

# IPHC Catch Limit Comment Form

**Comment on Regulatory Area: 2C and 3A**

**Year: 2009**

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## **1. What is your recommended catch limit or proposal?**

The IPHC staff recommendations for Area 2C and Area 3A Catch Limits should be revised to reflect the IPHC's longstanding practice of using best available estimates for all categories of Other Removals. As revised the Catch Limit for Area 2C would be 3.97 million pounds and the Catch Limit for Area 3A would be 22.56 million pounds.

The charter sector is concerned about the staff recommendations for Area 2C and Area 3A because the assumptions with respect to guided angler (charter) harvest for Area 2C and Area 3A are inconsistent with current US law. The staff recommendations arbitrarily assume that the harvest by guided anglers on charter vessels will be 0.93 million pounds in Area 2C and 3.65 million pounds in Area 3A. These assumptions are not valid based on existing US regulations with respect to guided angler harvests. According to the best available estimates from the Alaska Department of Fish and Game (ADF&G), which were provided to the IPHC on November 5, 2008, the existing US regulations resulted in a guided angler harvest for 2008 of 1.91 million pounds in Area 2C and 3.60 million pounds in Area 3A. In applying the Precautionary Approach to fishery management and consistent with the IPHC's treatment of all other halibut removals, the IPHC should use the best available estimates in their calculations, and not assumed numbers based on speculative application of Guideline Harvest Levels (GHLs) that US regulatory authorities have stated do not have a restrictive effect on charter harvests (see 72 Fed Reg 74258 "The GHLs do not limit the charter vessel fisheries.").

The IPHC should be aware that current US regulations allow two halibut per day for all anglers in Area 3A and all unguided anglers in Area 2C. Guided anglers in Area 2C are also allowed two halibut per day, but one of those halibut must be 32 inches or less in length. The amount of halibut harvested by guided anglers in Areas 2C and 3A is purely a function of angler demand, angler success, and average fish weight. The GHLs are a number set in Federal Regulations as a benchmark for comparison, and presently have no other legal force or effect. As last year demonstrated, the intent of the North Pacific

Fishery Management Council and even the publication of proposed regulations do not necessarily change existing law. Unless and until the Secretary of Commerce establishes new regulations, consistent with US law, to change the current regulations, it is error for the IPHC to substitute the GHL or any other number for the best available estimates.

If the staff recommendations were recalculated using the guided angler harvest estimates that reflect existing US regulations (the only ones the IPHC can rely upon being in effect), the staff catch limit recommendation would be reduced from 4.47 million pounds to 3.97 million pounds for Area 2C and increased from 22.53 million pounds to 22.56 million pounds in Area 3A. Even at the lower commercial allocation level of 3.97 million pounds in Area 2C, as the IPHC is well aware, the application of the IPHC's "slow-up, fast down" (SUFDF) policy buffers the impact of a declining stock on the commercial IFQ sector by adding 2.24 million pounds to the Area 2C Fishery CEY to increase the amount available to the Area 2C commercial IFQ holders. However, by using the best available estimates of guided angler removals in Area 2C rather than the staff's preferred assumption of the GHL, the lower commercial catch limit does not permit the Area 2C commercial IFQ sector to harvest an additional 500,000 pounds that the staff recommendation would provide at the expense of the Area 2C halibut stock.

Basically, the staff substitution of the GHL for best estimates has the effect of improperly inflating the Fishery CEY in Area 2C for the benefit of the commercial IFQ sector in Area 2C, and arbitrarily reducing the commercial IFQ allocation in Area 3A. Neither of these actions is consistent with the IPHC's mandate to protect the resource and promote optimum yield. By using the best available estimates for guided angler harvests of 1.91 million pounds in Area 2C and 3.60 million pounds in Area 3A, the improper inflation of the Fishery CEY and consequent over-harvest by commercial IFQ holders in Area 2C, and the arbitrary reduction of the commercial catch limit in Area 3A, can be avoided.

Further, the charter sector once again notes that if the IPHC decides to apply the SUFDF policy to Areas 2C and 3A, as recommended by IPHC staff, then it is necessarily affirming that there are no conservation concerns with respect to the status of the halibut stocks in those two areas. As the IPHC is well aware, the SUFDF policy results in the IPHC affirmatively setting commercial catch limits that are in excess of the Fishery CEY when halibut stocks are declining. The Fishery CEY is the amount of halibut that remain available for commercial harvest once Other Removals are deducted from the Total CEY.

In the case of Area 2C, the application of the SUFDF policy has resulted in commercial IFQ allocations that exceeded the Fishery CEY by 300,000 pounds in 2006; by 900,000 pounds in 2007; and by 3.07 million pounds in 2008 (including the additional 770,000 pounds that was fictitiously added to the Fishery CEY by substituting the expected GHL for the best available estimate of guided angler harvest). For 2009 application of SUFDF will result in the Fishery CEY for Area 2C being exceeded by either 2.74 million pounds (including the additional 990,000 pounds fictitiously added to the Fishery CEY by the staff substitution of the GHL) or 2.24 million pounds, depending on whether or not the IPHC adopts the staff recommendation or the precautionary, and more transparent, approach recommended here.

