



IPHC Fishery Regulation Proposal:

Recreational (Sport) Fishing for Pacific Halibut—IPHC Regulatory Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, 4E (Sect. 29) - Processing Pacific halibut for eating and/or preservation

SUBMITTED BY: JOHN FIELDS, RECREATIONAL FISHERMAN (20 DECEMBER 2021)

Directed Commercial Recreational Subsistence Non-directed commercial All
All Regulatory Areas All Alaska Regulatory Areas All U.S. Regulatory Areas
2A 2B 2C 3A 3B 4A 4B 4C 4D 4E

PURPOSE

To propose an exception that allows recreational fishermen on pleasure craft in Alaska Regulatory Area to process Pacific halibut for eating and/or preservation, subject to measures to facilitate enforcement of the applicable daily bag limits.

EXPLANATORY MEMORANDUM

This proposal is submitted on behalf of John Fields by his counsel, Matthew Krueger of Foley & Lardner LLP.

1. Background

Mr. Fields is a life-long recreational angler who has been taking several trips per year to Southeast Alaska with his family and friends for the last 30 years. Mr. Fields maintains and keeps his own boat in Sitka, Alaska. During the trips, which typically last about five to six days, Mr. Fields and his guests anchor out on his boat and generally return to port just once, if at all, during the trip to refuel. In all of these trips—well over 50 in total—Mr. Fields and his guests have always complied with the daily bag limits.

On these trips, Mr. Fields and his guests want to catch and eat or freeze meal-sized portions of Pacific halibut that they catch within the daily bag limit. But the International Pacific Halibut Commission’s (“IPHC”) current regulations effectively prohibit recreational anglers who, like Mr. Fields, do not return to port each day from doing so. Specifically, § 29(1)(d) of the 2021 Fishery Regulations promulgated by the IPHC provides:

In Convention waters in and off Alaska ... [n]o person shall possess on board a vessel, including charter vessels and pleasure craft used for fishing, Pacific halibut that have been filleted, mutilated, or otherwise disfigured in any manner, except that each Pacific halibut may be cut into no more than 2 ventral pieces, 2 dorsal pieces, and 2 cheek pieces, with a patch of skin on each piece, naturally attached.

Section 29(1)(d) thus effectively prohibits anglers from cutting up halibut and removing its skin to be consumed while on aboard the vessel. Further, the current IPHC regulations effectively prohibit recreational anglers like Mr. Fields who do not return to port each day from being able to process and

preserve halibut in reasonable, meal-sized portions. The regulations therefore impose an unreasonable hardship on all recreational anglers who, like Mr. Fields, do not return to port each day.

The hardship is not theoretical: Mr. Fields received a Written Warning from a NOAA enforcement officer who boarded his boat on September 1, 2021 and determined that Pacific halibut had been processed in a way that did not comply with 50 C.F.R. § 300.66(m) and § 29(1)(d) of the Fishery Regulations. Mr. Fields and his six guests were each licensed anglers. In total, they had only approximately eight small halibut—an amount that was well within the daily bag limit. Nonetheless, the official issued the Warning on the ground that the halibut were filleted into more than two ventral pieces and two dorsal pieces, with no skin remaining. The enforcement officer issued the Warning even though she had no trouble determining that Mr. Fields and his guests had complied with the applicable daily bag limit.

Nor is the hardship limited to Mr. Fields: The 2018 IPHC Annual Meeting received five proposals to allow recreational anglers who do not return to port each day to catch and consume or process halibut. *See* IPHC-2018-AM094-R. Following are excerpts from the proposals, which underscore the unfair burden imposed by the current regulations:

- The regulations “do not allow for proper processing and preservation of the catch” for recreational anglers who do not “return to day for processing their catch. ... The result ... is that any surplus fish caught and not immediately consumed must be wasted and not kept on board to satisfy the regulations.” A. Cooper Proposal, IPHC-2018-AM094-PropC2.
- “While [the regulations] may make sense for the day fisherman who brings their catch back to port for processing and storage at their home ashore, it is impractical for the long term or full time cruiser. To minimize waste the current regulation below should be revised to permit processing and storage aboard the vessel in usable portion sizes with the skin removed.” W. Cornell Proposal, IPHC-2018-AM094-PropC12.
- “The result of these [regulations] is that any surplus fish caught and not immediately consumed must be wasted and not kept on board” vessels that do not return to port each day “to satisfy the regulations.” M. Cowart Proposal, IPHC-2018-AM094-PropC9.
- “The current IPHC regulation prevents personal use of Halibut on the boat” where the angler does not return to port each day “and prevents the proper preservation of the catch for future use.” D. Robertson Proposal, IPHC-2018-AM094-PropC6.
- “The current halibut regulations do not allow for long term preservation and storage of halibut for personal use aboard pleasure vessels. The inability to package and preserve fish in serving size portions will result in waste and therefore increase the number of halibut required to supplement a family’s diet.” L. Thompson Proposal, IPHC-2018-AM094-PropC7.

