

Charter Halibut Permit Qualifications: General Information

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New Federal regulations require that beginning February 1, 2011, charter halibut operations in areas 2C and 3A must have onboard a Charter Halibut Permit (CHP) issued by NOAA Fisheries (NMFS). This informational document is intended to be used in combination with a customized “Summary of Official Charter Halibut Record,” if provided, and an application form, to assist you to understand the CHP program and apply for permits. This document does not stand in the place of authorizing regulations for this program which can be found at: 50 CFR § 300.61 or at: <http://alaskafisheries.noaa.gov>.

Several basic standards are required to initially receive a charter halibut permit. These standards include:

- (a) timely application for a permit;
- (b) documentation of participation in the charter vessel fishery during the qualifying and recent participation periods in ADF&G Saltwater Charter Logbooks; and
- (c) ownership of a business that was licensed by the State of Alaska to conduct the guided sport fishing reported in the logbooks; and
- (d) minimum participation standards in both a qualifying period (2004 and 2005) and a recent participation period (2008).

Each CHP will be issued with one area endorsement (either 2C or 3A), an angler endorsement, and a status of “transferable” or “non-transferable”. If you are entitled to permits for both areas they will be issued as separate permits.

Timely Application

The application period for a Charter Halibut Permit is **February 4, 2010 through April 5, 2010**. Applications submitted by mail, hand delivery, or facsimile will be accepted if postmarked, hand delivered, or faxed **no later than the last day of the application period** (electronic submissions other than facsimile will not be acceptable).

LATE APPLICATIONS WILL BE DENIED

Who will be issued Charter Halibut Permits?

CHPs will be issued to persons that were the ADF&G licensed business owners that met the minimum qualifications, and submit a timely application.

The term “person” includes an individual, corporation, firm, or association (50 CFR § 300.61). Hence, on successful application, NMFS will issue a charter halibut permit to the entity—

individual, corporation, partnership, or other entity—that held the ADF&G Business Owner License that authorized the logbook fishing trips that met the participation requirements.

The only exception to this requirement is if the entity that held these licenses is an individual who has died, or a non-individual entity, such as a corporation or partnership, that has dissolved. In these cases, a “successor-in-interest” may be entitled to apply for and receive earned permits.

Minimum Qualification Criteria

The minimum participation qualifications include documentation of at least five logbook fishing trips during each of two periods: one of the two qualifying years—2004 or 2005—plus the “recent participation year” of 2008.

Meeting these minimum participation qualifications could qualify an applicant for a non-transferable charter halibut permit. The minimum participation qualifications for a transferable charter halibut permit include at least 15 logbook fishing trips during one of the qualifying years—2004 or 2005—and at least 15 logbook fishing trips during 2008.

If the applicant participated in both 2004 and 2005 the applicant must select on its application the year NMFS will use to determine the nature of the charter halibut permits issued to the applicant.

Note: NMFS will not credit the same logbook fishing trip to more than one applicant and will not allow the participation history of one business owner to support issuance of a permit(s) to more than one applicant. (A business that had more than one owner is considered to be a single applicant.)

Area Endorsement

Minimum participation qualifications must be met separately for each area, 2C or 3A, for which you are applying. For example, to obtain a CHP endorsed for Area 2C the minimum participation requirements must have been met in Area 2C. A similar area-specific eligibility requirement extends to receiving a CHP endorsed for Area 3A.

Number of Permits

The number of permits issued will be based on an applicant-selected qualifying year (2004 or 2005). If an applicant for a charter halibut permit meets the minimum participation requirements during both a qualifying year and the recent participation year, NMFS will determine how many permits the applicant will receive and how many of those, if any, will be transferable permits. If an applicant qualifies for any permits, NMFS will issue to the applicant the number of permits equal to the lesser number:

- the applicant’s total number of bottomfish logbook fishing trips in the applicant selected qualifying year, divided by 5, or
- the number of vessels that made those trips.

The applicant will select which year in the qualifying period—2004 or 2005—NMFS will use in making this calculation. Select your year carefully. One year may result in more overall permits, but the other may result in fewer overall permits of which more are transferable.

For example, an applicant in its selected qualifying year reported 23 logbook trips using three vessels as follows: one vessel made 16 trips, another vessel made five trips, and the third made two trips. Under qualification rules, NMFS will calculate $23 \div 3 = 7.67$ which will be rounded down to seven. However, the number of permits will be limited to three, the total number of vessels that made all the logbook trips in the applicant-selected year. Hence, the applicant will be awarded three permits.

Transferable or Non-Transferable Permits

After determining the total number of permits you should be issued, NMFS will determine how many permits are transferable or nontransferable. The number of transferable permits issued will be based on the same applicant-selected qualifying year (2004 or 2005) used to determine the total number of permits plus the recent participation year of 2008.

