



**P.O. Box 22073
Juneau, AK 99802-2073
(206) 260-9111 telefax**

**halibutcoalition@gmail.com
www.halibutcoalition.org**

September 21, 2011

Glenn Merrill
Assistant Regional Administrator
Alaska Region
National Marine Fisheries Service
P.O. Box 21668
Juneau, AK 99802

Attention: Ellen Sebastian

RIN: 0648-BA37

Dear Mr. Merrill:

The Halibut Coalition submits these comments in response to the proposed rule implementing the Halibut Catch Sharing Plan RIN: 0648-BA37. 76 Fed. Reg. 44156 (July 22, 2011). The Coalition urges immediate implementation of the Catch Sharing Plan (“CSP”). The CSP was developed through a lengthy, analytically thorough, and very public process. It provides the necessary conservation and management measures to protect and rebuild the halibut resource while balancing the needs of all who depend on Alaska halibut for sustenance and livelihood. The CSP provides timely management of the charter industry harvest in order to conserve the resource and to protect halibut subsistence and commercial fishermen from the ill effects of charter industry overfishing. The CSP will end decades of allocation battles by establishing a “win-win” mechanism for inter-sector trading. As Dr. Jane Lubchenco stated:

**Alaska Longline Fishermen's Association • Cordova District Fishermen • Deep Sea Fishermen's Union •
Fishing Vessel Owners Association • Halibut Association of North America • Kachemak Bay Fisheries
Association • North Pacific Fisheries Association • Petersburg Vessel Owners Association • Sea Food
Producers Cooperative • Southeast Alaska Fishermen's Alliance • United Cook Inlet Driftnetters Association
• United Fishermen's Marketing Association • United Southeast Alaska Gillnetters Association**

The challenge is to address the issue of allocations and fairness while recognizing that re-allocation is most difficult when a fishery is over-fished and needs rebuilding. At this point everyone – recreational and commercial fishermen – is struggling just to make it. As a starting point, allocation needs to comply with the Magnuson-Stevens Act. Within that framework I would like to see Councils phasing in mechanisms for inter-sector trading—especially at the five year re-evaluation point. I think trading can be a win-win, and can allow a more fluid (and less political) allocation process.

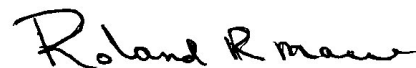
Dr. Jane Lubchenco, April 6, 2010 Recreational Saltwater Fishing Summit, http://www.nmfs.noaa.gov/sfa/PartnershipsCommunications/recfish/RecFishSummit/RecFishSummit_041610_LubchencoRemarks.pdf.

For these reasons and those set forth in the attached Comments, the Coalition urges prompt promulgation of the final rule implementing the Catch Sharing Plan.

Sincerely,



Rochelle van den Broek, Cordova District Fishermen United



Roland Maw, Upper Cook Inlet Driftnetters Association



Jeff Stephan, United Fishermen's Marketing Association



Buck Laukitis, North Pacific Fisheries Association



Robert Alverson, General Manager, Fishing Vessel Owners Association



Jan Standaert, President, Deep Sea Fishermen's Union



Linda Behnken, Alaska Longline Fishermen's Association



Rhonda Hubbard, Kruzof Fisheries, LLC

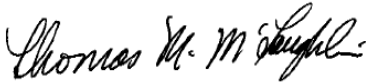
Glenn Merrill
National Marine Fisheries Service
September 21, 2011
Page 3



Bill Auger, President, United Southeast
Alaska Gillnetters



Peggy Parker, Executive Director, Halibut
Association of North America



Thomas M. McLaughlin, President/CEO
Seafood Producers Cooperative



Kathy Hansen, Executive Director,
Southeast Alaska Fishermen's Association



David Polushkin, Kachemak Bay Fisheries
Association



Julianne Curry, Petersburg Vessel Owners
Association

Appendix



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halibutcoalition@gmail.com
www.halibutcoalition.org

COMMENTS OF THE HALIBUT COALITION ON THE PROPOSED RULE TO IMPLEMENT THE HALIBUT CATCH SHARING PLAN

September 21, 2011

Alaska Longline Fishermen's Association • Cordova District Fishermen • Deep Sea Fishermen's Union •
Fishing Vessel Owners Association • Halibut Association of North America • Kachemak Bay Fisheries
Association • North Pacific Fisheries Association • Petersburg Vessel Owners Association • Sea Food
Producers Cooperative • Southeast Alaska Fishermen's Alliance • United Cook Inlet Driftnetters Association
• United Fishermen's Marketing Association • United Southeast Alaska Gillnetters Association

TABLE OF CONTENTS

I.	Introduction and History	1
A.	A Brief History of Halibut Charter Management in Alaska	1
B.	The Results of GHL Management	5
C.	The Impact of Charter Overfishing	7
II.	The Halibut Catch Sharing Plan.....	15
A.	The History of CSP Development	15
B.	The CSP is a Fair and Equitable Allocation	19
1.	The Allocation Amount	19
2.	The “Jink”	22
3.	“Stale Data”.....	23
4.	GHL versus CSP Management	23
5.	Market-Based Transfer Mechanism: Leasing Commercial Quota.....	26
6.	Accommodations to the Charter Industry – Fair and Equitable.....	27
7.	The GHL System is Unfair and Inequitable to Commercial Fishermen.....	28
8.	Shared Conservation Responsibility.....	29
9.	Public Trust.....	30
10.	Unguided Sport Fishing	31
11.	Harvest Rates	32
12.	Net National Benefits	33
13.	Conclusion	37
C.	Conservation.....	38
D.	Discrimination	40
E.	There is No Concentration of Shares	40
F.	Delay Tactics	40
III.	Participation in the Fishery	41
A.	The CSP Takes Into Account Present Participation	41
B.	The CSP Takes into Account Historical Participation In, and Dependence On, the Fishery.....	42
C.	The CSP Takes Into Account the Economics of the Fishery	44
D.	The CSP Takes Into Account the Capacity of Fishing Vessels in the Fishery to Engage in Other Fisheries	44
E.	The CSP Takes Into Account the Cultural and Social Framework Relevant to the Fishery and Affected Fishing Communities	45
F.	The CSP Takes Into Account Other Relevant Considerations	45
IV.	Economic Impact.....	46
V.	Comments Specific to the Provisions of the Proposed Rule.....	54
A.	Allocation Clarification.....	54
B.	Catch Accounting in the Charter Sector.....	56
C.	Requested EA/RIR/IRFA Revisions.....	58
VI.	Conclusion	60

The Halibut Coalition (“Coalition”) submits these comments in response to the proposed rule implementing the Halibut Catch Sharing Plan (“Proposed Rule”). 76 Fed. Reg. 44156 (July 22, 2011). We urge that a final rule implementing the Catch Sharing Plan be promulgated promptly.

I. Introduction and History

The Coalition includes 13 member organizations and over 500 individual members. The Coalition represents a broad cross-section of people dependent on the halibut resource, including subsistence fishermen, sport and commercial fishermen, commercial halibut processors, fishery dependent communities, and American halibut consumers. Our mission is to promote sustainable management of the Alaska halibut resource and sustained access to that resource by historic participants. We participate fully in federal and international halibut management fora and respect decisions made through these scientifically-based processes.

The Catch Sharing Plan (“CSP”) is the end result of almost two decades of focused effort by managers and stakeholders, including the Coalition, to develop a responsive and effective management system for the halibut charter fleet to protect the resource and all harvester groups. These comments will (1) provide background on the development of the CSP, including the resource issues that guided policy development, (2) discuss how the CSP complies with existing law, (3) discuss the mechanisms embedded in the CSP designed to accommodate charter industry interests, and (4) examine the regulatory provisions of the Proposed Rule.

A. A Brief History of Halibut Charter Management in Alaska

In 1993, concerned commercial halibut fishermen identified serious resource conservation and management concerns caused by the rapidly expanding halibut charter harvest. Commercial fishermen reminded the North Pacific Fishery Management Council (“Council”) that the rapidly growing charter harvest was causing a direct reallocation of the allowable catch from the commercial fleet to the charter sector. This was occurring because, under the allocation system in use, the estimated charter catch was being deducted from the total quota and what was left was the commercial quota. Subsistence and sport fishermen voiced their concerns that the charter harvest, which was growing at an exponential rate, was preventing subsistence fishermen from harvesting the fish necessary to provide their families with food. The problem was, and is, that charter fishing is concentrated near towns, and the geographically concentrated charter harvest depletes the near-town halibut stocks that provide sustenance to resident subsistence and

sport fishermen. Unlike the charter fleet, subsistence fishermen generally operate from small open skiffs and cannot safely access halibut outside their traditional near-shore areas.

Heeding these conservation and allocation concerns, the Council determined that managing the charter catch was necessary to prevent the open ended reallocation of fish from the commercial sector to the charter fleet and to ensure that subsistence users had access to the resource. The Council established a Halibut Charter Working Group to identify and examine potential management options. The Working Group, comprised of six charter representatives, three commercial fishery representatives, and one non-charter fish representative, was dominated by the charter industry.

In 1995, the Council reviewed the Working Group's findings, received public testimony, and adopted a Problem Statement explaining the issues requiring action. The Problem Statement focused on the biological, social, and economic effects of the rapidly growing charter harvest. In June 1996, the Council narrowed the management options to better address the issues in the Problem Statement.

In September 1997, the Council adopted a guideline harvest level ("GHL") for halibut management in International Pacific Halibut Commission ("IPHC") Management Area 2C set at 125% of the 1995 charter harvest, 12.35% of the combined Area 2C commercial/charter combined catch. In late 1997, the National Marine Fisheries Service ("NMFS") informed the Council the GHL would not be published as a regulation because the Council had not identified what management measures could be implemented if the charter fleet ever exceeded 125% of its then current harvest. 63 Fed. Reg. 11649 (March 10, 1998). Nevertheless, NMFS published a Federal Register notice formally announcing the Council's intent to limit the charter harvest to the GHL. *Id.*

Responding to NMFS' action, the Council, in 1998, appointed a nine person GHL Committee to identify management options that could limit the charter harvest to the GHL if the 125% growth limit was exceeded. The GHL Committee was comprised of six charter industry representatives, two subsistence users, and one non-guided recreational fisherman. The subsistence representatives left the Committee after one meeting because they could not afford the travel costs. Again, the charter industry dominated the GHL Committee.

In its 1999 meetings, and based on the GHL Committee's recommendations, the Council identified for analysis a suite of management options that could be implemented if the GHL was ever exceeded. 67 Fed. Reg. 3867, 3869 (Jan. 28, 2002).

At its February 2000 meeting, the Council had before it 25 GHL related management options and sub-options. The Council approved a GHL of 125% of the 1995-1999 average charter harvest with a cap of 13.05% of the combined charter/commercial quota, or 1.4 million pounds. By using data through 1999, the Council increased the percentage of the overall harvest to be taken by the charter fleet.

The Council's action to manage the charter harvest reflected the 1995 Problem Statement which had noted several "areas of concern with respect to the recent growth of halibut charter operations...." Chief among those concerns was "[p]ressure by charter operations may be contributing to localized depletion.... The recent growth of charter operations may be contributing to ... declining harvests for historic sport and subsistence fishermen.... As there is currently no limit on the annual harvest of halibut by charter operations, an open-ended reallocation from the commercial fishery to the charter industry is occurring.... The economic and social impact on the commercial fleet of this open-ended reallocation may be substantial.... [C]ommunity stability may be affected as traditional sport, subsistence, and commercial fishermen are displaced by charter operators."

The process used to develop the GHL had consumed ten years. The Council had devoted over 20 meetings to receiving thousands of pages of testimony and to discussing the best way to manage the halibut fishery. In one meeting alone, the meeting where the Council approved the GHL, the Council allocated 20 hours to considering halibut management issues.

Among the written statements presented to the Council in that and other meetings were many discussing the social and economic problems for commercial fishermen who were the traditional and historic users of the resource, subsistence fishermen, and local communities caused by the explosive growth of the charter industry. Typical comments were that people had invested in commercial halibut vessels, halibut quota shares, etc., often borrowing money and pledging their vessels and homes as collateral, and the ability to repay those loans was jeopardized if the commercial quota was cut to accommodate the new and growing charter industry. Other commenters talked about the conservation problems caused by charter fishing, including localized depletion caused by geographically concentrated charter fishing.

The Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (“EA/RIR”) for the GHL left no doubt as to the purpose of the Council’s action. The EA/RIR stated the GHL was “adopted to prevent the erosion of commercial quotas.... The impact on local communities is another prevalent rationale.... The Council has identified [charter operators] as contributing to localized depletion....” Environmental Assessment of the Guideline Harvest Level for the Guided Recreational Halibut Fishery in International Pacific Halibut Commission Areas 2C and 3A, August 1, 2003, at 13-14.

The preamble to the proposed GHL rule confirmed this intent stating the GHL was intended to “effectively limit further growth” of the charter industry to avoid the economic, social, and conservation issues identified in the Problem Statement. 67 Fed. Reg. at 3867-3868. The preamble to the final rule establishing the GHL in 2003 echoed the proposed rule. “The Council recognized the growth in [charter] harvests” was creating the precise “allocative concerns” discussed in the Council’s 1995 Problem Statement. 68 Fed. Reg. 47256, 47257 (September 8, 2003). The GHL was established to prevent the social and economic problems caused by the uncontrolled growth of the charter catch. *Id.* NMFS explained the commercial halibut catch limit is the amount of fish left over after other harvests are subtracted from the total allowable harvest. *Id.* “Hence, as the guided recreational fishery expands, its harvests reduce the pounds available to be fished in the commercial halibut fishery and, subsequently, the value of quota shares (QS)....” *Id.* NMFS stated that the “ever increasing harvests in this [charter] fishery may make achievement of Magnuson-Stevens Act National Standards [including NS 4’s fair and equitable standard] more difficult.” *Id.* Of particular concern was the:

ability to maintain the stability, economic viability, and diversity of the halibut industry, the quality of the recreational experience, the access of subsistence users, and the socioeconomic well-being of the coastal communities dependent on the halibut resource.

Id. NMFS concluded that “[t]his final rule is the result of ongoing efforts by the Council to address allocation concerns between the commercial IFQ halibut fishery and the guided recreational fishery.” *Id.*

The Council and NMFS were quite clear that the GHL “was to place an upper limit” on the charter harvest. 63 Fed. Reg. at 11649. “The GHLs are established as a total maximum poundage” for the charter industry. 68 Fed. Reg. at 47258. “[T]he GHL was to provide a limit on the total amount of harvests in the guided fishery....” *Id.* at 47259. “[I]t is the Council’s

policy that the charter vessel fishery should not exceed the GHL.” 73 Fed. Reg. 30504, 30505 (May 28, 2008). *See also* 73 Fed. Reg. 78276, 78277 (Dec. 22, 2008) (“the Council’s intent [is] to limit the [charter boat] catch to the GHL.”) The preamble to the final rule establishing the GHL stated: “The GHL was developed by the Council and approved by NMFS as an allowable level of harvest for the charter vessel fishery....” 74 Fed. Reg. 21194, 21202 (May 6, 2009).

B. The Results of GHL Management

Contrary to the Council’s goal, the charter industry has exceeded the Area 2C (southeast Alaska) GHL every year since the GHL was established in 2004. The exceedances have not been trivial, causing the exact problems the Council sought to avoid. Since the GHLs were established, the charter industry has exceeded its quota by 22%-115% for a cumulative overage totaling 3.77 million pounds. Charter overages have also occurred in IPHC Management Area 3A (south central Alaska) with small overages in each year 2004-2006 and a substantial overage in 2007 (352,000 pounds). Compounding these problems is the fact that the regulatory process to implement management measures and control the halibut charter harvest has not been timely and has been subject to interference. While the Council has made repeated attempts to address charter overharvest through a charter individual fishing quota system, annual limits, reduced bag limits, and maximum size limits, the charter industry has fought relentlessly against conservation and management measures through political pressure and litigation. As a result, the charter harvest has grown even as the halibut biomass has declined, thereby threatening the resource and devastating subsistence and commercial fishermen who have depended on the halibut resource for generations.

A brief review of the current trends in resource abundance and harvest levels is instructive. The 2010 coastwide Pacific halibut assessment indicates that the exploitable biomass has declined approximately 50% over the past decade. 2011 IPHC Annual Meeting Handout, at 78. The decline is not consistent across all halibut management areas. The Area 2C abundance level is the lowest on record and is at least 60% lower than its highest level. Similarly, the Area 3A surveyed weight per unit effort, a critical index of abundance, is at its lowest on record and is about 40% of the level seen in the late 1990s. *Id.* at 80. Managers are concerned and have taken drastic steps to protect stocks. By 2011, the annual commercial catch limit in Area 2C had been reduced by 76% from its 2005 level because of a declining halibut biomass, a reduction of eight million pounds. In Area 3A, the commercial catch limit has been

reduced 44%, a reduction of eleven million pounds, since 2005. Meanwhile, the Area 2C charter industry has continued to overfish its allocation (62% in 2010) and to fight against every proposed or approved management restriction. This charter overfishing has perpetuated the conservation and allocation problems the GHL was intended to address. Indeed, in a letter dated September 19, 2008, IPHC told the Council:

The lack of compliance with the GHL targets will exacerbate the present conservation problem in Area 2C. Estimates of exploitable biomass for Area 2C have decreased markedly in recent years and the lack of adherence by the charter fishery to the targets established by the Council in turn frustrates the ability of the IPHC to meet its management targets. The increased charter catch will delay the rebuilding of the Area 2C resource, and increase the harvest rate well above the 20 percent level we believe is appropriate.