The IPHC convened a Working Group to address this issue but took no action, despite the clear and unreasonable burden the regulation places on recreational anglers like Mr. Fields. *See* IPHC-2018-AM094-R.

Mr. Fields has filed an appeal with NOAA, asking that the Written Warning be vacated. In that appeal, Mr. Fields demonstrated that § 29(1)(d) of the Fishery Regulations is arbitrary and capricious, and contrary to law. If the IPHC does not modify the Fishery Regulations for 2022, Mr. Fields may be forced to discontinue taking recreational fishing trips that are so meaningful to his family and beneficial to the Alaska economy.

2. The Current Regulation is Arbitrary and Capricious, and Contrary to Law

Section 29(1)(d) of the 2021 Fishery Regulations promulgated by the IPHC prohibits recreational anglers from cutting up Pacific halibut on board their vessels in portions that can be consumed or frozen in reasonable, meal-sized portions. In so doing, § 29(1)(d) imposes restrictions on processing Pacific

halibut caught in certain areas beyond the restrictions imposed by § 300.66(m) and far beyond the purpose of the underlying Convention and Northern Pacific Halibut Act. The heightened restrictions are arbitrary and capricious, and contrary to law, both on their face and as applied to someone like Mr. Fields. This is so for several reasons.

First, on their face, the heightened restrictions effectively prohibit a whole category of recreational fishing—*i.e.*, recreational fishing by anglers who do not return to port each day—in a manner that is contrary to the express provisions of the governing Convention. The Convention makes clear in Article I, § 5 that its primary purpose is to regulate “commercial halibut fishing,” while allowing “sport fishing for halibut.” To be sure, § 5 provides that “sport fishing for halibut” is subject to IPHC “regulations and permit and licensing requirements, including the payment of fees.” But § 5 then emphasizes that besides those basic requirements, “sport fishing for halibut and other species by nationals and vessels of each Party may be conducted in Convention waters.” Section 5 reiterates: “All provisions of this Convention except this paragraph, refer to commercial halibut fishing.”

Read in context, the Convention’s main purpose is to regulate commercial fishing, not recreational anglers like Mr. Fields. The Convention contemplates that any regulations created for sport fishing would facilitate responsible sport fishing, not prohibit it. Yet, § 29(1)(d) effectively prohibits fishing by a whole category of recreational anglers—those who like Mr. Fields do not return to port each day, or who do not have access to facilities where they can process and store the fish that they catch when they do return to port. Prohibiting halibut fishing by recreational anglers who do not return to port each day is a plain violation of the Convention. Nor does it provide a “fair and equitable distribution of access privileges in the fishery.” *Cf.* 16 U.S.C. § 1853(b)(6) (setting forth the factors to be considered for creating a fishery management plan under U.S. law).

Second, on their face, the heightened restrictions draw an arbitrary distinction between Pacific halibut caught “[i]n Convention waters in and off Alaska,” and Pacific halibut caught in other areas, including California, Oregon, Washington, and British Columbia. Only the former are subject to heightened restrictions on processing. *See* 2021 Fishery Regulations, §§ 27(3) & 28(2). That is, for regulatory areas that include California, Oregon, Washington, and British Columbia, the Fishery Regulations simply provide that “no person shall fillet, mutilate, or otherwise disfigure a Pacific halibut in any manner that prevents the determination of minimum size or the number of fish caught, possessed, or landed.” *See* §§ 27(3) & 28(2). Although Mr. Fields had processed the fish in more than six pieces and removed the skin, the NOAA officer was still able to determine that the size and daily bag limits were not exceeded. Thus, the exact same conduct that led to Mr. Fields receiving the Warning would have been perfectly permissible if Mr. Fields had been fishing in waters off of California, for instance, rather than waters off of Alaska.

Third, the heightened restrictions are also arbitrary and capricious, and contrary to law, as applied to a person in Mr. Fields’ particular circumstances. The restrictions’ obvious purpose is to facilitate enforcement of the daily bag limits for Pacific halibut. But when applied to a recreational angler who has only a small number of Pacific halibut on board his boat at any given time, the restrictions serve no purpose other than effectively to prohibit the recreational angler from either eating or freezing the fish that he has caught without first returning to port. The result is that recreational fishermen who take multi-day trips without returning to port, or who do not have access to facilities for processing and storing fish other than on their vessels, face an unfair choice: They must either forgo fishing for Pacific halibut altogether or know that any halibut that they catch will necessarily go to waste. *See* 2018 Regulatory Proposals cited above.