An applicant will receive a transferable permit for each vessel that made at least 15 trips in the applicant-selected year (2004 or 2005) and at least 15 trips in the recent participation year (2008). The same vessel must have made all the trips within a year; but different vessels could have been used in the qualifying and recent participation years. The rest of the applicant's permits, if any, will be non-transferable permits.

Applicants that do not have the minimum of 15 logbook fishing trips in each period but qualify for one or more permit(s) with a minimum of five logbook fishing trips, will receive only non-transferable permit(s).

In the example above of an applicant with 23 logbook trips based on use of three vessels, the applicant will receive three permits. Based on the 15-trip minimum criterion, however, this applicant will receive only one transferable permit and the other two permits will be non-transferable.

Angler Endorsements

Each charter halibut permit will have an angler endorsement number. For this computation, NMFS will consider activity in both qualifying years, regardless of which year you selected for other purposes. The angler endorsement will be equal to the highest number of anglers that the applicant reported on any one logbook fishing trip during 2004 and 2005, with a minimum endorsement awarded of four anglers in most cases.

The angler endorsement number on the permit is the maximum number of charter vessel anglers that may catch and retain halibut on board the vessel. The angler endorsement does not limit the number of passengers that a charter vessel operator may carry, only the number that may catch and retain halibut.

Documentation of Participation

The principal documentation necessary to prove qualifying participation in the charter halibut fishery will be limited to saltwater charter vessel logbooks issued by the ADF&G. If a trip was not reported within required time limits, or if reported timely but amended after the allowed date, NMFS will not consider it a logbook fishing trip for purposes of a charter halibut permit application.

The basic unit of participation for receiving a charter halibut permit will be a logbook fishing trip. A “logbook fishing trip” is a bottomfish logbook fishing trip during the qualifying years, 2004 and 2005, and a halibut logbook fishing trip in 2008. A logbook fishing trip is an event that was reported to ADF&G in a logbook in accordance with the time limit required for reporting such a trip that was in effect at the time of the trip.

NMFS will use the same method of counting logbook fishing trips that was used by the North Pacific Fishery Management Council (Council) in developing its recommendation for this program. Each trip in a multi-trip day will count as one logbook trip, and each day on a multi-day trip will count as one logbook trip. For example, if a charter vessel operator documented two trips in one day, NMFS will consider that two logbook trips. A trip documented to have lasted two days also will be considered to be two logbook trips. This accounting of trips deviates from the ADF&G method of counting logbook trips when fishing continues over multiple days. The same issue does not exist for half-day trips. Consistent with ADF&G logbook data and the Council’s Analysis, NMFS will consider a half day trip as one trip.

A halibut logbook fishing trip also can be a trip for which the business owner, within ADF&G time limits, reported “boat hours that the vessel engaged in bottomfish fishing.” An applicant may use such a report as one way to document a halibut logbook fishing trip. The logbook data for “boat hours” that a business had to report in 2008 was “No. of Boat Hours Fished this Trip” with bottomfish as a targeted species. Hence, this action defines a halibut logbook fishing trip as a logbook fishing trip in which the applicant reported the number of halibut kept or released or the boat hours that the vessel engaged in bottomfish fishing.

Documentation of participation will be recorded in the Official Charter Halibut Record in Areas 2C and 3A during the qualifying and recent participation years.

Exceptions to Minimum Qualification

Under certain limited situations, an applicant that did not meet the minimum qualification criteria may still be issued a charter halibut permit.

Unavoidable circumstances. NMFS recognizes that certain unavoidable circumstances could have prevented an applicant from participating in either the qualifying period or recent participation period, despite the applicant’s intention. In developing a limited exception to allow for unavoidable circumstances, NMFS was guided in part by the unavoidable circumstance provisions in the License Limitation Program for groundfish and crab fisheries at 50 CFR § 679.4(k). Basically, an applicant must demonstrate that—

- it participated during either the qualifying period or the recent participation period;
- it had a specific intent to participate in the period, either the qualifying period or the recent participation period, that the applicant missed;
- the circumstance that thwarted the intended participation was (a) unavoidable, (b) unique to the applicant, (c) unforeseen and unforeseeable;
- the applicant took all reasonable steps to overcome the problem; and
- the unavoidable circumstance actually occurred.

The unavoidable circumstance exception will be limited to persons that will be excluded from the fishery entirely unless their unavoidable circumstance is recognized. The unavoidable circumstance exceptions are not intended to upgrade the number or type of permits an applicant could receive. For example, NMFS will not accept an unavoidable circumstance claim to upgrade a non-transferable permit to a transferable permit based on an anticipated 15 logbook trips in 2005 that did not occur. The Council recommended, and NMFS intends, to apply a narrow interpretation of the unavoidable circumstance exception so that if an applicant can get any charter halibut permit(s) based on the applicant's actual participation, then the applicant will be limited to that permit(s).