The implications of charter overfishing are compounded by the fact that the GHL is not directly tied to abundance. The GHL in each area is set in fixed pounds that do not automatically decline as the resource declines. Instead, the GHL is adjusted only to reflect large declines in abundance and the GHL is reduced only when fixed trigger points in halibut abundance are reached. Two years ago, the Area 2C GHL reached the bottom GHL tier, the level below which the GHL cannot be lowered even if the resource declines. Thus, the GHL has remained unchanged even as the halibut biomass has continued to drop and the commercial quota was slashed to conserve halibut stocks. While the halibut resource declined 16% from 2009 to 2010 (76 Fed. Reg. at 44160) and the Area 2C commercial quota was cut 12% to conserve the resource, the GHL was unchanged and the charter industry overfished its 2010 quota by 62%. Between 2010 and 2011, the Area 2C commercial quota was cut an additional 47% because of the need to conserve the resource. The charter GHL was not cut.

In considering the extent of charter overfishing and the conservation actions that should be undertaken, it is also important to recognize that estimates of charter harvest do not include an accounting of halibut that die after being released from a charter client's hook. Estimated mortality of released halibut in the charter fishery is 6%, but this number is not based on empirical data and does not account for fish that are hooked and released multiple times. Data from other areas indicate mortality rates can increase significantly with multiple hookings.

All of these facts document the underlying failure of GHM management to respond to stock emergencies. The facts are that GHM management does not directly link charter harvest levels to halibut abundance, it is not timely, and GHM management measures have proven to be subject to interference.

C. The Impact of Charter Overfishing

Charter overfishing has contributed to the dramatic declines in the Area 2C halibut resource which has devastated sport, commercial and subsistence fishermen. Many commercial fishermen dependent on the Area 2C resource can no longer earn enough money to pay their trip expenses and to repay the loans they took out to buy the quota shares (“QS”) necessary for them to fish halibut. Many QS holders face the very difficult and very real prospect of defaulting on their QS loans because non-fishing employment opportunities to supplement fishing income in Alaska’s small rural communities are extremely limited. Many commercial fishermen in this plight also confront the possibility of losing their homes and vessel which served as collateral for the QS loan.

These are not theoretical problems. When the charter industry sued in 2009 to overturn conservation regulations designed to prevent charter overfishing, commercial fishermen told the court about the economic and other impacts of charter industry overfishing. One commercial fisherman said her proportionate share of the commercial halibut quota had been cut 54% but her loan payments for the purchase of halibut QS had not been cut. Her halibut quota simply would not provide enough income to cover the loan payments.

Another commercial fisherman used his savings and borrowed money to purchase QS but was having difficulty repaying his loan and also paying for college because of cuts in the commercial quota. His fear was being forced to drop out of college and losing his chance to build a fishing business.

Another commercial fisherman explained that 60% of his family income was from halibut fishing and commercial quota reductions were having a devastating impact on his family. Another commercial fisherman who had pledged his fishing boat as collateral for the loan to purchase halibut QS was operating on razor thin margins and, because of quota reductions, grossed only \$18,000 from halibut fishing netting only \$2,000 after paying his QS loan.

Others were not as fortunate, not earning enough from halibut fishing to pay for the loan to purchase halibut QS. Like so many others, these fishermen had pledged their boats, the source

of their livelihoods, as loan collateral. These fishermen were forced to raid their life savings to survive and to pay their loan.

The plight of new commercial fishermen is the same. One such person purchased her QS in 2007. Since that time, she has lost 76% of her quota, 76% which would have otherwise been available to help pay the loan taken out to purchase the QS. In 2009 and 2011, she has been unable to cover her loan payments by fishing her halibut shares, notwithstanding the fact that the ex-vessel price of halibut has increased. Hers is a common story throughout Southeast Alaska as commercial fishermen find themselves unable to make payments on boats and/or QS loans based on earnings from halibut fishing. For example, in a letter to NMFS on the CSP, the Short family explained that a family member had been issued QS in 1995 and family members purchased more QS in 1996, 1997, 2002, 2005, 2008, 2009, and 2010. The family now operates two vessels. Both parents and both adult children own QS. They have invested heavily in the fishery, borrowing money to do so. Given the 76% cut in the commercial allocation since 2006, the family faces a severe economic crisis. The amount of their loans has not declined but their ability to pay has been cut by 76%.

In considering the plight of the commercial fishermen, recall that since 2005 the halibut resource in Area 2C has declined 62% and the commercial quota has been cut 76%. In that same time, the charter industry GHQ quota was reduced by 55% but the charter industry overfished its quota by an average of 52%. In other words, the commercial quota was cut for conservation by 76% while the charter industry's quota was cut by only 55%. However, the charter sector successfully avoided taking any responsibility for conservation because it overfished its quota by 52%.

In Area 3A, the halibut resource has declined by 37% from a 2007 high in abundance. The commercial quota has been reduced by 47%. The charter quota has never been reduced.

As noted above, the impact of charter overfishing on commercial fishermen has been direct and immediate because the amount of the harvestable resource was adversely affected and because the IPHC deducted charter overharvests from the commercial fleet. Although a few individual examples are given above, the facts are that the amount of the deduction from commercial fishermen totaled 3.77 million pounds between 2004 and 2010 in Area 2C. These 3.77 million pounds had an ex-vessel value to commercial fishermen of \$15 million (using an

average price of \$4 per pound). In Area 3A, the cumulative charter overage since 2004 has been 400,000 pounds with an ex-vessel value to commercial fishermen of \$1.6 million.

Equally important, charter fishing is concentrated near towns and has caused local depletion of the halibut resource, with devastating impacts on subsistence fishermen. The paucity of halibut in the protected waters accessible to sport and subsistence fishermen was documented in public testimony to the Council in the mid-1990s and is reflected in the Council's 1998 Problem Statement discussing the need for a management system to restrain the charter harvest. This Problem Statement setting forth the basis for the GHL acknowledged that "[p]ressure by charter operations may be contributing to localized depletion.... Community stability may be affected as traditional ... subsistence ... fishermen are displaced by charter operators." Similarly, the GHL EA/RIR stated: "The Council has identified [charter operators] as contributing to localized depletion." EA/RIR at 13-14. NMFS also identified "the access of subsistence users" to the resource as a significant issue. 68 Fed. Reg. at 47257.

When the charter industry went to court in 2009 to overturn conservation regulations designed to prevent charter overfishing, subsistence fishermen told the court about their plight and the problems caused by localized depletion due to concentrated charter fishing in near shore areas. For example, Carolyn Heuer told the court her family depends on wild fish and game for her family's protein, consuming 50-75 pounds of halibut annually, and she "cannot afford to feed [her] family without depending on a subsistence harvest." Ms. Heuer explained the effects of charter industry overfishing as follows: "Over the past five years, I have noticed a significant decline in the abundance of halibut in the Sitka area. This decline corresponds with the growth of concentrated and unrestricted charter boat fishing in and around the Sitka area. This concentrated fishing effort ... has meant that our usual locations for subsistence fishing are no longer reliable." Because of this localized depletion, Ms. Heuer was unable to catch the fish necessary to meet the subsistence needs of her family. That meant hunger or somehow finding the money to pay for substitute groceries. And whatever economic resources Ms. Heuer may have had were further depleted when, in an effort to find subsistence halibut in a fished out area, Ms. Heuer incurred the added fuel and other expenses associated with traveling farther to find fish.

Similarly, representatives of the Hoonah Indian Association ("HIA"), a federally recognized governing body for 1,032 tribal members of Hoonah, told the court "Our community

has been in existence prior to the formation of our Country, Alaskan Statehood, commercial fishing, and charter fishing.” About 70% of Hoonah residents fish and hunt and gather food. “Fishing, including halibut fishing, has cultural significance” to Tribal members and “[t]he cultural importance and intrinsic value to the ecosystem of the halibut resource and the role it plays in the health of Alaska’s coastal communities, subsistence users and small boat fishing fleet cannot be overstated. Charter overfishing compromises every aspect of our cultural heritage and directly harms my connection to the resource.”

HIA tribal members depend on “our customary and traditional practices” to feed their families. HIA told the court that tribal members were harmed by charter industry overfishing because “the localized depletion of halibut caused by charter overfishing forces us to leave historic fishing grounds that are no longer productive ... [T]he availability of the halibut resource is of great concern to my people’s survival.” About 75% of Hoonah residents use halibut as a subsistence resource. This subsistence dependence reflects the fact that 16% of Hoonah residents live below the poverty line and unemployment hovers around 21%. Hoonah’s representative told the court that allowing continued charter overfishing by failing to implement measures to control charter overfishing harms tribal members by weakening “the ability of local subsistence users to gather the resources necessary for basic sustenance.” The Tribe told the court that their concerns and problems are shared by other Native peoples in Alaska.

At the October 2008 Council meeting, the President of HIA spoke once again about the subsistence needs of native people and explained the effect of charter fishing in just one area. “Icy Strait used to be a hot place to fish halibut. Our people would only have to go a couple of miles to get a fish. Nowadays, we don’t get too much dried halibut because of the lack of fish... My people are a subsistence gathering people.... We feel that [the resource] may be depleted if we don’t do something about charter boats, a growing industry that is out of control...”

A subsistence fisherman, Hayden Kaden, echoed HIA’s concerns about Icy Strait in testimony submitted to the Council in September 2008. Mr. Kruden told the Council: “In the last 10 or so years, I have witnessed the explosive growth of the commercial charter fishing fleet in Icy Strait.... We subsistence and sport fishers are having to travel far from our community by skiff in order to be able to catch anything for our tables anymore.... This I attribute to the incredible overfishing of our waters by the commercial charter fleet.”

A biologist, Craig Murdoch, told the Council in September 2008 that the charter fleet was “catching more fish than they ever have and are having a real impact. Local depletion is a real problem that is having a real impact....”

The Sitka Conservation Society, Alaska’s oldest conservation society, told the Council in September 2008 that “There is ample circumstantial evidence to demonstrate local depletions.” It is this localized depletion caused by concentrated charter overfishing that is denying traditional subsistence families access to the halibut resource.

The City of Wrangell told the Council in March 2008: “The City of Wrangell is a rural, subsistence community and we support abundance based management that has all users sharing in the burden of conservation.”

As the preceding examples document, during Council consideration of the CSP, the continuing problem of localized depletion and the impacts of charter overfishing were well documented. Significantly, the charter industry admitted the existence of localized depletion when they testified to the Council during hearings on the halibut charter limited entry program that they need to travel farther every year to find halibut because inshore areas are “fished out.” Summing up the problem, the Southeast Alaska Subsistence Regional Advisory Council, a group established by federal law, told the Council in written testimony in September 2008: “The [Southeast Alaska Subsistence Regional Advisory] Council supports the continuation of the subsistence halibut fishery and is concerned with maintaining the availability of the halibut resource near rural communities. The Council has concerns regarding the growing sport halibut fishery charter fleet in Southeast Alaska and the decline in halibut abundance in Southeast Alaska. Many subsistence users have reported that it is becoming much more difficult to catch halibut near communities where they had traditionally harvested fish.”

In an amicus brief filed in a 2011 lawsuit by the charter industry challenging the charter limited entry permit program, Jeff Moran, a representative of the Metlakatla Tribe, told the court about the impacts on local subsistence fishermen of localized depletion caused by charter overfishing. Mr. Moran explained that many members of the Metlakatla community depend on subsistence fishing and then stated: “Speaking from my personal experience, subsistence fishing for halibut has declined to the point that I now feel lucky to catch a single halibut in any particular season.... [O]ne of the reasons for the decrease in the community’s halibut catch is a

depletion of the halibut stock by ... charter fishermen.... This impairs our ability to provide for the community.”

The impacts of charter overfishing also reverberate through the processing industry and the coastal communities in Alaska that depend on revenue generated by the halibut fishery. When the charter industry challenged the 2009 regulations that would prevent charter overfishing, commercial fish processors told the court about the problems caused by charter overfishing. For example, the Seafood Producers Cooperative (“SPC”), the largest fishermen owned cooperative in the United States, told the court that 23% of its revenue is derived from the commercial halibut fishery. The 2007 and 2008 commercial halibut quota reductions, caused in part by the charter industry overfishing its GHL, reduced SPC production by 15% and revenues by \$2 million, reducing income for SPC’s 140 hourly employees. The 2009 cut in the commercial halibut quota was expected to reduce production pounds by another 20% and revenue by \$500,000. SPC was forced to lay off production workers who had few other job opportunities in the local economy. Reduced product throughput and reduced revenue also meant lower revenue for SPC’s 512 owner/members, 275 of whom are commercial halibut fishermen. SPC and its members are further harmed by charter industry overfishing because of the localized depletion it causes when the charter industry concentrates near towns to service lodge and cruise ship tourists. As SPC representatives told the court: “SPC members have been forced to abandon historic fishing grounds near town and now travel most of a day to reach productive fishing grounds outside the range of the charter fleet. Additional time increases operating costs and safety risks.”

Rightly so, SPC also worried that charter overfishing may result in the halibut fishery losing its Marine Stewardship Council (MSC) sustainable fishery certification, an increasingly important marketing tool. Indeed, many importers and other retail purchasers look for the MSC certification in deciding whether to buy harvested product. In the 2011 MSC review of the halibut fishery, the reviewers stated: “The management measures in place for the sport fishing sector of the fishery do not, however, provide positive incentives for sustainable fishing. The daily bag limits and the limit on the number of sport charter permits do not provide incentives for the sector to maintain catches within the GHL (guideline harvest limit). As noted above, the sport fishery frequently exceeded the GHL in recent years.” Marine Stewardship Council Final Report US Pacific Halibut v.4 (June 2011), Scientific Certification Systems,

http://www.msc.org/track-a-fishery/certified/pacific/us-north-pacific-halibut/reassessment-documents/05.07.2011_Final_PacificHalibut.pdf.

An SPC spokesman recently supplemented this information. He reported on recent economic impacts to SPC's members stating: "The reality is, if someone took out a loan to buy 10,000 pounds of quota six years ago, they're now down to fishing 2,200 pounds because of the diminishing catch limits. So they have left less than a quarter of what they're still paying on. The ex-vessel halibut price over that time went from \$2 to \$4 per pound, but if you're only fishing a quarter to a fifth of your quota share, double the price still just doesn't add up." Both the fishermen and the processors are suffering from the quota reductions and processing production for halibut at SPC is down 65% since 2008.

Members of the Halibut Association of North America ("HANA"), an association of processors that processes 70% of the commercial halibut harvest, told the court that commercial deliveries to HANA's processors had, by 2009, dropped by as much as 40% since 2006. Such drops in product inventory cannot be recaptured through higher prices. Less product to process and higher overhead, caused in part by localized depletion resulting from charter overfishing in near shore areas which forces fishermen to travel farther offshore to catch fish, has resulted in layoffs among processing workers and lost wages for remaining workers.

Yet another processor, North Pacific Seafoods, Inc. ("NPS"), which employs 800 workers at three halibut processing plants, told the court in 2009 that since 2004 when the charter industry began exceeding its catch limit, halibut production in NPS' Area 2C processing plant had dropped 25%. Any continuation of charter overfishing would cause even more production cuts and the loss of processing jobs as the commercial quota is cut to compensate for the effects of charter overfishing. Since then the Area 2C quota has been reduced by 52%, further reducing production and processing jobs.

At Hoonah Cold Storage, diminishing halibut quotas have cut production by 75% since 2004 with a corresponding loss of jobs. Similarly, Dana Besecker Co., Inc., which purchases more halibut than any other buyer in Alaska, has seen halibut processing production drop 56% in the last five years. Though production has dropped, expenses have not, creating important economic issues for the processing company and the community since reinvestment dollars are just not there. Like these two companies, Icicle Seafoods, with processing plants in Areas 2C

and 3A, has seen halibut production drop by as much as 50% in some plants, with a corresponding drop in workers' pay and job opportunities.

The effects of charter overfishing on coastal communities were, and are, equally devastating. In Area 2C, for example, 74% of the halibut QS owners are family businessmen and women residing in Alaska's coastal communities and 90% of the Area 2C commercial halibut catch is delivered to community-based processors. Commercial fishermen are tied to their local communities. The effects of charter overfishing on these coastal communities was a significant part of the information presented to the court in 2009 when the charter industry sought to continue overfishing by overturning the conservation regulations intended to prevent that. For example, the City of Pelican is a community of 112 residents, 26% of whom are Alaskan Natives. The Mayor told the court that many Pelican residents are also subsistence fishermen whose subsistence harvest is "essential to their survival." Pelican has no road connections with any other town and the commercial halibut fishery is the mainstay of Pelican's economy. The Mayor explained that Pelican receives 50% of the commercial fish tax collected by Alaska from halibut and other commercial fish landings in Pelican and depends on this revenue. Diminishing the revenue from that tax jeopardizes the ability of Pelican to provide essential services to its residents. Since this tax is based in large part on commercial halibut landings, any reduction in the commercial halibut quota due to charter industry overfishing causes direct and immediate harm to the City. In the words of Pelican's Mayor: "Our community is NOT sustainable without commercial setline halibut fishing and seafood processing."

Similarly, the City of Port Alexander is an isolated fishing community in Area 2C which can only be reached by boat or float plane. It has 51 residents and is almost entirely dependent on the fishing industry. As the City's Mayor told the court, "The survival of Port Alexander as a community ... depends on viable access to healthy and abundant marine fish stocks." Reductions in the commercial catch caused by charter overfishing directly harm Port Alexander "because the economic survival of the community" depends on the fisheries.

That these are continuing problems was documented in March 2008 when the Mayor of Hoonah told the Council: "Our economy is resource based and fisheries is the leading driver.... My municipality does count on raw fish tax which totals well over a hundred thousand dollars on an annual basis." Turning to the need for all sectors to bear a fair share of the responsibility for

resource conservation, the Mayor continued: “If the charter fleet wishes to become a player they need to be asked to take conservation measures when the need arises.” Echoing this sentiment, the City of Craig submitted testimony to the Council in September 2008 stating: It is important ... that the charter industry be held accountable for their own excesses...”

The facts are that the impacts of charter overfishing are being felt first and foremost by the resource and then by all who depend on it, commercial, sport, and subsistence fishermen, and processors. Coastal communities who depend on the tax revenue and economic activity generated by commercial halibut fishery are also among those harmed by charter overfishing.

