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January 21, 2009

Ms. Sue Salveson
Assistant Regional Administrator
NMFS Alaska Region
PO Box 21668
Juneau, AK 99802-1668

Subject: RIN-0648-AX17

Dear Ms. Salveson,

On behalf of the Halibut Coalitions 13 member groups and over 400 members I am writing to **support limiting charter clients in International Pacific Halibut Commission (IPHC) Area 2C to one halibut per day, and to urge the Secretary to place a size restriction on the retainable halibut.** These measures are necessary to fulfill the obligations of the National Marine Fisheries Service (NMFS) to control charter harvest to the 2C Guideline Harvest Level recommended by the North Pacific Fishery Management Council (Council) and adopted by the Secretary. Failure to implement effective harvest control measures will allow the 2C charter industry to exceed its allocation by more than 100% and to overfish the resource for the sixth consecutive year. Southeast fishing communities depend on the halibut resource for subsistence, sport and commercial harvest and have safeguarded the health of the resource 80 years. Chronic overfishing by the charter industry is contributing to the decline of the 2C halibut resource and may prevent rebuilding, compromising the socioeconomic health of fishery dependent communities.

The Halibut Coalition is composed of commercial hook and line (setline) fishermen, fish processors, and sport and subsistence fishermen committed to sustainable management and harvest of the halibut resource. The setline fishermen members own, operate and/or deckhand on halibut boats, often working together with their family to support a way of life that has been handed down for generations. The majority of the 2C setline fleet works on boats less than 60 feet in length and delivers to coastal fish processors that provide the economic mainstay of remote fishing communities. Formed in 1998, the Halibut Coalition has consistently advocated in both Council and IPHC management forums for conservative management of the halibut resource.

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

Authority

The proposed rule relies on the authority of the National Marine Fisheries Service (NMFS), under the Halibut Act, to: “adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act.” (73 Fed. Reg. at 78276).¹ The proposed one halibut daily limit on 2C charter clients addresses **conservation of the resource**, which is the responsibility of NMFS as the managing agency. The proposed rule also clarifies NMFS’ authority to implement management measures applicable to the current fishing season that PREVENT catch limit exceedances, rather than react to such overages after they occur, repudiating the claims of the plaintiffs from *Van Valin v. Gutierrez, et.al.* (June, 2008). Finally, the proposed rule clarifies that resource conservation requires that charter halibut harvest be limited to the sector’s annual allocation or Guideline Harvest Level (GHL), as has been repeatedly stated by both the Council and the IPHC.

That said, the proposed rule does not contain effective measures to constrain charter harvest to the 2009 2C GHL of .788 million pounds, and must be amended to achieve this objective. The proposed rule does not fully explain the 2C halibut conservation issues and the critical conservation mandate to restrict charter harvest to the GHL given the status of the 2C halibut resource. Nor does the proposed rule fully explain the effect of past and potential future charter GHL exceedances on setline fishermen and processors, sport and subsistence fishermen, and coastal fishing communities. The Halibut Coalition believes the proposed rule should be strengthened prior to publication of the Final Rule so as to explain each of these issues in greater detail. Likewise, the proposed rule contains erroneous language at 50 CFR 300.65(c)(3) by referring to the GHL as a “benchmark.” This language directly contradicts clear Council intent and NMFS’ own statements contained in the 2003 Final Rule that established the GHL. The proposed rule must be corrected. To assist NMFS with these corrections, we provide the following comments and documentation.

Conservation basis for the Rule

Biomass declines

According to the 2008 IPHC Annual Report, North Pacific halibut stocks have declined fishery wide by 10% from 2007 levels. The 2C halibut exploitable biomass has declined by an estimated 58% over the past three years and is near historic low levels. Halibut catch rates, or the amount of fish caught per hook set or hours fished, have declined in all 2C sectors. This includes the catch rates of charter halibut clients (see attached Appendix 1). The drop in catch rates is evidence that all fishermen are working harder to catch halibut because there are simply less halibut to catch. The IPHC now understands that assessment models used prior to 2008 overestimated abundance in IPHC Area 2, which includes the Pacific Northwest, British Columbia and 2C, and that a “disproportionate share of the catches have been taken from

¹ “Convention” refers to the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea. “Halibut Act” refers to the North Pacific Halibut Act of 1982.

there.”² Other resource considerations, including slowed growth rates and poor stock structure (the overharvest of older, more fecund fish from the population) also indicate the need for caution and reduced harvest. To accomplish the necessary reduction in harvest, Southeast setline catch limits have been reduced by an unprecedented amount, totaling 53% over the past three years. The catch limit reductions threaten a socioeconomic disaster, as will be more fully described later in these comments.