By adopting the accompanying proposal, IPHC can remove the heightened restrictions that apply only to recreational fishermen in Convention waters in and off Alaska, and give these recreational anglers who do not return to port each day the same ability that anglers who do return to port have to process and

keep halibut they catch. To the extent that enforcement officials require additional means of enforcing daily bag limits, this proposal also suggests alternative, less restrictive measures than the complete prohibition effected by the current rules.

3. Proposal and Improvements It Offers

We offer here a proposal to amend § 29(1)(d) in ways that would satisfy IPHC’s need to allow officials to verify the size and daily bag limits while removing the unlawful prohibition on the ability of recreational anglers who do not return to port each day to consume and preserve halibut. The proposal has two features: (A) making the restrictions on processing fish in Alaska consistent with the processing restrictions in other IPHC regulatory areas, and (B) providing a new exception for recreational fishers to further process fish if they comply with logging requirements.

A. Harmonize Alaska’s Restrictions with Other Regions’ Restrictions

The first feature would eliminate the heightened restrictions that apply only to recreational anglers in Convention waters in and off Alaska by amending § 29(1)(d) so it is consistent with the restrictions that apply to recreational anglers in regulatory areas 2A (California, Oregon, and Washington) and 2B (British Columbia). As noted, the provisions that govern regulatory areas 2A and 2B neither specifically limit the number of pieces into which a Pacific halibut may be cut nor require that a patch of skin remains naturally attached to each piece. Instead, the restrictions governing regulatory areas 2A and 2B simply provide that “no person shall fillet, mutilate, or otherwise disfigure a Pacific halibut in any manner that prevents the determination of minimum size or the number of fish caught, possessed, or landed.” 2021 Fishery Regulations, §§ 27(3) & 28(2). The proposal would make the same restrictions that apply in areas 2A and 2B also apply in Alaska.

This feature brings appropriate consistency to the IPHC regulations and removes an unreasonable distinction between the enforcement regime in Alaska versus other regions. This feature would also give recreational anglers in Alaska some additional flexibility in how they process Pacific halibut for eating or preserving on board their vessels. At the same time, the proposal would maintain the same safeguards that the IPHC has deemed sufficient to allow effective enforcement of bag and possession limits in other regulatory areas.

Standing alone, however, the proposed restriction still could be read to prohibit recreational anglers like Mr. Fields from cutting halibut into small pieces for eating and meal-sized processing, to the extent doing so prevents authorized officers from determining the number and size of fish caught. Further, standing alone, the proposed restriction does not give clear instructions to recreational anglers like Mr. Fields regarding exactly how much they can process Pacific halibut. We therefore also propose adding the second feature, a limited exception for recreational anglers.

B. Add a New Exception for Recreational Fishers Who Log Catches

The second feature would add an exception for recreational fishers who are on board a pleasure craft used for fishing that would permit them to cut Pacific halibut into smaller pieces and remove the skin for consumption or preservation, provided they comply with specific procedures. Those procedures would require the angler to take a photograph of the halibut alongside a measuring device so the authorized officer could determine the size of the halibut. The angler would also be required to label any packages with the halibut according to the date, the sequence of the fish caught (*e.g.*, 1 of 2 of the daily bag limit), and with a sequence letter to reflect the portion of the fish in the package (*e.g.*, A, B, C, D, etc.). For example, if an angler processed the first halibut he caught that day into 9 pieces, each package would be labeled with the date, the number “1,” and a letter going from A to I. Finally, the angler would be required to keep a log that recorded that same information.

This proposal would allow an authorized officer easily to compare the required photograph showing the size of the fish to the log and to each portion of packaged fish on board the vessel, quickly determining if the packages correspond to what the log and photograph represent. If the vessel had more fish than what was represented, the authorized officer could determine that the size or daily limits were violated. Critically, this proposal still leaves in place a prohibition on processing fish in ways that prevent the determination of the minimum size or number of fish caught so that if an angler did not comply with each requirement of the exception, the angler could still be held accountable for violating daily bag and size limits. This proposal is also limited in scope, applying only to pleasure craft and not applying to charter vessels.

We considered including with this proposal a reporting requirement for an angler who intends to use the exception. Specifically, the angler could be required to notify an authorized officer before embarking on a trip of the angler's intended length of trip, areas of travel, and names of licensed anglers. Upon finishing the trip, the angler could be required to submit a copy of the photographs and log to the authorized officer. This reporting requirement would allow the IPHC to track how many recreational anglers are making use of the new exception so that the IPHC could evaluate its impact and make modifications in future years. In addition, the requirement could enhance awareness and increase compliance among anglers who would otherwise face enforcement if they did not report their activities.