II. The Halibut Catch Sharing Plan

A. The History of CSP Development

This history of failed management and chronic charter overfishing demanded, and still demands, resolution. Recognizing the difficulties with the GHL system, the Council in 2005 began investigating other ways to manage the charter harvest. As the Council’s Problem Statement for the CSP establishes, many of the same problems that the Council sought to address with the GHL (sector reallocation, charter overfishing, impacts to sport and subsistence harvesters, tension in coastal communities) have not been resolved by the GHL and these continuing issues demanded a more responsive management system. Recognizing these chronic and continuing problems, the Council re-formed the Halibut Charter Stakeholder Committee. This thirteen-member Committee was comprised of seven charter industry representatives, one sport fisherman, one processor, one Council member, one State of Alaska representative, and two commercial fishermen. Once again, the committee charged with finding solutions was dominated by the charter industry. When the Committee was almost finished with its work, one member was added to represent coastal communities.

The Stakeholder Committee determined that many of the alternative management programs that had been suggested could require federal or state legislation to implement and could not be implemented in a timely fashion. During the March/April 2007 Council meeting, charter industry representatives approached commercial fishermen and requested help. With staff assistance from the State of Alaska, the CSP was developed in October of 2007 with the full support of the charter industry representatives and operators present at the October 2007 Council meeting. The people representing the charter industry in these discussions were the charter representatives on the Stakeholder Committee plus additional representatives of the charter

industry who were present at the Council meeting. At the end, the support from the charter industry was unanimous. All charter and commercial fishermen at the Council meeting stood united before the Council in support of the CSP. Sport and subsistence fishermen added their support through public testimony at subsequent meetings, demanding that the Council restrict charter harvest to protect the resource and traditional users.

However, at the October 2008 Council meeting where the Council was to vote to approve the CSP Agreement, the charter industry withdrew its support of the Agreement it had endorsed and demanded a new plan that would meet their newly minted definition of fair and equitable. The charter industry's new plan proposed raising the then existing Area 2C charter catch from 913,000 pounds to 4.9 – 5.7 million pounds, between 70%-80% of the total harvest allowed by the IPHC. At that point, the commercial fleet would effectively cease to exist. If the total harvest had to be restricted for conservation reasons, all catch reductions would come from what was left of the commercial quota. The charter catch would not be restricted until the IPHC determined the coastwide halibut population had reached such low levels that all fishing must stop.

In response to the charter industry's proposal, the Alaska Department of Fish and Game ("ADF&G") Commissioner sought to salvage the CSP and presented another proposal that ultimately was the foundation for what the Council adopted. Neither the commercial sector nor the charter sector saw the State of Alaska proposal in advance, although the State consulted with both groups before presenting its proposal to the Council.

Members of the charter industry have subsequently claimed that the Council chose to "invent an entirely different" CSP from what the Stakeholder Committee and others had recommended. This claim ignores the fact that it was the charter industry that reversed its position, rejecting the CSP Agreement it had previously endorsed, forcing the State of Alaska to devise a modified plan. Notwithstanding the substantial turmoil caused by the charter industry's reversal of position and unrealistic demands, the CSP adopted by the Council accommodated charter industry interests in many important ways. For example, the charter industry had always asked for management stability regarding bag limits so that management measures would not change during the fishing season. The Council agreed to keep those measures constant during the fishing season. The Council also established a range around the charter allocation that allows charter harvest levels to vary by 3.5% above or below the allocation before bag limits are

changed. The range represents a variance of approximately 20% around the charter allocation, which can only be considered a very generous accommodation by managers and other halibut harvesters. We note that the U.S.-Canada Pacific Salmon Commission defines the annual management error range for Chinook salmon as +or- 7.5% of the point estimate harvest; the Chinook fishery includes both commercial and sport (guided and unguided) and both Chinook and halibut sport harvests are assessed with the same tools: charter log books and the Statewide Harvest Survey. Again, this provision was adopted in response to the charter industry's demand for stability and predictability. The Council then increased the charter industry's allocation percentage when halibut populations are low in order to provide an additional economic bonus to the charter industry. The effect is to reduce the charter industry's conservation responsibility and to shift that responsibility to the commercial sector since higher charter quotas mean lower commercial harvests. Finally, the Council established a unique opportunity for charter operators to maintain stability and client opportunity by leasing quota from commercial fishermen. This quota leasing program, called the Guided Angler Fish ("GAF") program, had broad support before the Council. As the Environmental Assessment published contemporaneously with this Proposed Rule noted: "Stakeholders from the commercial and charter sectors have testified in support of the GAF program as a market-based mechanism for attaining a more nearly optimal allocation." Environmental Assessment/ Regulatory Impact Review/Initial Regulatory Flexibility Analysis, Regulatory Amendment for a Catch Sharing Plan for the Pacific Halibut Charter and Commercial Longline Sectors in International Pacific Halibut Commission Regulatory Areas 2C and 3A, June 23, 2011 ("EA") at xxxvi. We note that the Canadians, who are experiencing similar problems with controlling the sport harvest, came to the same conclusion about the use of leased fish and their experimental program is exceeding expectations this year; we suggest the NMFS confer with the Canadian Department of Fisheries and Oceans to share lessons learned. In short, the Council accommodated charter interests to the maximum extent possible while still providing some protection to other harvesters, processors, and communities. In October 2008, the Council approved the CSP by a 10-1 vote. In that meeting, the Council received testimony from 109 organizations and individuals and the public submitted written comments that filled two four-inch binders.

The first response of the charter industry to the Council's action was to allege the Council was not fair because the Council had not adopted the charter industry's new allocation demands.

The charter industry said the Council was prejudiced because the Council had more members who were commercial fishermen than recreational fishermen. These comments will address the fair and equitable issue below. However, as to the composition of the Council, it is important to recognize that the Council manages 46 species and multi-species complexes but only one recreational fishery (halibut). The commercial harvest for all species when the CSP was adopted totaled 4.5 billion pounds. In contrast, the halibut charter harvest managed by the Council totaled 5 million pounds, 0.1% of the commercial harvest for which the Council was responsible. The Council has 11 members, four of whom are public sector representatives (NMFS plus the principal fisheries management official from each of the states of Oregon, Washington, and Alaska). Of the seven non-public sector members appointed by NMFS, two are from Washington and five from Alaska. Of those seven non-public sector members at the time the CSP was approved, six were commercial representatives and one a recreational fisherman. Given that only 0.1% of the Council's management responsibility based on pounds harvested involved recreational commercial fisheries, this was not surprising. Further, almost all of the commercial and public sector representatives on the Council were also recreational fishermen who accessed the resource from charter boats.

The CSP addresses the conservation and allocation issues that have plagued the halibut fishery for almost two decades. The CSP has four critical components. First, the CSP establishes clear sector allocations between the charter and commercial sectors via a percentage allocation that will allow harvests to rise and fall with the abundance of the halibut resource. Second, the CSP includes an improved method for timely implementation of management measures to restrict the charter harvest to that sector's allocation. Third, the CSP provides the charter industry an unprecedented measure of management stability by ensuring charter operations an uninterrupted season of historic length, restricting charter management measures to bag and size limits, holding charter management measures stable throughout the annual fishing season, and allowing charter harvest to fluctuate within an allocation range without a change in harvest restrictions. Finally, the CSP allows charter operators to lease QS from commercial fishermen to satisfy any need to harvest halibut above the specified charter limits. This is the market-based mechanism for inter-sector trading envisioned by Dr. Lubchenco.

B. The CSP is a Fair and Equitable Allocation

1. The Allocation Amount

When the GHL was established, it was set at 125% of the then existing charter harvest. That was 13.1% of the combined commercial/charter harvest in Area 2C and 14.0% in Area 3A. In the CSP, the Council awarded the Area 2C charter fleet 15.1% - 17.3% of the combined commercial/charter quota, with the higher percentage granted at times of low halibut abundance. In Area 3A, the CSP charter allocation is 14% - 15.4% of the combined quota, again depending on halibut population levels. In other words, the CSP allocation is at least equal to, and is generally greater than, the GHL allocation. In fact, a retrospective analysis discussed below establishes that had the CSP been in place since 2004 instead of the GHL the charter sector would have been allocated more fish under the CSP than it was allowed under the GHL.

To further place the allocation percentages into perspective, the 17.3% allocation for Area 2C was the highest percentage allocation considered by the Council and the lower tier of 15.1% was the second largest percentage considered. These percentages also accounted for present participation in the fishery by the charter fleet because the allocation was calculated as 125% of the average charter harvest in Area 2C from 2001-2005. In other words, notwithstanding the fact that the charter industry overfished its 2004 and 2005 GHL quota by 22% and 36% respectively, the CSP includes those overfishing harvest levels in the average, and then adds 25%, to reach the CSP allocation. Another way to look at this is that the charter industry was rewarded for overfishing and was given a 25% bonus on top of that.

Applying the CSP allocation percentages to the actual harvest levels in Area 2C amply demonstrates that the allocation is fair and equitable and that any related allegation about not accounting for present participation is false. In Area 2C, if the CSP had been in effect in 2010, the charter industry would have been allowed to take 15.1% of the combined commercial and charter allowed harvest. Under the GHL, the charter industry was allowed to take 15.4% -- a difference of only 8,000 pounds. However, it should be noted that because the charter industry overfished their quota, they actually harvested 21% of the combined commercial and charter catch, to the detriment of the resource and the commercial fishermen.

For Area 3A, the 15.4% charter allocation, the upper bound, was based on a calculation of 125% of the average charter harvest 2001-2005. In other words, the allocation was based on current harvest levels plus 25%. The 14% lower bound was established using the GHL formula

of 125% of the 1995-1999 average charter harvest in Area 3A. This allocation is fair because in 2008 and 2009 the Area 3A charter harvest did not exceed the GHL and from 2004-2007 exceeded the GHL by less than 3%. In other words, the charter harvest in Area 3A closely approximated the GHL in all years. Consequently, the CSP allocation based on the GHL fully takes into account present participation in the fishery and, in fact, provides a larger percentage allocation.

While it is not possible to predict future harvest levels because no one can know the size of the resource, it may be instructive when considering whether the CSP allocation is fair and equitable to compare actual GHL harvest amounts with what would have occurred had the CSP been in effect. Those numbers are set forth in Tables 1 and 2 for Areas 2C and 3A respectively. For Area 2C in the years 2004-2011, the total cumulative GHL quota was 9.023 million pounds. The harvest under the CSP allocation would have been 10.31 million pounds. In other words, the CSP would allow a greater overall harvest than the GHL. This information is also graphed in Appendix 1, which is attached to these comments.

The facts are the same in Area 3A where the total cumulative GHL quota 2004-2011 was 29.20 million pounds. If the CSP had been in place in the same time period, the cumulative harvest would have been 29.92 million pounds. Again, the CSP harvest levels exceed the comparable GHL levels.

Notwithstanding these facts, the charter industry argues the CSP is not fair and equitable and fails to account for present participation because in 2011 in both Areas 2C and 3A the charter allocation under the GHL would have been greater than under the CSP. Such statements only document the charter industry's view that they should bear no responsibility for the conservation of the resource and that declines in resource abundance should not change the charter catch. Such a definition of what is fair and equitable does not comport with long accepted principles of fishery management or with reality. The facts are that in the 2004-2011 period in Area 2C, the halibut resource declined 62% in abundance. The commercial catch declined 76%. However, the charter harvest under the GHL declined only 45%. Further illustrating the disparity in conservation burdens is the fact that between 2009 and 2011 the halibut resource declined by 16%, the commercial harvest was reduced 53%, but the charter GHL quota was not reduced by one pound. As the Proposed Rule states: "The burden of a lower exploitable biomass in Area 2C was borne entirely by the commercial sector in 2010." 76 Fed.

Reg. at 44160. That the CSP asks the charter industry to assume a share of the conservation responsibility for a declining resource is fair and equitable.

In Area 3A, the story is the same. In the 2004-2011 period, the resource declined 25%. The commercial catch was cut 43%. The charter GHL quota was not reduced one pound. Again, it is only fair and equitable that everyone share the responsibility for conservation when resource abundance is declining. It is neither fair nor equitable for one sector, here the charter industry, to argue it should be able to maintain or increase its harvests when the resource size is plummeting and the commercial fleet is seeing its quota cut with the attendant serious adverse economic consequences.

There are those who now argue that the Council never intended the 3A charter sector to be managed with a one fish bag limit. The transcripts from the October 4, 2008 Council final action deliberations, which are quoted at length in the CSP proposed rule comments submitted by the Alaska Longline Fishermen’s Association, contain ample evidence to the contrary. The Council discussed and fine tuned through amendment the management tiers and triggers for Area 2C and Area 3A separately. The tiers and triggers of the Area 2C matrix are different from the tiers and triggers in the 3A matrix; each was determined based on data specific to the area. However, each area contains a combined charter and commercial catch level that triggers a one halibut daily bag limit. There can be no question that the Council considered and prepared for the one halibut daily limit management scenario in both Area 2C and Area 3A.

TABLE 1
Area 2C Comparative Charter Allocations

Year	GH ¹	CSP % Allocation	CSP ¹ Allocation
2004	1.432	15.1%	1.79
2005	1.432	15.1%	1.87
2006	1.432	15.1%	1.85
2007	1.432	15.1%	1.50
2008	0.931	15.1%	1.08
2009	0.788	15.1%	0.90
2010	0.788	15.1%	0.78
2011	<u>0.788</u>	17.3%	<u>0.54</u>
Total	9.023		10.31

¹ Weights in millions of pounds.

TABLE 2
Area 3C Comparative Charter Allocations

Year	GHL ¹	CSP % Allocation	CSP ¹ Allocation
2004	3.650	14%	3.97
2005	3.650	14%	4.01
2006	3.650	14%	4.01
2007	3.650	14%	4.18
2008	3.650	14%	3.90
2009	3.650	14%	3.55
2010	3.650	14%	3.30
2011	<u>3.650</u>	14%	<u>2.52</u>
Total	29.20		29.92

2. The “Jink”

Charter representatives cite what they call the “jink” in the CSP as further evidence of the alleged unfairness of the CSP. However, the so called “jink” about which the charter industry complains was adopted at their request. During public testimony on the GHL and the CSP, the charter industry repeatedly asked for management stability and a higher harvest percentage at low levels of halibut stock abundance, claiming they needed extra fish to keep their businesses alive when stocks were scarce. The change in the charter harvest percentages which the charter industry requested causes the so-called “jink.” For example, under the CSP, when halibut abundance permits a combined catch of 5 million pounds, the charter harvest is 755,000 pounds.

But if the halibut population drops and the allowed harvest falls 2% to be below the 5 million pound level, the commercial harvest drops 2% but the charter harvest increases from 755,000 pounds to 847,000 pounds. This counter-intuitive system was adopted only because the charter industry did not want to reduce their harvest when the halibut population declined. Instead, the CSP provides the stability in the charter harvest the industry sought by increasing the charter allocation percentage when the halibut population drops, taking that increase from the commercial fleet and making the commercial fleet bear the conservation burden. The Council could have fixed the so called “jink” by assigning the same allocation percentage to the charter industry regardless of the level of halibut abundance. Instead, the charter industry was granted protection when halibut populations fell, shifting conservation responsibility and lower catches to the commercial fleet.

3. “Stale Data”

After working for years to delay conservation and management measures and the CSP by filing lawsuits, changing previously agreed positions and endlessly demanding more halibut despite declining stocks, the charter industry now alleges the CSP relies on stale data that do not fully recognize current charter harvest levels. Charter plaintiffs made the same argument in their 2009 lawsuit against management measures designed to enforce the GHL. There, charter operators argued the GHL allocation was not appropriate and their allocation should be based on “present participation,” *i.e.*, their current harvest levels. The Court rejected this argument and its ruling provides essential insight. The Court stated:

Where overfishing by one group in recent years is the precise concern that the regulation intends to address, it makes sense to disregard the most recent participation data.

Van Valin v. Locke, 671 F.Supp.2d 1, 13 (D.D.C. 2009). The Court determined the charter sector should not be rewarded for ignoring the GHL and for overfishing. The Court stated:

The Charter Operators' argument that the Secretary should have relied on recent participation data is in essence a claim that they are entitled to a greater allocation of the harvest because they have been harvesting a greater amount in recent years, *i.e.*, that they should be rewarded for exceeding the guidelines year after year. The Secretary understandably chose not to encourage such overharvesting.

Id. Rewarding a sector for overharvesting would place the resource and the North Pacific management system at risk.

4. GHL versus CSP Management

Certain charter associations argue they are worse off under the CSP than under the GHL, despite the increased percentage allocations to the charter industry, the historic analysis captured in Tables 1 and 2 above, and the market-based mechanism that allows charter operators to acquire more fish. Instead, the charter industry has presented information to NMFS and the Council that allegedly compares charter allocations under the GHL and the CSP. *See* SEAGO letter of September 10, 2010 to the Council. These comparisons are inaccurate and misleading. First, the SEAGO comparisons are theoretical and lack any historical basis. Second, the charter industry based its charts on projected Constant Exploitation Yield (“CEY”), rather than the combined charter and commercial catch limit, which is the basis for the CSP allocations. The

combined charter commercial catch limit is set after the IPHC Commissioners evaluate CEY, apply appropriate harvest and management policies, and listen to public testimony. The Council very deliberately elected to base the CSP allocations on the combined commercial and charter catch limit to allow for the incorporation of these management factors. Creating graphs that apply CSP percentages to the CEY is misleading at best.

In considering the charter industry's allegations, it is important to recall the analysis in Part II(B)(1) of these Comments comparing the cumulative GHL quota harvest with the harvest levels had the CSP been in effect. Indeed, the 2010 Area 2C charter allocation under the CSP would have been 15.1% or 780,000 pounds. This compared to the GHL of 788,000 pounds – only 8,000 pounds different. The facts are that the 2011 charter allocation reductions that would have occurred under the CSP, and about which the charter industry complains, result from the resource decline discussed above and the need to proportionately reduce the harvest of both the charter and commercial sectors. What the charter industry wants to forget is that the halibut resource decline caused a 47% reduction in the 2010 commercial quota. The charter industry's quota was not cut. Now, they are arguing that despite continuing resource declines, they do not want to accept any quota reduction for conservation under the CSP.