Although the 2C setline catch limit has been reduced each year for the past three years, the charter GHL was not reduced until 2008. This delay was a result of the stair step formula that was designed by the Council **at the request of the charter industry** and published as part of the 2003 GHL final rule. Under this policy, the abundance of halibut in area 2C can, and did, drop by 15% from the index year before triggering a reduction in the GHL. Under the policy, the GHL then remains constant unless abundance again drops by 15%. Again, this stair step policy was part of the original GHL and was designed by the Council at the request of the charter industry. From the Council minutes:

Dave Benton moved the following amendment for Issue 1–Basis for the GHL: To establish a proportional GHL consisting of a set of stair step guideline harvest levels based on pounds. The GHL would be reduced proportional to the reduction in abundance for halibut. (Council minutes, February 2000)

Between 2004 and 2007 the GHL formula resulted in a 1.4 million pound limit, despite a decline in 2C halibut abundance that triggered a 20% reduction in the setline catch limit. In 2008, the decline in abundance was sufficient to drop the GHL to .931 million pounds; in 2009 continued declines in halibut abundance dictate a .788 million pound limit—all stair steps and limits that were published in the Federal Register on August 8, 2003 page 47264 to define the GHL. The charter industry requested the stair step policy, claiming annual GHL fluctuations would be difficult for their businesses and that the stair steps were necessary to provide a measure of stability and economic buffering. The stair steps are comparable to the Slow Up Fast Down (SUF) policy employed in the setline fishery, which allows setline catch limits to decrease quickly but increase more slowly, as is explained later in these comments, except that the stair steps are **less conservative** since they allow the charter GHL to increase at the same rate as it decreases. What is essential is that the charter fleet did not challenge the GHL or the stair step formula when it was established in 2003, and that the harvest by both commercial sectors—charter and setline—is tied by comparably polices to abundance, ensuring that both sectors share in the burden of conservation by reducing harvest during times of low abundance. **Without question any other approach would be unfair and inequitable.**

² Clark, W.G. and Hare, S.R. . Summary of the 2007 Pacific halibut stock assessment. Excerpted from International Pacific Halibut Commission Eighty-fourth Annual Meeting, Portland, OR, January 2008. p 65

Notwithstanding the widely recognized need to share the burden of conservation, the 2C charter sector has exceeded its GHL every year starting in 2004, and exceeded the 2008 GHL by 105% or 1 million pounds. In the past, charter operators have alleged that limits on halibut charter harvest were purely allocative, asserting that: “the IPHC sets limits on halibut removals” and therefore the resource is protected. This assumption ignores the obvious fact that the resource is only protected if the catch limits are adhered to.³ In the absence of a one halibut daily limit, the 2C charter industry can be reasonably expected to once again double its GHL, since status quo management (two halibut limit with one fish required to be less than 32 inches) resulted in a 2008 harvest of 1.9 million pounds in 2C. 2008 marked the fifth consecutive year in which Southeast halibut charter harvest exceeded the conservation target established for the sector by the IPHC. The charter industry has exhibited a disturbing disregard for the resource, choosing to ignore the efforts by resource managers to promote conservations. To quote from the *Amicus Curiae* brief filed by the IPHC in May, 2008:

”Exceeding the GHL specified for 2008 in Area 2C will mean that the combined removals by all sectors in 2008 will exceed the Commission’s conservation targets, which have been accepted by the U.S. government, to the detriment of the halibut stock in this area.”⁴

Despite such clear directives to equitably share in conserving the resource, the charter sector sought and secured injunctive relief, ensuring the charter overfishing would continue. The GHL overharvest contributed to further decline in 2C halibut stocks, which in turn has resulted in a lower 2009 setline catch limit and reduced halibut availability for sport and subsistence fishermen. Failure to implement the one halibut daily limit in 2009 could drive the 2C stock decline to unprecedented levels, at the expense of the resource and at the expense of all who depend on the long-term health and abundance of halibut stocks.