Military Exemption. This program also recognizes a particular type of unavoidable circumstance, military service. An applicant that had a specific intent to operate a charter halibut fishing business during the qualifying period (2004 and 2005) but was ordered to report for active duty military service such as a branch of the U.S. military, National Guard, or military reserve, may qualify for one or more CHPs. **The military exemption is designed to benefit persons that will otherwise be completely excluded from receiving any charter halibut permits** despite their intention to meet the participation requirement during the qualifying period.

If a military exemption applicant can receive any permits based on the applicant's actual participation in the qualifying period, the applicant will be limited to that number and type of permits and cannot use the military exemption. An applicant may not claim a military exemption to excuse lack of participation in the qualifying period and an unavoidable circumstance to excuse a lack of participation in the recent participation period.

The successful military exemption applicant will receive the number of transferable and non-transferable permits that result from the logbook fishing trips that the applicant proves likely would have taken place but for the call to active duty with an angler endorsement of six.

Official Charter Halibut Record

The Official Charter Halibut Record (Official Record) in Areas 2C and 3A will be based on data from ADF&G and will link each logbook fishing trip to an ADF&G Business Owner License and to the person—individual, corporation, partnership or other entity—that obtained the State license. Thus, the Official Record (OR) will include information from ADF&G on the persons

that obtained ADF&G Business Owner Licenses in the qualifying period and the recent participation period; the logbook fishing trips in those years that met the State of Alaska's legal requirements; the Business Owner License that authorized each logbook fishing trip; and the vessel that made each logbook fishing trip. The OR is based on the best available data in State and Federal records, and is presumed to be correct. The burden rests with CHP applicants to overcome this presumption.

Please note that NMFS is unable to release logbook data that it has received from ADF&G due to confidentiality restrictions. **Pursuant to Alaska Statute 16.05.815, individual Charter Logbook records are defined as confidential.** The business owner requesting release of department logbook records from the Alaska Department of Fish and Game (ADF&G) must sign a Logbook Data Release form in the presence of a notary public and submit their request to ADF&G as shown below. Historical logbook data are available ONLY to the licensed owner of the business during the time period for which information is being requested. The Department will provide a summary of Charter Logbook records per individual requests. Allow up to three weeks for processing.

The notarized form may be submitted to any area office of the Alaska Department of Fish and Game, or sent directly to:

Alaska Department of Fish and Game
Division of Sport Fish, RTS (Logbook Program)
333 Raspberry Road
Anchorage, Alaska 99518-1599
Phone (907) 267-2369
Fax: (907) 267-2422

For additional information and a PDF of the form, go to the following ADF&G website:

<http://www.sf.adfg.state.ak.us/Guides/index.cfm/FA/forms.dataRelease>

Application Processing

An application period of 60 days and address information for submittals is specified in a notice in the Federal Register and posted on NMFS' web site at: <http://alaskafisheries.noaa.gov>. The application period for a Charter Halibut Permit is **February 4, 2010 through April 5, 2010**. Applications must be submitted by mail and postmarked, or submitted by hand delivery or facsimile, within the application period. Electronic submission other than by facsimile will be denied. **Late applications will be denied.**

NMFS will compare all timely applications to the OR. If an applicant submits a claim that is not consistent with the OR, NMFS will allow the applicant to submit documentation or further evidence in support of the claim during a formal 30-day evidentiary period. If NMFS accepts the applicant's documentation as sufficient, NMFS will change the OR and issue charter halibut permit(s) accordingly. If NMFS does not agree that the further evidence supports the applicant's claim, NMFS will not change the OR and will issue an initial administrative determination (IAD). The IAD will describe why the NMFS, Alaska Region, Restricted Access Management

(NMFS/RAM) Program is denying some or all of an applicant's claims and will provide instructions on how to appeal the IAD to the Office of Administrative Appeals (OAA).

An applicant may appeal an IAD to the OAA pursuant to 50 CFR § 679.43. NMFS will issue interim permits to applicants that file timely applications and whose appeal is accepted by OAA. NMFS will only issue interim permits for claims on appeal to applicants who applied for charter halibut permits within the application period specified in the Federal Register. This means that an applicant that is denied a permit because its application was late will not receive an interim permit. All permits issued pursuant to an appeal will be interim, non-transferable permits, along with all permits issued that applicant for the same area, even those not contested. Until NMFS makes a final decision on the appeal, the permit holder will not be able to transfer any permits for that area.

NOTE: All applications submitted for consideration under an unavoidable circumstance or military exemption must be made pursuant to the appeals process outlined in regulation. NMFS/RAM will issue an IAD that must be appealed to the OAA in order for the applicant to continue to be considered for a charter halibut permit under these circumstances

For additional information about the CHP Program and how to apply for a CHP please contact NOAA Fisheries, Alaska Region, Restricted Access Management (RAM) Program at:

NMFS Alaska Region
Restricted Access Management (RAM)
P.O. Box 21668
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Phone: 1-800-304-4846 (select option #2) or (907) 586-7202
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