With respect to Area 3A, the difference between the GHL and CSP allocations illustrates what is unfair and inequitable about the GHL—namely that resource declines in Area 3A have triggered a 44% reduction in the commercial quota over the past six years without triggering any reduction in the charter GHL allocation. The CSP requires the charter sector to share in conserving stocks and, therefore, reduces charter harvest at these low levels of halibut abundance to allow stocks to rebuild.

When evaluating charter industry allegations, recall also that the CSP sets an allowable range, not an inflexible fixed amount. Under the CSP, the annual charter catch is allowed to vary from the allocation percentage by up to 3.5% in either direction. This harvest range equates to about a 20% range around the charter allocation. To our knowledge, no other fishery, commercial or charter, is allowed to exceed its allocation by 20% without immediate conservation action. To illustrate, in 2010, the allowable charter catch in Area 2C under the CSP would have been from 600,000 pounds to 960,000 pounds with a midpoint of 780,000 pounds. A harvest within that range would mean no management action was required. In contrast, under the GHL, if the charter catch exceeded 788,000 pounds in 2010, management action would be

initiated to restrict charter harvest in subsequent years. While the Council clearly committed to managing the charter sector over time to the CSP allocation mid-point, the CSP allows the charter harvest to fluctuate by up to 20% of their allocation without changing charter bag or size limits, thus giving the charter fleet greater predictability for marketing trips to clients. That the management measures are limited to bag and size limits is further evidence of concessions to the charter industry, which did not want any other management tools in the tool box. The charter fleet repeatedly asked for predictability to assist in marketing charters to their clients and the allocation range and management measure matrix were developed to accommodate the charter business model.

The CSP provides another benefit to the charter sector when compared to the GHL system. As halibut stocks rebuild, the CSP process will allow charter management measures to be liberalized more quickly than is possible under the GHL. Under the GHL, Area 2C charter clients will likely be limited to one 37 inch halibut per day for 3-4 years even as stocks rebuild since the GHL relies on an end of the season evaluation of charter catch, which takes nine months to verify after the season closes, and uses the Council/NMFS rulemaking process to modify management measures. The CSP projects charter catch levels pre-season, uses the Council approved matrix or tiers to identify appropriate management measures based on halibut abundance and projected catch, and then relies on the annual IPHC management process to implement changes. This innovative process will allow the size and bag restrictions to be liberalized in response to stock recovery on a 1-2 year timeframe.

In sum, when the CSP versus GHL harvest level is plotted as in Tables 1 and 2 the analysis establishes a very different story than that claimed to exist by the charter industry. Over the long-term, the CSP grants the charter industry in both Areas 2C and 3A a larger halibut allocation than was made under the GHL. When charter lobbyists cite the quota reduction charter operators would have faced in 2011 under the CSP if it had been in place this year they ignore the recent resource declines and corresponding commercial catch limit reductions, abdicating their responsibility for sharing in conserving and rebuilding the halibut resource. Moreover, the charter industry has ignored the advantage of the CSP during increasing halibut abundance, which will allow management measures to be liberalized on a more timely basis.

5. Market-Based Transfer Mechanism: Leasing Commercial Quota

Furthering the fair and equitable nature of the CSP, the CSP allows charter operators to lease QS from commercial fishermen to meet the harvesting desires of their clients. The original Council CSP alternatives also included an option to allow charter operators to purchase a limited amount of commercial quota share, but this option was removed at the charter industry's request.

Commercial fishermen will likely lease quota to charter operators for two reasons. First, many commercial halibut fishermen currently do not have enough QS to pay the overhead of a fishing trip. Second, rather than exceed their allocation, many commercial fishermen leave a margin of their quota unharvested on their final trip. They can do this because commercial operators are allowed to carry over to the next year 10% of their annual allocation. At a minimum, it is that margin that could be leased with the understanding that charter operators return any unused portion to the commercial quota holder at the end of the charter season, and only pay for quota that is actually used by charter clients. In 2011, applying only the 10% margin, the amount available for leasing if the CSP were in place would approximate 230,000 pounds in Area 2C and 1.4 million pounds in Area 3A, approximately 10% of the quota in each Area. Further, charter operators would only pay for the quota actually used, a win for everyone. This leasing provision allows the market to resolve the allocation issue, removing the matter from the political arena. It will also end the bitter feuds between commercial and charter operators that have torn apart Alaska's coastal communities. In short, it is the win-win identified by Dr. Lubchenco in her speech at the 2010 Recreational Fishing Summit.

The charter industry, however, asserts it will not be able to afford to lease fish because the price will be too high. They are wrong. Some commercial halibut fishermen currently lease part or all of their quota to other commercial fishermen and this precedent provides a reasonable basis to estimate lease fees to charter operators. Although arrangements vary, a 50% split on the ex-vessel value is the industry average. Halibut prices have varied over time, but the average 2010 ex-vessel price was approximately \$4.50. This would place the lease fee at \$2.25 per pound. The average size halibut harvested in the charter fishery has varied over time, but 20 pounds is a reasonable average. Hence, the conversion from commercial QS to charter GAF will likely be in that range. To complete the equation, a charter operator leasing QS will likely pay approximately \$45 per purchased fish. Given that a day of charter fishing costs between \$150 and \$300, charter fishermen regularly pay \$2 per pound for processing, and charter fishermen

can pay over \$100 to ship their catch home, this added leasing expense is proportionately reasonable, if not small.

6. Accommodations to the Charter Industry – Fair and Equitable

The CSP has numerous benefits to the charter industry that amply demonstrate the CSP is fair and equitable to that industry. First, the percentage allocations are at least equal to and generally greater than the GHIL allocations. Second, the charter industry can add to its harvest percentage by leasing quota from the commercial fleet. Third, as noted in paragraph 1 of this section, a retrospective comparison of charter quotas under the GHIL versus the CSP shows that charter operators would have been better off under the CSP over the 2004-2011 period. Fourth, at the request of the charter industry, the CSP has no in-season harvest changes for the charter fleet and harvest can vary within a range of the charter allocation without triggering changes in bag or size limits. This provision was included based on testimony from the charter industry that in-season changes to harvest regulations would be disruptive and that predictability in management measures between seasons was important to their businesses. Fifth, at the request of charter industry, conservation actions were limited to bag and size limits. Conservation actions such as season limits and fishery closures were taken off the table.

Sixth, the CSP recognizes the charter harvest is difficult to predict. Instead of imposing management restrictions based on a fixed charter quota, the CSP allows the charter harvest level to fluctuate plus or minus 3.5% of the allocation percentage without changing bag or size limits. Thus, in Area 2C, the 17.3% allocation is actually a range of 13.8%-20.8% and the 15.1% is in effect a range of 11.6%-18.6%. For Area 3A, the allocation of 15.4% becomes a range of 11.9%-18.9% and the allocation of 14% becomes a range of 10.5%-17.5%. This harvest range translates into approximately a 20% range in the charter allocation. Not only does this floating percentage add an important element of flexibility for the charter industry, but it addresses the concern in the charter industry that a fixed allocation amount and a no halibut retention rule once that amount was reached would disrupt their business. Such a “hard cap” would, according to the charter industry, be a disincentive for people to book charters assuming the only purpose of the charter was to catch halibut. By providing the 3.5% upward adjustment, the Council avoided the hard cap, thus giving the charter industry the room to exceed its in-season quota. The Council then added the opportunity for the charter fleet to buy more quota. To our knowledge,

no commercial or charter fishery is allowed to exceed an allocation by 20% without triggering conservation actions.

Seventh, the Council increased the charter industry's allocation percentage when halibut populations are low in order to protect the industry. The effect is to reduce the charter industry's conservation responsibility and to shift that responsibility to the commercial sector since higher charter quotas mean lower commercial harvests.

Eighth, by linking the charter allocation to halibut abundance, the charter industry avoids the situation such as that which occurred in Area 3A when the allowable biological level of removals, called the Total CEY, increased by approximately 11% from 2006 to 2007, but this increase did not trigger a change in the GHL which was held at a constant level. In contrast, the CSP allows the charter allocation to increase above GHL allocations. It also allows charter bag and size limits to be liberalized more quickly as the halibut biomass rebuilds.

All of these concessions were adopted by the Council and are accepted by the commercial fleet in an effort to finally resolve the 18 year conflict between sectors, ensure the resource is protected, and address the unacceptable inequities of the GHL.

7. The GHL System is Unfair and Inequitable to Commercial Fishermen

Without question, status quo GHL management is unfair and inequitable to the commercial sector. While the charter industry has been allowed to overfish its allocation without consequence, the commercial sector has dutifully accepted painful quota reductions, some a direct result of charter overfishing, and has never exceeded its quota. While the GHL and the CSP allow the charter sector a continuous season of historic length, commercial fishermen must stop fishing once their individual allocations are met. While commercial fishermen on average received 80% of their historic harvest when the halibut QS system was implemented, the charter industry received 125% of its historic largest harvests. At low levels of abundance, the charter GHL is not reduced, forcing the commercial fishermen to bear the entire conservation burden. Under the GHL management restrictions go unchanged for 3-4 years following charter overages, almost ensuring measures will be inappropriate and inadequate by the time they are implemented. And critically important, as discussed in part of the next section, the charter industry has not borne its share of the responsibility for conserving the resource during these times of low abundance, which shifts that responsibility to the commercial sector and disadvantages both subsistence and sport harvesters.

8. Shared Conservation Responsibility

The CSP is fair and equitable because under the CSP both the charter industry and the commercial fleet share in the benefits and burdens of changes in resource abundance. The benefits and costs of managing the resource are shared because the amount of the sector allocation adjusts directly with resource abundance.

Under the fixed poundage allocation of the GHL system, the charter industry may not get to share in the benefits of a resource increase if the increase is not large enough to trigger the next higher GHL allocation level. Similarly, the charter industry does not bear the conservation burden of a decreased allocation when, as now, the resource is declining but the GHL is already at its lowest level. In that circumstance, the entire conservation burden falls on the commercial fleet which is unfair and inequitable to the commercial sector.

Under the status quo, the charter industry has overfished its Area 2C GHL allocation by 22%-115% in each year. In contrast, the commercial sector has never overfished its quota since the 1995 implementation of the IFQ plan. Charter overfishing has to be accounted for someplace. Either the resource pays the price with reduced abundance caused by overfishing or the commercial fleet pays the price as its quota is cut to compensate for charter overfishing. Under the status quo, both have happened. This is both unfair and inequitable to the resource and to commercial fishermen.

The charter industry, however, complains that in Area 2C it has sustained conservation related cuts because the GHL has declined. The charter industry forgets two facts. First, while the GHL has declined from 1,432,000 pounds in 2003-2007 to 931,000 pounds in 2008 and 788,000 pounds in 2009, 2010, and 2011, the charter percentage decline from 2007 to 2011 of 45% is nowhere near the 73% decline from 2007-2011 experienced by the commercial fleet. Second, the charter sector overlooks the fact that it has ignored the GHL, overfishing its annual quota by as much as 115%.

In Area 3A, the story is much the same. The commercial fleet has seen its quota cut by 45% from 2007 to 2011 because of the need to conserve the resource. However, the charter industry has never had its GHL reduced, and from 2004 to 2007 overfished its GHL by 9% (320,000 pounds). However, if the CSP had been in effect, the charter allocation would have been reduced from the 3.65 million pound GHL to 2.52 million pounds in 2011. This 21% quota

reduction under the CSP would have allowed the charter industry to do its part to conserve the Area 3A halibut resource.

The charter industry also complains that if CSP had been in place in 2011, the charter allocation would be lower. Such statements ignore the fact that in 2011 the commercial quota in Areas 2C and 3A was cut from 2010 levels by 47% and 38%, respectively, while under the GHLL the charter quota was not reduced in either area. A fair and equitable allocation would have reduced the quota for each sector by equal amounts. But the charter industry does not want fair and equitable. It wants what is unfair and inequitable – that the charter industry not bear its full share of the responsibility for conserving the resource – a conservation need caused in part by years of overfishing by the charter industry.

9. Public Trust

Some charter operators argue it is a violation of the public trust doctrine to allow commercial fishermen to sell unused commercial quota to charter vessels. Reduced to its core, the argument is that the fish belong to the public and commercial fishermen should not be allowed to profit by selling a public trust. The problem with this argument is that it means no one could ever harvest and sell fish because doing so would constitute the sale of a public trust resource. It also means charter vessels would be put out of business because they are selling the right to harvest a public trust resource. Further, it is well settled law that a government agency charged with managing a public trust resource may allow private entities to harvest and sell the resource. Here, commercial fishermen have been given that right. To whom a commercial fisherman sells the fish, whether to charter vessels or to commercial fish processors, does not implicate the public trust doctrine once the commercial fisherman has been given the right to take the resource.

Charter fishermen have also argued that the GAF program is illegal asserting that a charter operator who allows a client to harvest GAF becomes a commercial fisherman. Since halibut harvested under the GAF program may not be sold on a commercial market, such claims are without merit. Further, a charter operator purchasing GAF is simply changing the overall charter CSP allocation consistent with the applicable regulations. Moreover, the charter operator is not selling fish to the client but is selling a seat on the charter vessel with the opportunity to harvest one of dozens of fish that are eligible for sport harvest. Indeed, the charter client is not

allowed to harvest more than the applicable bag or size limit, and is certainly not allowed to sell the fish.

10. Unguided Sport Fishing

The charter industry asserts it is unfair to not include unguided sport fishing and perhaps subsistence fishing in the CSP. The Council's decision to include only the charter and commercial sectors in the CSP was deliberative and well founded. The charter industry's arguments do not comport with the facts. Neither the sport nor the subsistence harvest has shown a definitive increasing trend over time. Rather, both have increased slightly in one year only to fall again in the next. The Council rightly recognized that the halibut resource conservation and allocation problems that currently exist are caused by the rapid growth of charter harvest over the past decade, that the charter harvest increases are negatively affecting sport and subsistence fishermen, and that the Council has a responsibility to control charter harvest for the benefit of all who depend on the halibut resource. As the Council's CSP Problem Statement clarifies: "The Council seeks to address this instability, while balancing the needs of all who depend on the halibut resource for food, sport or livelihood." EA at xi.

Sport and subsistence fishermen have testified in support of charter harvest controls since 1993 when the issue of increased charter harvest first came before the Council. The Council's problem statement for the GHF reflected these concerns stating: "The recent growth of charter operations may be contributing to overcrowding of productive grounds and declining harvests for historic sport and subsistence fishermen in some areas." 2001 Environmental Assessment at 13. By tying charter harvest directly to resource abundance and by preventing charter overages, the CSP addresses resource and access issues identified by the Council's GHF and CSP problem statements.

Ignoring the history that the GHF and the CSP were created to protect the subsistence and unguided sector from charter industry overfishing, charter operators now voice concern that the CSP is unfair to charter operators because it does not include harvest controls on the unguided sport sector. While arguing for controls on subsistence and unguided fishermen, the charter industry fails to identify any problems caused by the unguided sport harvest that justify harvest controls. Instead, charter operators simply claim the CSP will drive clients to harvest halibut without their professional services and create safety issues because the charter industry views unguided fishing vessels as less safe than charter vessels. As to alleged safety issues, no

one has identified unguided recreational fishing as a safety issue. The facts are that Coast Guard safety regulations currently require little more in the way of lifesaving equipment on a “six pack” charter boat than on a sport boat. The charter industry’s alleged safety concerns are unfounded. As to more people choosing unguided fishing rather than paying for charter fishing, the facts are that unguided sport fishing is perfectly legal. In that regard, it may be significant that the harvest rate of unguided fishermen is generally significantly lower than guided clients. Thus, any changeover to unguided sport fishing that may occur can be expected to reduce overall halibut harvest and thereby reduce pressure on the resource. Jaenicke and White, ADF&G, 2007, Summary Data for the Sportfish Fishery for Pacific Halibut in IPHC Area 2C.

A more valid concern than that raised by the charter industry is the growing practice of “assisted unguided” fishing where some members of the charter industry are again trying to subvert resource conservation for their own profit. It is well established that a charter vessel will often lead a fleet of “unguided” vessels to the fishing grounds and then call directions to the “unguided” fishermen regarding how to select and operate fishing gear. This obvious attempt to circumvent regulations governing the charter industry targets a loophole in the definition of “guided fishing” and should be fixed by action of NMFS and the Alaska State Legislature.

In short, the charter industry is, once again, part of the problem and needs to be part of the solution. Their complaints about the need to regulate unguided sport fishing ignore the facts and ignore the role of the charter industry in creating any issue that might exist. While the Coalition supports efforts to close regulatory loopholes that allow the charter industry to evade regulations on guided fishing, that issue is not solved by delaying the CSP. Moreover, that issue pales in comparison the resource issues associated with charter overfishing.

11. Harvest Rates

Some charter operators are now accusing Area 2C commercial fishermen of overfishing the resource, basing the accusation on a retrospective analysis of halibut stocks and on flawed recalculated harvest rates. The target harvest rate, as identified by the IPHC, has varied over time as the scientific understanding of stock dynamics has changed. Harvest rates can also vary between areas based on biological indices determined through the stock assessment process. The current target harvest rate in Area 2C is 20% and the 2011 commercial catch limits and GHM allocation are established to control the actual harvest rate to this level. Because retrospective analysis allows a re-evaluation of older data and a testing of past assumptions based on data that

did not exist at that time, comparing past target and actual harvest rates to current rates based on new data is inappropriate at best. When questioned on this issue, IPHC Research Program Manager Gregg Williams responded: “There is some lag in the data being reported. There’s also an issue of fish stock assessments in which the most recent year is frankly the most poorly estimated one because you don’t have as good a look at the younger age classes that you do as you go down the road when those age classes get to be larger components in the stock. It’s a bit of a red herring to look at those high exploitation rates as being commercial overharvest. It’s more appropriate to look at each year on a stand-alone basis.”