We opted not to include the above-described reporting requirement, however, for two reasons. First, we are mindful that implementing such a requirement would impose additional record-keeping burdens on authorized officers. Second, we believe that a reporting requirement is likely unnecessary, given the lack of evidence that recreational anglers who do not return to port each day are responsible for any significant number of violations. Nonetheless, we stand ready to amend our proposal to include a reporting requirement if doing so would give the IPHC additional comfort in adopting a new exception.

By adopting this proposal, the IPHC would be removing an unreasonable hardship that has led to recurring complaints by recreational anglers like Mr. Fields—a hardship that the IPHC recognized in 2018 by forming a working group. The proposal would give recreational anglers in Alaska who do not return to port each day the ability to enjoy the halibut they catch for consumption and for processing in meal-sized portions. The proposal offered here would also remedy the unlawfully arbitrary and capricious nature of the current regulations.

4. Potential Negative Impacts.

The proposal would not create any negative impacts. In explaining its unwillingness to recommend changes, the 2018 IPHC Working Group stated that § 29(1)(d) is “necessary for the enforcement of the bag and possession limits among sport fishermen,” and that it had not received “a consistent, easily verifiable option that would ... still allow effective enforcement of the bag and possession limits.” IPHC-2018-IM094-INFO2, Appendix I, at p. 3.

This proposal would offer a consistent, easily verifiable method for authorized officers to enforce the size and daily bag limits for recreational anglers who do not return to port each day. Moreover, we are not aware of, and the 2018 IPHC Working Group did not cite, any data indicating that fishing by recreational anglers who do not return to port each day contributed to a significant amount of halibut catches or violations of the size or daily bag limits. Indeed, that is highly unlikely to be the case because there are relatively few recreational anglers who do not return to port each day. The current regulations—and the 2018 IPHC Working Committee's position—apply a blunt, broad tool to what is, at most, a miniscule issue. We offer here a scalpel to address the issue properly, without harming all of the recreational anglers who do not return to port each day and fish responsibly.

RECOMMENDATIONS

That the Commission:

- 1) **NOTE** fishery regulation proposal IPHC-2022-AM098-PropC, which adds an exception that allows recreational fishermen on pleasure craft in Alaska Regulatory Area to process Pacific halibut for eating and/or preservation, subject to measures to facilitate enforcement of the applicable daily bag limits, submitted for consideration at AM098.

APPENDICES

[Appendix A](#): Suggested Regulatory Language.

APPENDIX A

SUGGESTED REGULATORY LANGUAGE

Proposal: Amend § 29(1) (governing IPHC Regulatory Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, 4E) to be consistent with § 27(3) (governing IPHC Regulatory Area 2A) and § 28(2) (governing IPHC Regulatory Area 2B), and add an exception that allows recreational fishermen on pleasure craft to process Pacific halibut for eating and/or preservation, subject to measures to facilitate enforcement of the applicable daily bag limits, as follows:

29. Recreational (Sport) Fishing for Pacific Halibut—IPHC Regulatory Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, 4E

- (1) In Convention waters in and off Alaska:

...

- (d) No person shall possess on board a vessel, including charter vessels and pleasure craft used for fishing, Pacific halibut that have been filleted, mutilated, or otherwise disfigured in any manner, ~~except that each Pacific halibut may be cut into no more than 2 ventral pieces, 2 dorsal pieces, and 2 cheek pieces, with a patch of skin on each piece, naturally attached.~~ **that prevents the determination of minimum size or the number of fish caught, possessed, or landed; except that any person who, while on board a pleasure craft used for fishing, may further fillet or otherwise process Pacific halibut for immediate consumption or preservation for later consumption if the person does all of the following:**
 - (a) Maintain on board the pleasure craft and available for inspection by an authorized officer a photograph of each Pacific halibut caught. The Pacific halibut must be photographed alongside a measuring device that allows an authorized officer who inspects the photograph to determine the length of the Pacific halibut. Each photograph must be accompanied with information indicating the date and approximate time at which the Pacific halibut in the photograph was caught.
 - (b) For each Pacific halibut processed for later consumption, store the Pacific halibut in a package or packages labeled with (A) the date and approximate time at which the Pacific halibut was caught, (B) the length of the Pacific halibut, (C) a sequence number corresponding to the daily bag limit (i.e. 1 of 2), and (D) a sequence letter corresponding to a portion of the Pacific halibut in the package (i.e., A, B, C, etc.).
 - (c) Maintain on board the pleasure craft and available for inspection by an authorized officer a log of each Pacific halibut caught. The log must specify (A) the date and approximate time at which each Pacific halibut was caught, (B) the length of each Pacific halibut, (C) the sequence number corresponding to the daily bag limit (i.e., 1 of 2), and (D) an indication of the portions of the Pacific halibut packaged for later consumption (i.e., A, B, C, etc.).