For Area 3A the IPHC's use of the SUFD policy resulted in the commercial IFQ allocations that exceeded the Fishery CEY by 260,000 pounds in 2006 and by 1.72 million pounds in 2008 (adjusted down from 1.97 million pounds to reflect the arbitrary reduction in Fishery CEY caused by the substitution of the GHL for the best available estimate at the time of 3.40 million pounds). If SUFD is applied again in 2009, the Catch Limit for Area 3A will exceed the Fishery CEY for Area 3A by either 1.69 million pounds or 1.67 million pounds, depending on whether or not the staff recommendation or best available estimates are used in calculating the Fishery CEY.

If the IPHC chooses to apply its SUFD policy again this year, since 2006 the IPHC's use of SUFD will have resulted in commercial IFQ holders harvesting at least 6.51 million pounds more than the Fishery CEY in Area 2C and 3.65 million pounds more than the Fishery CEY in Area 3A. Given those numbers, the IPHC can't legitimately claim to have conservation concerns about far smaller removals by other user groups in those areas. If there are conservation concerns about the status of the halibut stocks in either area, then the first place the IPHC should look for savings is at reduction or elimination of the cleverly misnamed "Fast Down" portion of SUFD.

**2. What is the supporting information for this recommendation (e.g., catch rates, biomass trends, recruitment, etc.)? Please be specific where possible.**

The best available estimates of Other Removals are shown as 3.84 million pounds for Area 2C and 7.12 million pounds for Area 3A in Table 4 on page 19 of *Assessment of the Pacific halibut stock at the end of 2008* by Steven Hare and William Clark.<sup>1</sup> However, the staff recommendation published on November 25, 2008 states that it is "made with the *assumption* that both Canada and the U.S. will manage to their domestic targets for sport fish catch." (emphasis added). That assumption is reflected in the header for Table 4, which states "Sport catch figures for Areas 2C and 3A are actual catches not GHL levels as in Table 5."

Table 5 on page 20 of Hare and Clark's *Assessment* shows a Total CEY for Area 2C of 5.57 million pounds and a Fishery CEY of 2.72 million pounds. This result means Other Removals must be 2.85 million pounds rather than the 3.84 million pounds shown in Table 5 – a difference attributable only to the assumption that guided angler harvest is equal to the current GHL for Area 2C of 0.93 million pounds rather than the best estimate of 1.91 million pounds that was provided by ADF&G. The ADF&G estimate was used to generate the combined sport harvest estimate in Table 4 of 3.08 million pounds (1.91 million pounds guided angler harvest plus 1.17 million pounds unguided angler harvest), and should be what the IPHC uses to calculate Other Removals and the Fishery CEY.

Table 5 also reflects the substitution of a 3.65 million pound GHL (instead of the ADF&G best estimate of 3.60 million pounds) for Area 3A in the calculation of the Fishery CEY for Area 3A. Table 5 shows a Total CEY for Area 3A of 28.01 million

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<sup>1</sup> As published on the IPHC's website at <http://www.iphc.washington.edu/halcom/research/sa/papers/sa08.pdf> (viewed December 30, 2008).

pounds. When you subtract from that Total CEY the 7.12 million pounds of actual Other Removals for Area 3A shown in Table 4, the resulting Fishery CEY for Area 3A should be 20.89 million pounds, not the 20.84 million pounds shown in Table 5.

Hare and Clark refer to the Precautionary Approach on page 8 of their *Assessment* when describing how the IPHC applies its SUFD mechanism. The IPHC clearly is not following the Precautionary Approach if it makes assumptions that it knows to be false when projecting halibut removals. It made such an assumption last year with respect to Area 2C based on proposed regulatory changes that were later enjoined by a court and ultimately withdrawn. As a result, the Area 2C commercial IFQ fishery was allowed to catch 390,000 pounds more halibut than it would have been allocated had the IPHC used the best available estimates of Area 2C guided angler harvest (which at the time were 1.7 million pounds) instead of the GHF of 0.93 million pounds that the IPHC assumed. To repeat such a deliberate over allocation to the commercial IFQ fishery again this year based on assuming once again that proposed regulatory changes will ultimately be adopted would make a mockery of claims to be following a precautionary approach.

If the IPHC uses the best available estimates of Other Removals shown in Table 4 on page 19 of Hare and Clark’s *Assessment* the catch limit calculations for Area 2C and Area 3A would be:

<u>Area 2C</u>	
2009 Exploitable Biomass	27.9 million pounds
Proportion of Total	0.086
Target Harvest Rate	0.20
Total CEY	5.57 million pounds
Other Removals	3.84 million pounds
2009 Fishery CEY	1.73 million pounds
2008 Catch Limit	6.21 million pounds
SUFD Adjustment	2.24 million pounds
2009 Catch Limit	3.97 million pounds

<u>Area 3A</u>	
2009 Exploitable Biomass	140.0 million pounds
Proportion of Total	0.401
Target Harvest Rate	0.20
Total CEY	28.01 million pounds
Other Removals	7.12 million pounds
2009 Fishery CEY	20.89 million pounds
2008 Catch Limit	24.22 million pounds
SUFD Adjustment	1.67 million pounds
2009 Catch Limit	22.56 million pounds

The charter sector urges the IPHC to use the best available estimates of guided angler harvest, as it has consistently done until 2008 and presently continues to do for all other categories included in Other Removals, when calculating Fishery CEY and Catch Limits.