<http://www.alaskajournal.com/Alaska-Journal-of-Commerce/September-2011/Fish-Bytes/index.php?cparticle=1&siarticle=0#artanc>. Curiously, if the charter operators are now arguing that the commercial catch limit should have been reduced in previous years based on a new present-day understanding of past stock abundance, they must then also be arguing that the charter GHL, and perhaps the CSP which is based in part on the GHL, should be lower since the GHL was also set in accordance with what the charter industry is now calling an erroneous understanding of stock abundance. The argument now presented by the charter industry is specious and is nothing more than an attempt to confuse the issue.

12. Net National Benefits

At the outset, it must be recognized that the primary goal of any fishery management plan is conservation of the resource. The findings, purposes, and policy of the Magnuson-Stevens Fishery Conservation and Management Act (“MSA”), for example, make that clear for all fishery managers. *See* 16 U.S.C. §1801. This policy and priority is reflected in the Proposed Rule that states: “While NMFS intends for the CSP to accommodate the guided sport industry’s need for predictability and sustainability, it believes conservation of the halibut resource should be a priority under the CSP.” 76 Fed. Reg. at 44173.

In considering our national policy of fisheries conservation, certain facts stand out. Foremost among those facts is that in Area 2C, for example, the charter industry has exceeded its GHL quota every year by 22%-115%, a level of overfishing which, as noted above, the IPHC believes threatens the conservation of the resource. The situation in Area 3A is trending in the same direction. The CSP was developed against the backdrop of the need to prevent charter overfishing – something that had proven impossible to accomplish under the existing GHL management system.

In contrast, the commercial fleet has never exceeded its quota since the commercial IFQ plan was instituted in 1995. Thus, it is no surprise that the CSP focuses on the one area of overfishing that is occurring – charter industry overfishing. Although it is not possible to place a quantitative value on ending overfishing, it is clear that there is a significant qualitative value and national benefit. Indeed, the MSA requires as a matter of national policy that fishery management plans “prevent overfishing.” 16 U.S.C. §1853(a)(10). The CSP seeks to implement that national policy which comprises an important net national benefit to the nation.

The charter industry ignores this conservation reality and benefit, instead focusing on the alleged economic impacts of the CSP to its industry. Before turning to this argument, it is important to consider the Court’s words in the case the charter industry filed to overturn regulations designed to prevent charter overfishing. There, the charter industry made claims of economic harm if they were regulated. The Court rejected the industry’s argument finding “[t]he Secretary gave little weight to quantitative estimates of the economic impact of the Rule because it is not appropriate to compare the economic impact to the commercial sector with the economic impact to the charter sector when their products are so very different.” *Van Valin v. Lock*, 671 F.Supp.2d at 16.

Nevertheless, the charter industry persists. And again, the charter industry has chosen to ignore critical facts. Among those facts, as discussed above, is that under the CSP the charter industry receives an equal or greater percentage of the allowed catch than under the current GHM management system. Equally important, if the CSP had been in place 2004-2011 instead of the GHM, the charter industry would have been allocated more fish than under the GHM program. In short, any quantifiable national benefits of the CSP to the charter industry over time would have been, and will be, greater than under the status quo.

The argument made by the charter industry that in the short term their harvest under the CSP will be lower than if the GHM system is retained confuses rather than clarifies the issue of net national benefits. First, as discussed throughout these comments, the facts are that the halibut resource is, and has been, declining. Throughout this decline, the commercial quota has been significantly reduced for resource conservation reasons. Yet, in Area 3A, the charter industry quota has never been reduced. In Area 2C, the charter industry quota has not been reduced in any of the past three years and, before that, the GHM quota reductions were much less than the corresponding cuts for the commercial fleet. Significantly, the charter industry offset much of

their Area 2C quota reductions by overfishing their quota. There is clearly a net national benefit in providing that both the commercial fleet and the charter industry be invested equally in sharing the responsibility for conservation – a responsibility which heretofore has been borne almost exclusively by the commercial fleet. Providing both sectors with an incentive for conservation instead of providing that incentive to only one sector is a net national benefit.

In addition, as discussed above, there is a net national benefit in terms of jobs, income, and economic output to the commercial halibut processing sector that comes from properly managing the resource to prevent charter overfishing. That benefit also reaches to Alaska's coastal communities who depend on the tax revenue and economic activity generated by the commercial fleet.

Furthermore, there is a net national benefit to ensuring that the least fortunate among us, those living near, at, or below the poverty level, who urgently depend on subsistence fishing should be able to meet their nutritional needs. This cannot be done if they cannot find fish to harvest. As discussed above, the localized depletion of the resource caused by geographically concentrated charter industry overfishing inflicts a significant negative toll on resource dependent subsistence fishermen.

The economic impact of localized depletion caused by charter overfishing is a huge force throughout Alaska but particularly in isolated rural, subsistence communities. To estimate the economic impacts, the Sitka Conservation Society, Alaska's oldest conservation society, estimated that nearly one in four residents of Sitka, Alaska are subsistence fishermen. The Society told the Council in September 2008: "The economic value of these [subsistence] harvests to local communities is substantial. One accepted method of quantifying this value is to estimate the replacement cost of a substitute, imported product. Had [the subsistence fishermen in Sitka] purchased their fish at a grocery store in Anchorage the cost would easily have exceeded \$1.5 million at current prices for halibut fillets." If one considers the number of subsistence users throughout Alaska, the net negative benefit of continuing to allow charter overfishing and its associated localized depletion is enormous. This is a cost that those who depend on subsistence fishing cannot afford.

In addition to ignoring the economic impacts of charter overfishing on subsistence fisheries, the EA makes almost no effort to quantify the importance of the commercial sector and the economic effects of the CSP. Instead, the EA focuses only on the charter industry which has

presented misleading and incomplete information. A careful examination of the facts reveals that virtually all of the economic analyses relied on by the charter industry can be ignored because these analyses complain about the effects of reducing the charter harvest for conservation reasons. Thus, these economic impact analyses rest on the false premise that the charter industry should not suffer any quota reductions notwithstanding that the halibut resource has been, and is, declining. Curiously, and as noted above, if the CSP had been in place in lieu of the GHF from 2004-2011, the charter industry would have experienced a net positive benefit because its quotas would have been larger. In contrast, as discussed above, the Area 2C commercial fleet lost \$15 million in harvest because of the decline in the resource caused in part by charter overfishing and caused directly by quota reductions made to offset the amount of charter overfishing. For Area 3A, the commercial loss due to charter overfishing was \$1.6 million. These are real, direct, and quantifiable net negative benefits from the status quo that the CSP will correct.

Analyses by the charter industry about their overall economic value should also be discounted because all of the alleged total economic value is not, in fact, properly attributable to halibut. Halibut is only one of 33 fish (3%) (halibut, five salmon species, rockfish, black cod, ling cod, Pacific cod, flatfish, etc) which a charter client is allowed to catch in Area 2C and two of 39 fish (5.1%) a charter client is allowed to catch in Area 3A. Thus, statements about the total economic benefits of, or harms to, the charter industry must be reduced accordingly.

Moreover, as discussed in more detail below in Part IV of these Comments, the economic benefit of the commercial sector within Alaska far outweighs the total economic benefit of the charter industry regardless of whether one considers total economic benefits or halibut specific benefits. The total sport fish industry economic output in Alaska in 2007, the most recent year for which data are available, was \$1.6 billion. The comparable number for the commercial fishing sector was \$5.8 billion. The tourism related jobs in Alaska from all tourist industries total 36,200. The comparable number for commercial fishing alone is 80,800. With respect to halibut specifically, under the most optimistic scenario, only \$200 million (see analysis below on page 47) of the total \$1.6 billion of alleged sport fish economic output can be attributed to halibut in Areas 2C and 3A. For the commercial fishery, the comparable number for Areas 2C and 3A is \$478 million. In other words, actions which disadvantage the commercial sector, such

as continuing the status quo GHM management system have quantifiable negative net benefits versus a system such as the CSP.

In considering net national benefits, it should also be noted that seafood is one of very few products shipped south out of Alaska by barge. This is an important net positive economic benefit to Alaska's residents. By providing a freight "backhaul," these seafood "exports" from Alaska reduce the cost of incoming or north-bound freight to Alaska by approximately 10%. Indeed, both inside and outside the U.S., commercially caught halibut provides economic benefits to transportation services, retail markets, and restaurants.

When discussing economic issues and benefits, the charter industry loudly asserts that bag and size limits hurt the economics of their fishery and, therefore, net national benefits. Such an argument ignores fundamental points. First, bag and size limits are designed to prevent charter overfishing which harms the resource. Economics should never trump fisheries conservation. Indeed, overfishing and destroying the resource ultimately destroys any fishery economics that once existed.

Second, try as they might, the charter industry cannot ignore the fact that it is the national economy, not bag or size limits, that is affecting their current economics. The EA states the number of charter trips has declined significantly between 2008 and 2010 in both Areas 2C and 3A. EA at 51. While Area 2C charter fishermen try to fix the blame for this on regulatory changes designed to prevent their overfishing, bag and size limits have not changed in Area 3A. Yet, both Areas have experienced significant declines in demand. The only conclusion is that changing national economic conditions are the driving force behind the reduced demand for charter services, not regulatory issues.

Although the preceding discussion focuses on benefits occurring in U.S. markets, one should not overlook the benefits to the U.S. of halibut in the international market. In 2010, approximately one third of the commercial halibut harvest was exported. These exports had a value to the U.S. of just under \$100 million and positively affected our balance of payments.

13. Conclusion

When the charter industry asserts the CSP is unfair and inequitable, they forget that: (1) they agreed to the CSP, but withdrew their support and just before final action by the Council submitted a completely new plan to the Council, (2) their newly minted "fair and equitable" proposal increased the Area 2C charter catch from 913,000 pounds to 4.9-5.7 million pounds,

between 70%-80% of the allowed harvest, effectively putting the commercial fleet out of business, (3) the GHL gave the charter fleet 125% of their then existing harvest levels and the CSP gives the charter fleet an equal or higher harvest percentage than the GHL, (4) while the commercial harvest has declined by 76% in Area 2C and 44% in Area 3A because of the declining halibut population and the commercial fleet has not exceeded its quota, the charter fleet has increased its harvest, exceeding its quota by 22%-115% every year in Area 2C and by lesser amounts in Area 3A, (5) when the charter industry challenged NMFS regulations designed to keep the charter fleet within its quota, arguing they were now harvesting above their quota and it was unfair to make them live within their quota, the Court rejected the challenge noting it is bad public policy to reward overfishing, (6) charter overharvests are often subtracted from the commercial harvest making the commercial fleet pay for overfishing by the charter fleet, (7) reductions in the commercial quota caused by resource declines resulting in part from charter overfishing and caused directly by subtracting the amount of charter overfishing from the commercial quota has already cost the commercial fleet \$15 million in Area 2C alone which translates to \$46.5 million using a standard economic multiplier, (8) charter overfishing results in localized depletion of inshore areas meaning that subsistence fishermen who typically live close to the poverty line cannot harvest the fish they need to feed their families because they do not own boats allowing them to get to distant fishing areas, (9) the charter industry would have received more quota under the CSP than under the GHL if the CSP had been in effect since 2004, (10) it is unfair and inequitable for the charter industry to not share equally in the conservation of a declining resource, and (11) even if the CSP had been in effect in 2011, the charter industry would have had a smaller percentage quota reduction for conservation than the commercial sector.

C. Conservation

A fundamental underlying predicate for the CSP is to promote conservation by preventing overfishing. As noted above, in each year since the GHL was established, the charter industry has overfished its Area 2C quota by 22%-115% and its Area 3A quota by lesser amounts. It is intuitively obvious that fishing beyond the quota limit harms the resource. More importantly, the IPHC has specifically found that charter industry overfishing threatens the health of the resource. *See* Part I(B) above. Without the CSP, charter overfishing will likely continue under the GHL, just as it has in the past.

In contrast to the record of the charter industry, the commercial halibut fleet has never exceeded its quota since the commercial halibut IFQ was implemented in 1995. Careful monitoring of halibut dockside deliveries by processors, enforcement personnel, and IPHC observers, as well as at-sea enforcement, ensures compliance with quotas. Every pound taken off a commercial boat is weighed on a NMFS certified scale and the weight is reported on an Alaska Department of Fish and Game fish ticket. In addition, a policy of allowing up to 10% underage (with carry forward) and 10 % overage without penalty (overages are deducted from next year's quota) provides a reasonable mechanism to stay within the commercial allocation.

The CSP is a better mechanism to address charter industry overfishing and the conservation of the halibut resource than the existing GHL system. The principal reason is that the pre-season specification of CSP management restrictions is designed to limit the charter harvest to its annual quota before an overage occurs. Contrast this with the retroactive GHL approach that implements corrective action only after the overages have occurred. While the GHL management system allows charter overfishing to occur and then reacts, the CSP is designed to proactively prevent such overfishing from occurring in the first place. Although it is possible the 2011 GHL enforcement measures may be effective, it has taken seven years since the GHL was created to get such measures because every year the charter industry has fought politically or in court against conservation regulations.

The CSP establishes a matrix of management measures that correspond to biomass levels and charter catch. The matrix clearly specifies bag and size limits to be implemented based on the pre-season evaluation of halibut abundance and charter catch projections. This management matrix is deliberately structured to be proscriptive in order to provide clear direction to the IPHC on necessary charter bag or size limits. In this way, the Council clearly established CSP allocations and management actions, engaging the IPHC to conduct the mechanical part of implementing management changes.

The facts are that the CSP is more likely to prevent overfishing than is the GHL status quo. The CSP establishes a percentage allocation for the charter fleet where catches are expected to average the CSP percentage allocation over time. In some years, the charter catch will be over the CSP percentage allocation but under the upper limit and in some years the catch may be under. The Council was aware that the allocation range might allow overharvest by as much as 3.5% of the combined charter and commercial catch limit, which is why it emphasized the need

to err on the side of conservation. As stated in the Council's CSP management objectives: "In meeting its conservation mandate while accommodating the charter industry's need for predictability and stability, the Council will necessarily err on the side of conservation in selection of management tools and season length, with the result that the sport charter sector may not be able to harvest its entire allocation." EA at 7.

D. Discrimination

Not only is the CSP fair and equitable and promotes conservation, but it does not discriminate against fishermen based on state residency or any other basis. The CSP does not establish or perpetuate any standard or requirement that allocates fish based on state residency or any other basis.

The CSP does establish limits on charter clients without limiting unguided sport fishermen. This differentiation is justified by the enhanced catch rates of the charter fleet versus unguided operators and by the dramatic increase in charter harvest over the past decade. In stark contrast to the charter industry harvest, unguided sport harvest has not demonstrated an increasing trend, but has instead varied over time.

E. There is No Concentration of Shares

The CSP does not allocate shares of the common pool. Thus, consolidation of shares is not an issue. The GAF program includes limits on the amount of GAF a charter operator may lease, thus addressing the issue of any excessive share in this segment of the CSP.

F. Delay Tactics

The Halibut Coalition is aware that some members of the charter industry have requested that the CSP be delayed until federal funding is available to shift halibut quota from the commercial sector to the charter industry. This is unrealistic and unwise. Current economic conditions in this country make federal funding for any such endeavor highly unlikely. Even if such funding is procured, the impacts of a compensated reallocation are substantial and need careful evaluation. These impacts include reduced opportunities for subsistence and sport fishermen, the loss of commercial fishing employment opportunities in harvesting and processing, reduced consumer access to halibut, and increased risk to the resource of overharvest given that catch accounting in the charter fishery is far inferior to catch accounting in the commercial fishery. These complications, coupled with the dearth of available funding, clarified to all stakeholders that this approach could only be considered as part of a longer-term

management strategy that might modify the CSP. The Council did not want the obvious conservation and allocation problems that would result from the charter industry's proposal to delay the CSP. The CSP must be implemented immediately to protect the resource and all who depend on the resource for sustenance and livelihood. Further delays will only allow continued overfishing by the charter industry at the expense of the resource, the commercial industry, sport and subsistence harvesters, and coastal communities. NMFS needs to call an end to the charter industry's bait and switch tactics and implement the CSP.

III. Participation in the Fishery

A. The CSP Takes Into Account Present Participation

The charter industry asserts the CSP fails to take into account their present participation in the fishery. These comments will not repeat all of the discussion in previous sections showing how present participation was, in fact, taken into account. Rather, we incorporate by reference as if repeated here all of the discussion in Part II addressing the present participation issue.

Included in Part II is a discussion showing that (1) the allocation percentages under the CSP are greater than under the GHF, (2) had the CSP been in effect since the GHF was implemented the charter industry would have been allocated more fish, (3) for Area 2C, the Council included in the base CSP calculation the amount of fish harvested by the charter industry in excess of the GHF, i.e. the amount of overfishing done by the charter industry, and added 25%, (4) for Area 2C, if the CSP had been in effect in 2010 the charter industry would have been allowed to take 15.1% of the combined commercial and charter catch versus 15.4% under the GHF, a difference of only 8,000 pounds, and (5) for Area 3A the charter catch has approximated the GHF and that is the base allocation used in the CSP.

The essence of the charter industry's complaint is that if the CSP had been in effect in 2011 their allocation would have been below their GHF levels. Such logic ignores the fact that the principal reason for the reduction is a decline in resource abundance. In effect, the charter industry is trying to use the present participation standard to subvert the national policy of preventing overfishing. The charter industry's argument is that their allocation should not be cut because the resource is declining. To do so according to the charter industry means they will catch less fish and their "present participation" is adversely affected. This argument is without merit. It contravenes our national fisheries policy to conserve the resource and to prevent overfishing.

Another aspect of the charter industry's argument is that because they have overfished their GHL, any reduction in the fishing level to require them to live within their quota fails to take into account their "present participation." As noted above, when the charter industry presented this argument in court, the judge rightly rejected it, finding the charter industry should not be rewarded for overfishing.

Finally, it should be noted that in 2008 and 2009, the charter industry refused to accept the conservation measures intended to keep them within their GHL quota and sued in each year to overturn the conservation measures. This had the effect of delaying the promulgation of the Proposed Rule because many of the agency staff charged with bringing the CSP to fruition were diverted from that task in order to respond to the charter industry's lawsuits. In short, the charter industry's singular desire to oppose conservation regulations designed to prevent charter overfishing contributed to the delay in promulgating the CSP about which the charter industry now complains.

B. The CSP Takes into Account Historical Participation In, and Dependence On, the Fishery

As stated in Part II(B) of these Comments, the CSP takes into account both historical and present participation in the halibut fishery, as well as dependence on the halibut resource. In identifying the charter allocations, the Council relied on the historic harvest under the GHL, which allocated the charter fleet 125% of its historic catch and translated to 13% and 14%, respectively, of the Area 2C and Area 3A combined commercial/charter catch limit. The Council then reviewed the charter harvest levels relative to the GHL allocation, and elected to use the most recent years' catch levels despite charter overharvest of the GHL in Area 2C and the Court decision that the charter industry should not be rewarded for overfishing the resource. Because the charter fleet was not satisfied with even these concessions, the Council recommended allocation percentages for the charter fleet that are even higher during times of low halibut abundance. This decision shifts the burden of conservation to the commercial fleet during periods of low stock abundance. This is best illustrated by a comparison of commercial and charter allocations over the past six years. In Area 2C, the commercial catch limit has been reduced by 76% but the charter allocation 55%. In Area 3A, the commercial catch limit has been reduced 44% while the charter allocation has not been reduced at all. In short, the CSP establishes allocations that tie both sectors to present abundance, the CSP establishes allocations

based on historical catch and the CSP updates the historical allocation to include the most recent catch split between the charter and commercial sectors to account for dependence on the fishery.

Significantly, the CSP addresses “historical dependence” beyond the commercial and charter fisheries. High levels of charter fishing activity adversely affect catch rates for unguided sport anglers and subsistence harvesters because of localized depletion, making it difficult for these harvesters to meet their subsistence needs. Charter catch is concentrated near towns, and local depletion from this concentrated charter catch has been established through testimony before the Council, court filings, and comments to the Secretary. Subsistence and sport testimony before the Council, some of which is referenced in these Comments, document the impacts of charter overfishing. Indeed, charter fishermen admitted the existence of localized depletion when they testified to the Council during hearings on the halibut charter limited entry program that they need to travel farther every year to find halibut for their clients because inshore areas are “fished out.” That testimony is hereby incorporated by referenced into these Comments. Allowing the charter fleet to overfish the resource has had negative impacts on local sport and subsistence fishermen. The failure to constrain charter-based catches will have increasingly negative impacts on the people who have historically depended on the halibut resource for sport and sustenance. The CSP protects the interests of these historic harvesters by accounting for sport and subsistence needs before allocating the resource between charter and commercial fishermen, by tying charter catch directly to resource abundance, and by establishing management measures that prevent rather than react to charter overages. The failure of the EA/RIR/IRFA to reflect the negative effects of the status quo on these historic harvesters and the positive impact of the CSP should be corrected. *See* EA at xiii.

It has been argued that the leasing provision included in the CSP could harm unguided sport and subsistence harvesters by allowing more charter effort. The Halibut Coalition shares concerns relative to any reallocation, included compensated reallocation, and for that reason supports the provision in the CSP that restricts quota transfer to 10% of the IPHC Area total. This percentage provides ample opportunity for individual charter operators to meet the demands of their clients without placing undue additional pressure on near-shore harvesting areas. Any increased charter harvesting will be less than the disproportionately high (relative to halibut abundance) charter harvest allowed under the GHL status quo.

C. The CSP Takes Into Account the Economics of the Fishery

Per the discussion in the two preceding sections and throughout these comments, the CSP takes into account the economics of the fishery by protecting the halibut resource from overharvest, tying the charter allocation to resource abundance, and maintaining allocations that recognize historic and current participation as well as dependence on the resource. At the outset, it is important to return to first principles -- fishery managers have a responsibility first and foremost to protect the health and productivity of the resource. Economic considerations are secondary to this objective. It should state the obvious that the economics of a fishery depend completely on protecting and, in the case of the Areas 2C and 3A halibut resource, restoring the health and productivity of the stock. The CSP safeguards the resource by preventing sector overfishing, which in turn safeguards the economics of the halibut industry.

The CSP, however, specifically takes into account the economics of the charter fishery. The CSP accommodates the charter business model by, among other things, providing a continuous season of historic length, setting management measures preseason and holding them constant throughout the season, creating a range around the charter allocations, holding charter bag and size limits constant provided forecasted charter harvest remained within the established range, and allowing charter operators to lease commercial quota if existing bag and size limits do not satisfy their clients. These CSP provisions were all designed in response to testimony from the charter sector and to Council consideration of charter business plans.

Importantly, the CSP also takes into account the economics of others who depend on and enjoy the halibut resource, including harvesters, processors and consumers, by ensuring that charter allocations are clearly established and closely tied to resource abundance, that the open-ended reallocation of halibut to the charter sector is finally stopped, and that charter management measures are timely and effective in preventing charter overfishing. These are the critical components requested again and again by sport, subsistence and commercial harvesters, halibut processors, retailers, and Americans who love to eat halibut.

D. The CSP Takes Into Account the Capacity of Fishing Vessels in the Fishery to Engage in Other Fisheries

The CSP follows closely on the heels of the charter limited entry program (“LEP”). In developing the LEP, charter stakeholders, charter industry members, and the Council carefully reviewed issues of historic and present participation in the charter sector as well as the capacity

of vessels that did not receive an LEP to participate in other fisheries. Those documents are hereby incorporated by reference into these Comments. Similarly, the commercial halibut fishery has been managed with an Individual Fishing Quota system since 1995. Adoption of this program was preceded by a lengthy public and analytical process that included consideration of the capacity of fishing vessels in the halibut fishery to engage in other fisheries.

E. The CSP Takes Into Account the Cultural and Social Framework Relevant to the Fishery and Affected Fishing Communities

The CSP is an innovative approach to sector management that resulted from Council discussion, staff research, and extensive public participation. The Council received testimony from representatives of coastal communities, Tribal organizations, and community-based fishermen from all sectors. The CSP is the result of carefully balancing the cultural and social framework of all who depend on the halibut resource for sustenance or livelihood. The CSP first and foremost safeguards the resource from overharvest. Second, the CSP maintains historical allocations, which protects traditional harvesters, processors, and communities. Third, the CSP accommodates to the maximum extent possible the business plans and burgeoning needs of the charter industry and their clients.

The charter sector has grown from next to nothing in the early 1990s to current levels which, in 2011, are now comparable to commercial catch in Area 2C. For perspective, the charter harvest in Area 2C increased 93% between 1997 and 2008. EA at 53. The 2010 sport harvest in Area 2C was 2.55 million pounds while the commercial catch limit for 2011 is 2.33 million pounds. This explosive growth and the *de facto* reallocation from historical harvesters to the charter fleet that resulted have created conflict in Alaska's small coastal communities, pitting neighbor against neighbor. The inability of managers to resolve this conflict through an effective allocation has torn southeast and south central Alaska communities apart. The CSP, which establishes clear allocations, an effective management process, and a market-based transfer mechanism between sectors, will finally end this conflict and restore the "social and cultural" framework in these small communities.

F. The CSP Takes Into Account Other Relevant Considerations

At its core, the allocation aspect of the CSP is between the small segment of the population who can afford to access the halibut resource from fancy charter boats, and those who have neither the resources nor the inclination to do so but have access to halibut via local

restaurants and grocery stores. If one examines the ratio of sport licenses to the general public, over 98% of the American public access the halibut resource through commercial fishermen. This access is highly valued. It is telling that halibut ex-vessel prices (*i.e.*, the price paid to commercial fishermen at the dock) is at an all time high in 2011, having increased from an average price of \$5 per pound in 2009 to an average price of \$7 in 2011, despite the economic recession. In contrast, a 2011 report indicates that the number of visitors to the State of Alaska has declined each year since 2007, and that the number of visitors travelling to Alaska by cruise ship dropped 14.5% between 2009 and 2010. McDowell Group, Inc., Alaska Visitor Statistics Program VI Interim Visitors Volume Report, March 2011. In this regard, the EA states that the change in demand for charter trip cannot be estimated, but that “the demand for charter trips is expected to decline.” EA at 61. Indeed, Table 15 in the EA establishes that the number of charter trips decreased significantly between 2008 and 2010 -- and that it decreased in both Areas 2C and 3A (by 23% and 15% respectively). EA at 51. While charter operators in Area 2C may try to blame this demand reduction on regulatory changes, bag and size limits in Area 3A have not changed over this time period. The inescapable conclusion is that the reduction reflects reduced demand from the public. The CSP takes into account the consuming public and protects their interest in the halibut resource.

IV. Economic Impact

Certain charter associations continue to claim that recreational fisheries are more valuable than commercial fisheries and that the public and the Nation will benefit from a reallocation of the allowable harvest. These statements are unsubstantiated and incorrect.

At the outset, it should be noted that the commercial sector delivers the fish to the public. The charter sector delivers the public to the fish. Both provide the public with access to the resource, although the Coalition submits that the commercial sector provides access to a much larger public, people who are either disinclined, unable, or cannot afford to travel to Alaska to harvest fish for themselves. In terms of public access, it should also be noted that charter industry growth has displaced subsistence fishermen, preventing subsistence fishermen from having access to the resource because of the localized depletion caused by the charter fleet. To place that growth in perspective: the charter harvest in Area 2C increased by 93% between 1997 and 2008. EA at 53. The economic impact on subsistence fishermen is huge. In one community alone, the cost of replacing the subsistence halibut harvest with grocery store purchased product

was a staggering \$1.5 million – a cost that few people living below, at, or near the poverty level can afford. *See* Part II(B)(12) of these comments.

Further, the numbers advanced by the charter industry to “prove” their alleged economic dominance are incorrect. In 2007, the sport fish total industry output in Alaska (real estate construction/repair, trip expenses, pre-purchased packages, equipment purchases, lodging, food, etc.) for both fresh and saltwater was \$1.6 billion. The comparable number for the statewide commercial fishing sector was \$5.8 billion. *The Seafood Industry in Alaska, Northern Economics, January 2009.*

In considering the relative importance of halibut to the charter industry, it is also important to note that in 2010 the daily sport fishing bag limit in southeast Alaska (Area 2C) totaled 33 fish of which only one could be a halibut. In southcentral Alaska (Area 3A) the daily bag limit is 39 fish (which does not include 6 species of cod for which there is no daily limit) of which two could be halibut. Therefore, it could be argued that only 1/33 (3%) or 2/39 (5.1%) of the economic activity claimed by the charter industry is attributable to halibut. Indeed, no charter fishing lodge advertises to its clients for halibut alone. Every species (halibut, cod, rockfish (30+), lingcod, sharks, salmon (5), steelhead, and dolly varden) that can possibly be caught is mentioned as a reason to go to that lodge. In fact, some charter fishing lodges do not even advertise fishing for halibut as an option, mentioning only other species. For a charter client, one permit entitles that client to catch a multitude of species and target whichever is seasonal, has the most appeal, or is most abundant to fulfill their fishing experience. The reality is that the economic impact of travel lodging and food claimed by the charter industry is more closely related to the fishing experience than to the number of halibut caught.

It may also be helpful to examine the actual 2007 data with respect to halibut fishing. The 2007 Alaska Sport Fishing Survey indicates that slightly over 3,032,493 million fish of all types were caught in the Alaska sport fish fishery. Of that number, 584,764 were Pacific halibut (charter and unguided), which equates to 19% of the state-wide total. <http://www.adfg.alaska.gov/sf/sportfishingsurvey/>. Of the 584,764 sport caught halibut statewide, 65% were caught by charter boats in 2C/3A. ADF&G Special Publication 09-11. To complete the equation, Area 2C and 3A charter boats accounted for 12.5% of the 2007 state-wide halibut sport harvest. Thus, of the \$1.6 billion state-wide sport fish output, only \$200 million can possibly be attributed to the charter halibut fishery in Areas 2C and 3A. Economic Impacts

and Contributions of Sportfishing in Alaska 2007 (Southwick Associates and Alaska Dept of Fish and Game Sportfish Division), The Seafood Industry in Alaska's Economy 2007 (Northern Economics).

The commercial halibut fishery accounts for 14% of the state-wide commercial fishery economic output or \$812 million. The Seafood Industry in Alaska, Northern Economics, January 2009. Using a 2010 ex-vessel value of \$194.5 million and a multiplier of 3.1, the 2010 halibut economic output was \$603 million. ASMI 2011. The Area 2C and 3A contribution to the total was \$478 million.

To place these gross numbers into perspective, Sitka, the major halibut charter and commercial port in southeast Alaska, accounted for 28% of all southeast Alaska charter halibut landings in 2009 and approximately 35% of commercial halibut landings. In 2008, the first wholesale value of processed commercially caught fish landed by Sitka residents was \$119 million. The comparable number for the charter industry (gross business sales) was \$29 million. NMFS AK Region landings data (<http://www.fakr.noaa.gov/ram/ifqreports.htm>); Sitka Economic Development Association (<http://www.sitka.net/Economy/reports.html>), revenue data.

The story is the same regarding jobs impact. In the 2008-2009 visitor season, visitors to Alaska accounted for 36,200 full and part time jobs in Alaska. 2009 Alaska Economic Performance Report, Alaska Department of Economic Development (http://www.dced.state.ak.us/pub/2009_Performance_Report_web.pdf). This number includes visitor activity resulting from all forms of tourism (skiing, hiking, wildlife viewing, cruise ships, bus tours, charter fishing, etc.). In comparison, in 2007 Alaska's commercial seafood industry alone provided employment for 80,800 people. Northern Economics, The Seafood Industry in Alaska's Economy 2009 (Feb. 2011).

Under the status quo GHL management, commercial fishermen have borne a disproportionate share of the economic impact from the decline in halibut stocks. Status quo management allows the charter industry to overfish its allocation and fails to reduce the charter allocation commensurate with the decline in halibut abundance. Commercial fishermen, processors, seafood support industries, and coastal communities have all suffered as a result. To supplement the EA, a few examples of these impacts, in addition to those set forth in Part I(C) above, are described below.

In considering economic impacts to commercial fishermen, it is important to begin with the fact that in order to harvest halibut in Alaska commercial fishermen must own Individual Fishing Quota (“IFQ”). The facts are that commercial fishermen have made substantial investments to purchase halibut IFQs. Over 60% of the quota has changed hands since the IFQ program was implemented in 1995. Because of these investments in the fishery, the economic impact of quota reductions caused by charter overfishing has been severe. Most fishermen borrow money to purchase IFQ, which sells for \$25-\$35 per pound, and are now struggling to pay loans that were taken out based on quota levels that were two or three times higher than current levels. Some fishermen will not be able to make loan payments this year and may lose their shares. Many currently owe more than they can make by fishing or by selling their shares because of the quota reductions. For example, one young fisherwoman purchased halibut QS in 2007, leveraging a sizable loan to move from being a deckhand to vesting herself in the fishery. Since that time, she has lost 76% of her quota, 76% which would have otherwise been available to help pay the loan taken out to purchase the QS. She has been unable to cover her loan payments by fishing her halibut shares in two of the past four years, notwithstanding the fact that the ex-vessel price of halibut has increased. Another young gillnet fishermen from Juneau took his savings, secured a loan, and bought 5,600 pounds of Area 2C QS in 2006 for \$18 per pound. As a boat owner, he recognized that he needed to use his boat in more than one fishery to make it pay for itself. Little did he know that his poundage would be reduced to the point where he could not catch enough halibut to cover his QS loan payments. He now has 1,237 pounds of QS left, owes \$70,000 on his loan. If he sold his QS at current market value he could hope to receive \$35,000, half of what he owes on his loan. Another older fisherman took his \$40,000 nest egg and bought 3,000 pounds of Area 2C halibut QS in 2007. Given the quota cuts, he has approximately 800 pounds of QS left and the nest egg is gone. Another family from a small Alaska community has invested over \$700,000 in halibut QS since 2005, with all four members of the family buying QS and fishing together to harvest it. The 76% quota reduction has made it difficult for the family to afford their children’s education and forced them to defer maintenance on their boat. These are but a few of the examples of economic problems caused by the status quo GHM management of the charter fishery and by the declining halibut resource.

Any consideration of comparative economic impacts must also take into account the fact that charter operators offer their clients a large portfolio of species to target, and one license

provides all of this access. The same is not true in the commercial fisheries. Most federal and state commercial fisheries off Alaska are restricted through limited access programs and require significant investment to enter. Commercial fishermen do not have the same flexibility that charter operators and clients have to enter other fisheries and target species other than halibut. If the commercial catch limit for halibut is reduced, the commercial halibut QS holders experience direct revenue losses and direct economic impacts. While some commercial fishermen participate in multiple fisheries, they do so only after a substantial investment (\$35,000-\$300,000) in a limited access permit for that fishery.

In assessing relative economic benefits, one must also consider Alaska's coastal communities that receive tax revenues from commercial fish processing and who use the generated funds to maintain harbors and to provide other necessary governmental services. In 2010, this tax generated approximately \$266,500 to local governments, in addition to revenue to the state government. As commercial halibut quotas drop, so too do the commercial fish tax revenues to communities and the State. By way of example, the ex-vessel value of commercial halibut landings in Juneau declined between 2008 and 2010 from \$50 million to \$32 million, a 35% loss. Since commercial fishermen pay a percentage-based tax on this ex-vessel value to the State and local community, this reduction has local and statewide impacts.

Charter fisheries do not pay a comparable landing tax to local communities. Therefore, the reallocation of harvest to the charter industry caused by charter overharvest has imposed economic stress on Alaska's coastal communities. Some rural Alaska communities, such as Pelican, Hoonah, and Port Alexander are struggling to remain viable in the wake of declining commercial halibut quotas. As the residents of Pelican have learned, charter businesses leave town when the infrastructure previously funded by the commercial fishing industry falls apart. And when businesses leave town, schools close, health care facilities falter, and the future of the community is bleak.

Declining halibut quotas have also resulted in reduced employment both in the harvesting and processing sectors. As one report stated: "The trend in harvesting employment for the halibut fishery has continued its slow but steady decline. From 2008 to 2009, 132 average monthly jobs were lost." Alaska Economic Trends (Nov. 2010), <http://labor.state.ak.us/trends/nov10.pdf>.

Another report estimated the impact of shifts in halibut quota from the commercial to the charter sector stating: “Based on 2005 prices (average of \$3.08 and \$3.07 in Areas 2C and 3A respectively) and the labor income estimates described above, the economic impact of reallocation of 100,000 pounds of halibut would be approximately \$360,000 in personal income in Area 2C and \$300,000 in Area 3A. In terms of total economic output, the impact would be just under \$600,000 in both 2C and 3A.” Economic Impact of the Commercial Halibut Fisheries in Areas 2C and 3A (McDowell April 2007) at 16. The cost to the commercial fleet, due to ineffective GHIL enforcement and the reallocation of 100,000 pounds of halibut at the average 2010 halibut price of \$4.58 is even more severe and has had a much larger impact on QS holders who are struggling to meet loan payments and to make a living on reduced quotas.

The commercial fisheries also support other industries important to Alaska and Alaska’s isolated communities. Yet another report highlights by way of example the importance of commercial fisheries to the Kodiak Island Borough. “Kodiak’s status as the state’s commercial seafood capital is the reason many organizations are located there, including the U.S. Coast Guard, University of Alaska Fairbanks’ Fisheries Industrial Technology Center and Kodiak Fisheries Research Center.” Alaska Economic Trends (June, 2010), <http://labor.state.ak.us/trends/jun10.pdf>.

The transportation sector and dependent Alaskans also rely heavily on the commercial fishing sector. A spokesman for Lynden Transport, which employs 800 people in Alaska, testified that transportation of the commercial seafood harvest from Alaska as a backhaul significantly reduces the cost of freight to Alaska’s remote communities. He estimated that north-bound freight costs would be 10% higher without the seafood backhaul. Since most of the food and goods sold in Alaska are imported from the Lower 48, this increase in freight costs would impose a substantial economic burden on all Alaskans, particularly on residents of Alaska’s remote coastal villages.

Finally, it is worth pausing to consider the nature of the commercial and charter fleets. Virtually all Area 2C commercial halibut fishermen operate small boat family businesses working from vessels less than 60 feet. In 2010, approximately 60% were permitted to harvest 3,300 pounds or less of halibut and 90% could harvest less than 9,000 pounds. The average Area 2C individual commercial halibut fisherman grosses approximately \$9,000 from halibut fishing in this Area.

The comparison to the charter fleet, particularly the large fishing lodges that dominate harvest in the charter industry, became clear in 2009 when the charter industry sued to prevent NMFS from enforcing the GHL harvest quota. The annual revenue from the smallest of the charter plaintiffs was \$100,000. Two charter plaintiffs reported annual revenues of \$1.6 million and \$1.89 million. One charter plaintiff operated a corporate fleet of 27 vessels catching between 460,000 and 763,000 pounds of halibut annually. Another charter plaintiff was catching between 93,000 and 148,000 pounds of halibut annually. In 2010, less than 1% of the Area 2C commercial fishermen harvested 22,000 or more pounds of halibut in this area. In Area 3A, less than 16% of commercial fishermen harvested more than 25,000 pounds. Pacific Halibut–Sablefish IFQ Report for Fishing Year 2010 at Table 3.12.

In sum, claims by the charter industry that their harvest has greater economic value than the commercial industry are false. Claims that business losses are solely due to increased regulation are also false. The facts indicate that the National economic recession has reduced tourism to Alaska and that tourism spending per visitor has also declined, both forces driving demand for charter boats downward. Further, charter boat operators are not the only ones suffering because of a decrease in resource size. Commercial fishermen are also suffering, and because the commercial quota has been reduced proportionately more than charter quotas, the economic impact of resource decline has been greater for the commercial sector. And one cannot overlook the fact that charter overfishing is the cause of some of the economic harm being suffered by the commercial fleet. The cumulative charter overharvest of 3.77 million pounds in Area 2C from 2004-2010 cost the 1,162 QS holders in the commercial sector over \$15 million in lost ex-vessel value. The de-valuation of QS, which is now worth \$25-30 per pound, is an order of magnitude higher. The cost to processors includes the 76% reduction in product flow from reduced commercial quotas, as well as the inability to retain a year-round employment force.

Furthermore, it cannot be said that the agency has not prepared numerous economic analyses of the halibut charter and commercial sectors and that the public has not had the opportunity to comment on each. In addition to the analyses referenced in the EA and the Proposed Rule, those analyses are found in the following documents.

- RIR/FRFA of a Regulatory Amendment to Revise Permit Endorsements for Charter Halibut Businesses That Are Qualified to Receive Multiple Permits – Draft for Secretarial Review, August 26, 2010
- Categorical Exclusion for a Regulatory Amendment to Revise Method of Assigning Angler Endorsements to Charter Halibut Permits, June 10, 2010
- Public Review Draft RIR/IRFA for a Regulatory Amendment To Revise Permit Endorsements for Charter Halibut Businesses that Are Qualified to Receive Multiple Permits, June 9, 2010
- Categorical Exclusion for Regulatory Amendment to Revise Charter Halibut Logbook Submission Requirements, March 31, 2010
- Draft for Secretarial Review Regulatory Amendment to Modify Regulations Governing Submission of Halibut Charter Logbooks - Regulatory Impact Review/Initial Regulatory Flexibility Analysis, January 5, 2010
- EA/RIR/FRFA for Regulatory Amendment to Limit Entry in the Halibut Charter Fisheries in IPHC Regulatory Areas 2C and 3A, November 6, 2009
- Regulatory Impact Review/Final Regulatory Flexibility Analysis/Environmental Assessment for a Regulatory Amendment to Implement Guideline Harvest Level Measures in the Halibut Charter Fisheries in International Pacific Halibut Commission Regulatory Area 2C, March 26, 2009
- Secretarial Review Draft RIR/IRFA/EA for a Regulatory Amendment to Implement Guideline Harvest Level Measures in the Halibut Charter Fisheries in International Pacific Halibut Commission Regulatory Area 2C, November 3, 2008
- Secretarial Review Draft EA/RIR/IRFA for a Regulatory Amendment to Limit Entry in the Halibut Charter Fisheries in IPHC Regulatory Areas 2C and 3A, April 25, 2008
- Draft for Secretarial Review EA/RIR/IRFA for a Regulatory Amendment to Implement Guideline Harvest Level Measures in the Halibut Charter Fisheries in International Pacific Halibut Commission Regulatory Area 2C, November 27, 2007
- Final EA/RIR/FRFA for the Regulatory Amendment to Modify the Halibut Bag Limit In the Halibut Charter Fisheries in IPHC Regulatory Area 2C, April 11, 2007
- Draft EA/RIR/IRFA for the Regulatory Amendment to Modify the Halibut Bag Limit In the Halibut Charter Fisheries In IPHC Regulatory Area 2C, March 23, 2007
- Environmental Assessment of the Guideline Harvest Level for the Guided Recreational Halibut Fishery in International Pacific Halibut Commission Areas 2c and 3a, June 2, 2003
- EA/RIR/FRFA for a Local Area Halibut Management Plan for Sitka Sound. FONSI determination 09-14-99; NEPA Coordinator letter dated 09-16-99; EA dated 8-26-99 August 26, 1999

Finally, the charter industry is fond of quoting a study by Dr. Keith Criddle asserting the study “proves” that the maximization of economic benefits in the halibut fishery occurs when the commercial sector has 71% of the allowed harvest and the recreational sector has 29%. After the charter industry first presented this argument, Dr. Criddle stated in a September 28, 2008 email that his study was “not intended to serve as a specific review of an optimal allocation of halibut

in Alaska.” Rather, his studies “were intended to demonstrate the kind of information that would be required if there were an attempt to determine an optimal allocation and to show the impracticality of trying to do the analyses needed to determine an optimal allocation.” In other words, not only does the author of the study reject the charter industry’s use of his work, but he says his study demonstrates why the charter industry cannot even begin to argue there is such a thing as an optimal allocation.

V. Comments Specific to the Provisions of the Proposed Rule

A. Allocation Clarification

In approving the CSP, the Council clarified that the CSP sets clear percentage-based allocations for the commercial and charter sectors. Although the CSP allows the charter harvest to fluctuate within a specified range of this allocation, the goal of the CSP is to restrain charter harvest at or below the level specified by the target allocation percentage (midpoint of the allocation range). The CSP regulations trigger management changes if pre-season projections indicate charter harvest will fall outside the specified charter allocation range.

NMFS’ previous decision to label the GHL a “benchmark” invited multiple lawsuits that were costly to the industry, the public, and the resource. Following NMFS’ lead, charter plaintiffs in *Van Valin v. Locke* argued the GHL “merely set benchmarks and did not limit the halibut harvest.” *Van Valin v. Locke*, 671 F.Supp.2d at 11-12. Noting all the references in the record to the GHL as a cap on the charter harvest, *see* Part I(A) above, the Court responded to Plaintiffs’ argument stating: “This argument is unsupported by the Administrative Record.” *Id.* at 12. The Court noted the word “benchmark” is to be understood in the context that the GHL is only a “benchmark” in that it tells the agency when it is necessary to adopt appropriate enforcement measures. *Id.* at 4, 12. Thus, the Court noted the GHL is not self-enforcing but sets a charter limit that is to be enforced “by subsequent regulation.” *Id.* at 4. While this court decision finally forced effective restriction of charter harvest, the seven year lag between the first charter Area 2C GHL overage and effective action undermined the productivity of the halibut resource and cost the commercial halibut industry over \$15 million directly in lost revenue, which does not include indirect costs to commercial fishermen in the devaluation of QS, nor does it include costs to the processing or support sectors of the commercial industry. The inadequacy of the GHL system to protect resource health and the interests of all who depend on the halibut

resource demands change and drove development of the CSP. The Coalition hopes NMFS will avoid the use of words such as “benchmark” in describing the GHL and the CSP.

The CSP sets clear allocations for the charter sector and a process to prevent allocation overages before they occur. By identifying “unique management measures for the charter sector that are associated with different allocations” the system allows federal regulations to be adjusted as necessary prior to the start of the fishing season. EA at 49. This method eliminates the delays that have been associated with GHL management and will ensure management measures implemented pre-season via the IPHC process so as to protect the resource and historic users.

The CSP still allows the charter sector a continuous season of historic length and guarantees management measures will not be changed in-season. It also provides a range around the charter sector’s allocation to minimize bag and size limit changes over time—again at the request of the charter sector for predictability. Recognizing that these concessions could allow a measure of charter overharvest, the Management Objectives section of the CSP EA/RIR makes it clear that managers are expected to err on the side of conservation and caution when projecting charter harvest relative to allocation:

In meeting its conservation mandate while accommodating the charter industry’s need for predictability and stability, the Council will necessarily err on the side of conservation in the selection of management tools and season length, with the result that the sport charter sector may not be able to harvest its entire allocation.

CSP EA/RIR October 2008, Statement of Management Objectives.

In short, the CSP establishes sector allocations and directs managers to constrain charter harvest at or below the allocations, which are the range mid-points. This built-in conservatism is necessary to offset the imprecision in charter management and the lack of timely in-season catch accounting. Thus, charter management under the CSP demands a measure of conservatism. The ranges give managers time to finalize data and confirm harvest trends before changing charter harvest restrictions. The ranges are not intended to allow an increase in the charter allocation. As the motion to adopt the CSP stated:

The Council recognizes that management measures are imprecise. Therefore a small variance can be expected to occur around the allocation. The Council’s expectation is that the variances will balance over time to ensure IPHC conservation and management objectives are achieved.

All of these factors and issues must be reflected in the final rule.

B. Catch Accounting in the Charter Sector

The CSP proposes the following process to convert commercial IFQ to GAF: “The conversion factor for the current fishing year would be the ADF&G estimate of the average net weight calculated from all halibut harvested in the guided sport fishery during the preceding fishing year in that IPHC regulatory area.” 76 Fed. Reg. at 44186.

This procedure can be expected to underestimate the weight of GAF since charter operators are likely to lease quota to provide their clients the opportunity to harvest a larger fish than is allowed under existing bag and size limits in the common pool charter fishery. For example, in Area 2C in 2011, the 37” maximum size fish will result in a maximum net weight of 17 pounds, with the average weight likely to be lower. If an Area 2C client wants the opportunity to catch a bigger halibut, the client can harvest a GAF and will likely not retain a halibut until a larger fish is harvested. Accurate accounting for GAF, and hence resource removals, requires that charter operators log and report the length of GAF fish and that ADF&G and the IPHC use this data to set the GAF conversion rate the following year. Alternatively, ADF&G and the IPHC could use the average weight of commercial caught halibut or IPHC survey-caught halibut.

The Halibut Coalition strongly supports the proposal set forth at 76 Fed. Reg. 44180 that GAF holders be required to allow ADF&G and IPHC scientific personnel access to private property owned by GAF permit holders in order to monitor GAF and collect scientific data. This data collection will result in a better size estimate for GAF and reduce the potential for over harvest of the halibut resource.

The Coalition recommends NMFS clarify the regulatory language at proposed section 300.65(c)(6)(iv) titled GAF Use Restriction that states QS holders may only convert to GAF commercial quota they held as of January 1. One interpretation of this language is that a QS holder would be eligible to lease IFQ as GAF only if that person held QS when IFQ permits were initially issued for that year. To avoid any misunderstandings on the part of charter or commercial fishermen, this section should be clarified.

At 76 Fed Reg. 44173, the Proposed Rule requests comments on the use of proposed Methods A, B, C, or other potential methods to establish maximum lengths under the CSP. The Coalition supports Method B. This is the most biologically conservative method proposed under

the CSP and will provide the most benefit to the resource. The Coalition remains concerned about the adequacy of catch accounting in the charter fishery, particularly relative to catch accounting and mortality rates of “released” halibut, and believes any underharvest that may result from Method B will provide a necessary conservation buffer. As catch accounting in the charter fishery improves and regulators gain experience with size limit management in the halibut charter fishery, it may be appropriate to revisit the algorithm and adjust the methodology.

Relevant to the issue of catch accounting, the Coalition supports the requirement that charter operators be required to retain the halibut carcass when a maximum size limit is in place, and not disfigure or mutilate a halibut such that the size and number of halibut harvested is difficult to ascertain under any bag or size limit. The Coalition accepts that on-board filleting benefits charter operations, and agrees with NMFS that while filleting on board can be permitted. However, the fillets should be cut in no more than two ventral, two dorsal and two cheek pieces to facilitate enforcement of bag and possession limits.

The Coalition supports the prohibition on charter operator, guide and crew retention of halibut while engaged in guiding efforts in both Areas 2C and 3A. This prohibition will reduce charter harvest by approximately 4.5% in Area 2C and 10.4 percent in Area 3A. These reductions are consistent with CSP objectives and will ensure guided clients are provided maximum opportunity to harvest halibut while still restraining the sector’s catch to its allocations. The Coalition also supports prohibiting an individual from using both a charter halibut permit and Subsistence Halibut Registration Certificate during the same day. This will discourage abuse of halibut subsistence harvesting opportunities and aid in enforcement.

Finally, in managing and accounting for charter harvest, it is essential that NMFS, the Council, and the IPHC remained firmly focused on the charter allocation as the management target. The management range of 3.5% above and below the allocation is intended to minimize changes to charter bag and size limits while still preventing resource overharvest. The Council recognized that charter catch accounting and charter management measures are imprecise and “therefore a small variance can be expected to occur around the allocation.” That said, the Council made clear that the goal is to achieve a zero variance over time: “The Council’s expectation is that the variances will balance over time to ensure conservation and management objectives are achieved.” EA/RIR/IRFA xix. The Halibut Coalition strongly supports this commitment to manage the charter fleet to its percentage-based allocation.

C. Requested EA/RIR/IRFA Revisions

Throughout the EA, information is provided on the economic contributions of, and impacts to, the charter sector. However, minimal information is included in the EA regarding the economic impacts of the status quo to all who depend on the halibut resource, from harvesters through processors, communities, and consumers. For balance and accuracy, the EA should be amended to include these effects, and, more importantly, the benefits of the CSP. Because the CSP directly ties charter harvest to resource abundance through a percentage-based allocation and establishes a management system that prevents, rather than reacts to, charter overfishing, there are clear benefits to the resource and quantifiable benefits to sport, subsistence and commercial harvesters; commercial processors; distributors; and consumers. The Coalition has identified and quantified some of the impacts of status quo GHM management in these Comments and has also described and quantified the benefits of the CSP. The EA should be supplemented to include this information.

The EA attributes too much weight to halibut in assessing impacts to the charter sector of changes in management measures. The EA should be amended to more accurately reflect the relative impact of changing management measures for one of the 33 or 39 species, depending on the IPHC Area referenced, that can be retained in any given day by a charter client.

There are also specific sections of the EA that demand revision. These are set forth below.

1. Page xxxviii. This section provides estimates of revenue to charter operators from trip fees and should include estimates of ex-vessel revenues to commercial fishermen.
2. Page xli. The discussion of impacts to communities in this section assumes charter overfishing is an acceptable part of the status quo, when in fact that overfishing has imposed significant costs. The costs, and conversely the benefits of preventing charter overfishing, should be described. This section also includes the comment repeated later at 50 that the one fish bag limit has decreased client demand. The decrease in client demand should be evaluated relative to the State-wide decline in Alaska tourism, the reductions in tourism spending, and the reduced availability of halibut—all of which are already discussed in the analysis. The EA/IRFA at 155 suggests that the 2007-2009 recession “likely” played a part in the decline of Area 2C bottomfish anglers. The following 2009 information from *The Juneau and Southeast Economic Indicators 2010* (Juneau Economic Development Council 2010, available at http://jedc.org/forms/2010_Juneau_&_SE_Economic_Indicators_Final.pdf) demonstrates the scale of the recession on the tourism business.

- From 2008-2009, Juneau’s Leisure and Hospitality annual employment was down 180 jobs.
- From 2008-2009, passenger transportation indicators were down: ferry -12%, Alaska Air -9%, Other Air -5%, cruise ship -1%.

In sum, the statement attributing decline in angler demand to regulation is unsubstantiated and should be evaluated in a larger context or struck.

3. Page 156. Substitution of species. As noted elsewhere, the daily recreational bag limit varies from 33-39 or more in Areas 2C and 3A. In 2008, ADF&G Special Publication No 09-11 (Tables 15 & 16) reported that saltwater guided vessels caught a total of 807,618 fish in 2C/3A (not including sablefish and Pacific cod), of which 42% were halibut. This indicates that saltwater clients already place considerable importance (58%) on species other than halibut. The EA states: “More restrictive regulation will reduce the profitability of this sector...” This is overstated and needs to be examined in light of the obvious substitution occurring. This statement is also contradicted by the market that has developed for charter permits. There is clear demand for the newly created charter halibut limited entry permits, which indicates confidence in the future of the halibut charter business. Since January 2011, 58 permits have sold for average prices of \$32,000 in Area 2C (April) and \$58,833 in Area 3A (May). http://www.fakr.noaa.gov/ram/charter/apps_permits.htm.
4. Page 159. Change “400 or fewer” to “400 or fewer”.
5. Page 165. This section should note that most, if not all, charter trips target not only halibut but other bottom fish such as lingcod, rockfish, shark, Pacific cod. In addition, many charters also target salmon during a bottomfish trip and view wildlife as part of their experience. The revenue numbers, therefore, do not reflect a “pure” halibut trip.
6. Page 167. This text should be clarified to show that the term “hook-and-line catcher vessels,” as used in the SAFE, includes vessels harvesting not only halibut but also sablefish and Pacific cod. The average gross income of \$390,000 cited does not align with the average halibut longline gross. The Coalition does agree with the conclusion that most if not all halibut longline vessels qualify as small businesses under SBA rules. This section should be carefully reviewed to ascertain if vessel or QS holder average is the appropriate number to use. In the SAFE, the title of Table 36 is “Number of groundfish vessels that caught or caught and processed more than \$4.0 million...”
7. Appendix B, section 8.5. The regional economic impacts of changes that affect charter operations are discussed in this section. However, once again the regional economic impacts of the status quo and of any changes to the status quo that affect commercial fishermen are not discussed. These need to be added.

8. Appendix B, section 8.6. This section should be revised to describe the impacts to subsistence and sport fishermen of local depletion. Charter operations have gradually increased their working radius from coastal towns seaward as they deplete the more accessible fishing grounds. This forces resident sport and subsistence fishermen to travel farther in search of halibut, which increases fuel costs, heightens the risk of perilous fishing in more exposed areas of the ocean, and increases the number of trips needed to find halibut.

VI. Conclusion

The Halibut Coalition urges NMFS to implement the CSP without further delay. The CSP marks 18 years of public discourse on halibut charter management that engaged hundreds of people from all sectors of the halibut fishery: subsistence, sport, and commercial fishermen; consumers; processors and distributors; and coastal communities. The CSP will allow halibut fishery managers to achieve important conservation and management goals. It will provide a measure of stability to the halibut fishery. Finally, the CSP will establish a market-based mechanism to resolve the allocation conflict that has consumed the Council and torn apart coastal fishing communities.

The almost two decades of testimony and analysis surrounding the development of the CSP have resulted in an extensive and complete factual and legal record supporting the CSP – a record that fully demonstrates the CSP is fair and equitable, takes into account present participation in the fishery, and promotes conservation. Among those facts are the following.

- The GHM and CSP were developed by committees dominated by the charter industry.
- When the charter industry decided at the last minute to oppose the CSP to which it had previously agreed, the industry did so based on the assertion the CSP was neither fair nor equitable. The charter industry’s “fair and equitable” alternative proposed raising the then-existing Area 2C charter catch from 913,000 pounds to 4.9-5.7 million pounds, between 70%-80% of the total harvest, effectively putting the commercial fleet out of business.
- The status quo GHM management program has resulted in the Area 2C charter industry exceeding its quota by 22%-115% and by lesser amounts in Area 3A. The commercial sector has never exceeded its quota since the IFQ program was established.
- The IPHC has stated that charter overfishing is a threat to resource conservation.
- In Area 2C since 2005, the halibut resource has declined 62% and the commercial quota has been cut 76%. The charter industry’s quota was reduced by only 55% but the charter industry offset those reductions by overfishing its quota by an average of 52%. While the resource has been declining, the charter industry in Area 2C increased its harvest by 93% between 1997 and 2008.

- Charter overfishing has resulted in direct reductions to the Area 2C commercial fleet to offset the charter overharvest. These reductions have an ex-vessel value to commercial fishermen of \$15 million which translates to a \$46.5 million economic loss using standard multipliers.

- Charter overfishing causes localized depletion because it is concentrated in nearshore areas. The charter industry admitted the existence of localized depletion in testimony on the charter limited entry program.

- Localized depletion means the least fortunate among us, those who live near, at, or below the poverty level, and who depend on subsistence fishing, cannot find the resources to feed their families.

- The commercial processing sector has seen significant declines in the amount of halibut available for processing, caused in part by charter overfishing, with a corresponding impact on jobs and community wages.

- Alaska's coastal communities which depend on halibut and other commercial fish landing taxes to support essential government services have suffered a dramatic loss of income as commercial quotas have been cut to compensate for charter overfishing.

- The CSP awards the charter industry a percentage of the allowable harvest that is equal to, or greater than, the GHF percentage in both Areas 2C and 3A.

- Had the CSP been in place in lieu of the GHF since 2004, the charter industry would have received more fish in both Areas 2C and 3A.

- The CSP allows the charter industry to increase its allocation by providing a mechanism for the industry to acquire more fish from the commercial fleet.

- The CSP makes substantial concessions requested by the charter industry, mostly at the expense of the resource or the commercial fleet. Among those concessions are:

- percentage allocations equal to or greater than the GHF allocations;
- a program that allows the charter industry to increase its harvest by leasing commercial quota;
- no in-season harvest management changes;
- allowing the charter industry to exceed its annual harvest limit by approximately 20% with no new regulations to limit harvest;
- management measures limited to bag and size limits with season limits and fishery closures taken off the table as possible management measures;
- an increase in the charter industry's allocation percentage when halibut

abundance is low so that the commercial fleet bears the conservation burden; and

- a more flexible management system so that charter allocations can rise more quickly when halibut abundance increases.

Despite these facts, the charter industry protests. Ignoring the fact that if the CSP had been in place since 2004 instead of the GHF, the charter industry would have received more fish, the industry asserts that their 2011 allocations, had the CSP been in place, would have been less than their GHF allocations. This argument captures the essence of the charter industry's attitude and the exact nature of the problem confronting fishery managers. The facts are that:

- the difference between the 2010 CSP and the GHF Area 2C allocation to the charter industry would have been only 8,000 pounds;
- while the commercial fleet has seen its quota cut by 73% between 2007 and 2011, the charter industry quota was cut by only 45%, and none at all in the last three years even though the resource has continued to decline and commercial quotas have been slashed to conserve the resource;
- in Area 3A, the commercial quota was cut 45% between 2007 and 2011 for conservation reasons, but the charter quota was never reduced; and
- in 2011, the commercial quota in Areas 2C and 3A was reduced from 2010 levels by 47% and 38%, respectively, while the charter quota under the GHF was not cut by one pound.

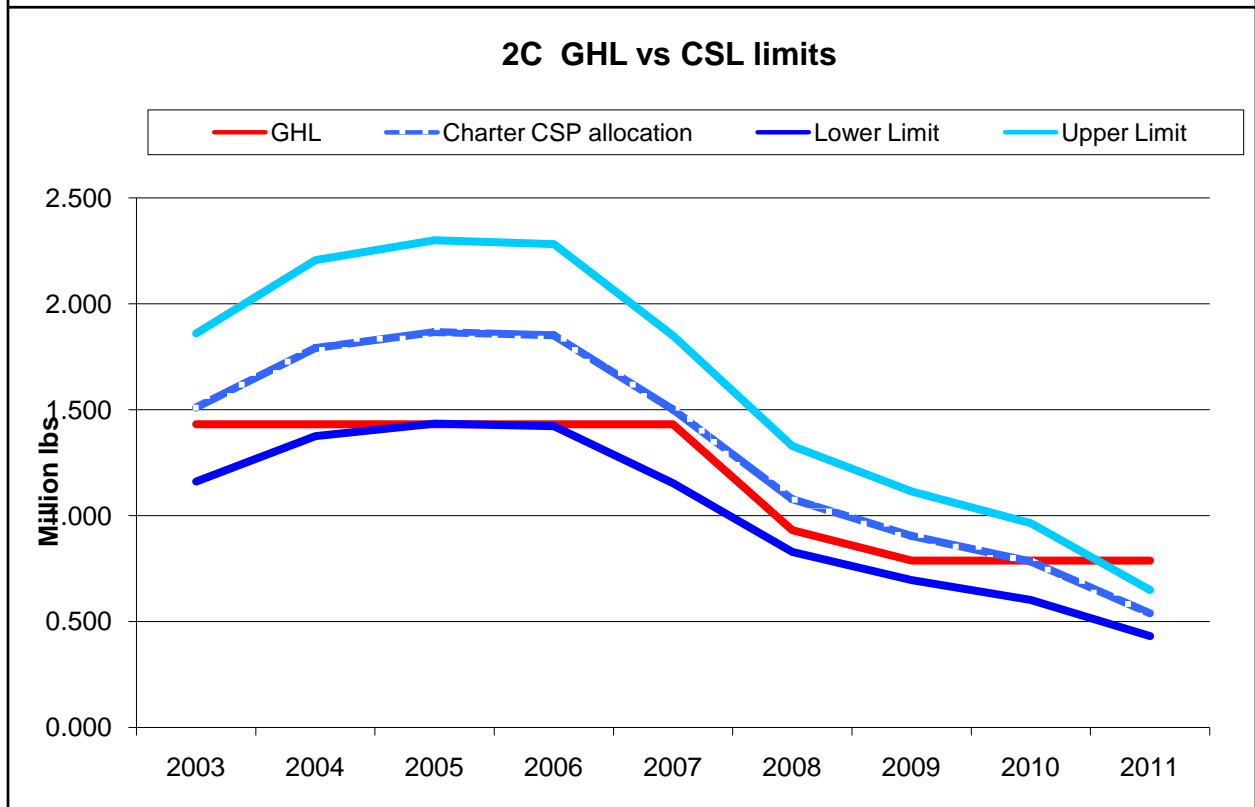
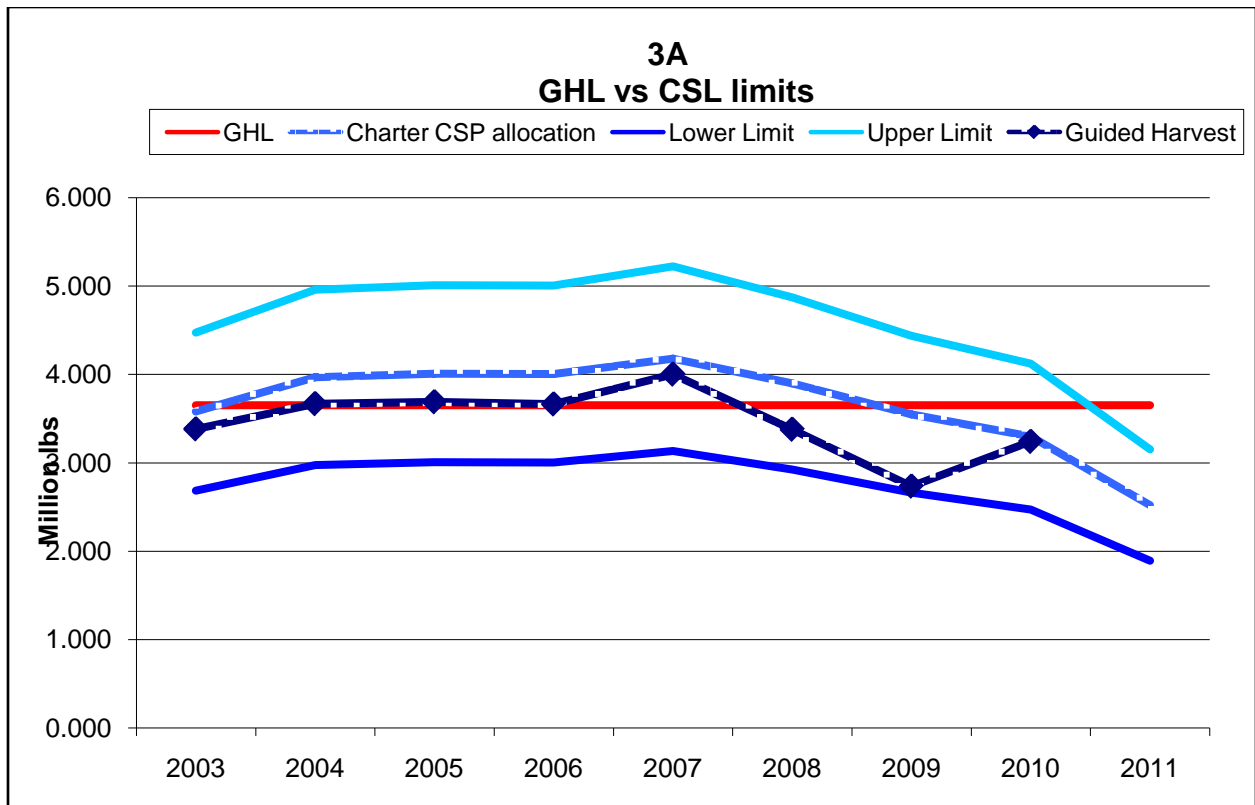
A fair and equitable allocation would have reduced the quota for each sector by equal amounts. But the charter industry does not want fair and equitable. It wants what is unfair and inequitable – that the charter industry not bear its share of the responsibility for conserving the resource – a conservation need caused in part by years of overfishing by the charter industry – overfishing that has inflicted enormous harm on the resource, commercial fishermen, subsistence fishermen, processors, and coastal communities.

There are clearly net national benefits to implementing our national policy of preventing overfishing. There are national benefits to not inflicting economic loss on the commercial fleet (and dependent processors and coastal communities) when the IPHC is forced to reduce the commercial quota to offset charter overfishing and to conserve the resource. There is clearly a net national benefit to ensuring that the least fortunate among us, subsistence fishermen, do not lose access to the resource due to localized depletion caused by charter overfishing. And in

considering net national benefits, one cannot forget that the charter industry would have received more fish if the CSP had been in place since 2004 instead of the GHL. This means the benefit to that industry would have been, and will be, greater under the CSP.

The facts and the law are clear. The CSP can and must be implemented for the 2012 season.

Appendix A: CSP Limits compared to GHL



**2C CSP
Data**

Year	Commercial Limit	Charter deduction	Combined Catch limit	GHL	CSP rule	Charter CSP allocation	Lower Range	Upper Range	Lower Limit	Upper Limit
2003	8.500	1.501	10.001	1.432	15.1%	1.51	11.6%	18.6%	1.16	1.86
2004	10.530	1.333	11.863	1.432	15.1%	1.79	11.6%	18.6%	1.38	2.21
2005	10.930	1.437	12.367	1.432	15.1%	1.87	11.6%	18.6%	1.43	2.30
2006	10.630	1.639	12.269	1.432	15.1%	1.85	11.6%	18.6%	1.42	2.28
2007	8.513	1.432	9.945	1.432	15.1%	1.50	11.6%	18.6%	1.15	1.85
2008	6.210	0.931	7.141	0.931	15.1%	1.08	11.6%	18.6%	0.83	1.33
2009	5.200	0.788	5.988	0.788	15.1%	0.90	11.6%	18.6%	0.69	1.11
2010	4.400	0.788	5.188	0.788	15.1%	0.78	11.6%	18.6%	0.60	0.96
2011	2.330	0.788	3.118	0.788	17.3%	0.54	13.8%	20.8%	0.43	0.65

3A

Year	Commercial Limit	Charter deduction	Combined Catch limit	GHL	CSP rule	Charter CSP allocation	Lower Range	Upper Range	Lower Number	Upper Number	Guided Harvest
2003	22.630	2.943	25.573	3.650	14.0%	3.58	10.5%	17.5%	2.69	4.48	3.382
2004	25.060	3.279	28.339	3.650	14.0%	3.97	10.5%	17.5%	2.98	4.96	3.668
2005	25.470	3.161	28.631	3.650	14.0%	4.01	10.5%	17.5%	3.01	5.01	3.689
2006	25.200	3.414	28.614	3.650	14.0%	4.01	10.5%	17.5%	3.00	5.01	3.664
2007	26.200	3.650	29.850	3.650	14.0%	4.18	10.5%	17.5%	3.13	5.22	4.002
2008	24.200	3.650	27.850	3.650	14.0%	3.90	10.5%	17.5%	2.92	4.87	3.378
2009	21.700	3.650	25.350	3.650	14.0%	3.55	10.5%	17.5%	2.66	4.44	2.734
2010	19.900	3.650	23.550	3.650	14.0%	3.30	10.5%	17.5%	2.47	4.12	3.24
2011	14.360	3.650	18.010	3.650	14.0%	2.52	10.5%	17.5%	1.89	3.15	