Through the Halibut Convention, the IPHC has an international responsibility to maintain the health and abundance of North Pacific halibut stocks to ensure optimal yield. The IPHC depends on the United States and Canada to restrict catch to conservation targets established by the Commission, including any more restrictive measures adopted by either country. There are conservation concerns, as well as both domestic and international implications, associated with the long-standing failure of the United States government to control charter harvest. As in 2008, the IPHC has recommended 2009 catch limits based on the assumption that charter halibut harvests will be held to the GHL. Thus, failure to implement the one halibut daily limit will again compromise conservation and management objectives and will result in a significant overage of the 2C Constant Exploitation Yield (CEY), defined by the IPHC as the biological target level for total removals from each regulatory area.

³ North Pacific Fishery Management Council 2008. Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis. April 20, 2008. p. xi

⁴ Declaration of Bruce M. Leaman, Ph.D. as *Amicus Curiae* on behalf of defendants. Van Valin, et al., vs Gutierrez et.al. June 17, 2008

Slow up/Fast down Policy

Halibut management by the IPHC is one of few national or international success stories in fisheries management. The halibut fishery has been prosecuted by setline fishermen off Alaska's coast for close to a century. Setline fishermen and processors play an active role in the halibut management process, participating in joint research projects and in the stock assessment process. When indicated by halibut stock conditions, setline halibut fishermen have supported shortened seasons, reduced quotas, and other conservative management actions since 1914 despite often painful economic consequences.

Setline fishermen have not only accepted but have also supported the IPHC's conservative Slow Up Fast Down policy, that leaves more halibut in the water over time.

This conservative policy ensures that upward setline catch limit adjustments occur more slowly than downward adjustments, leaving more halibut in the water over the long-term.

The SUFD policy also allows the IPHC to act more quickly and more responsively in applying new understandings of stock dynamics that indicate downward adjustments, while acting more cautiously when increased biomass is indicated by the stock assessment. Such increases are often triggered by the level of incoming recruitment to the stock (young fish that will sustain the stock in the future), but the strength of this recruitment must be verified over several years. The SUFD policy also provides a measure of stability to the setline fishery that is comparable to the stabilizing effect provided to the charter sector by the GHM stair step formula described above. Compensation for the CEY overages or underages that occur as a result of the SUFD policy has been thoroughly evaluated in the IPHC stock assessment. These scientific evaluations have confirmed that the SUFD policy contributes to precautionary stock management.⁵

“The SUFD approach is somewhat different from other agencies in that it is asymmetric around the a target value, i.e., the catch limit responds more strongly to estimated decreases in biomass than to estimated increases. This occurs for two reasons: first, the assessment generally has better information base for estimating decreasing biomass compared with increasing biomass; and second, such an asymmetric policy follows the Precautionary Approach.”⁶

However, the chronic overages accruing from a half-decade of charter over harvest are not accounted for in the IPHC harvest policy. These overages pose a management and conservation concern because they compromise the effectiveness of the harvest policy. To quote the IPHC: “The achievement of the Commission's conservation mandate is dependent on adherence to catch limits and total yield.”⁷

⁵ <http://www.iphc.washington.edu/halcom/pubs/annmeet/2008/bluebook/bluebook08.pdf>. p.62; pp.81-83

⁶ <http://www.iphc.washington.edu/halcom/research/sa/papers/sa08.pdf>. Page 8 (RARA 2008)

⁷ IPHC letter to Council Chair Madsen, Dec.1, 2006 (attached in Appendix 2)

GHL Overages

The chronic charter GHL overages are having significant effects on the resource and disastrous consequences for the fishing families of Southeast Alaska. Given the unanticipated steep decline in the 2C halibut resource, continued overages will be devastating. As described above, the resource is close to historic low levels, questions regarding declining growth rates remain unanswered, and the paucity of mature females suggests overfishing is jeopardizing the stock's future. The recovery of Southeast halibut stocks depends on reducing harvest and remaining within conservation limits. Setline fishermen have embraced these conservation mandates for close to a century and have not exceeded established catch limits for over a decade. Resource conservation demands that all sectors respect limits. The charter sector must be held accountable.

There is a misperception regarding the scale and impact of guided recreational fisheries that has allowed this chronic overharvest to occur Nation-wide and in Alaska. Many individual guided anglers do not comprehend the cumulative impact of their sector. To quote statements describing the results of a National Research Council study on the impact of recreational fishing:

*“In some ways, recreational fishing is where commercial fishing was 20 years ago with very weak controls and rapidly increasing numbers of fishermen,” says Federal Ocean Commissioner Andrew Rosenberg, of the University of New Hampshire and former Deputy Director of NMFS.*⁸

In Southeast Alaska, the “very weak controls” have allowed a 70% increase in Southeast halibut charter harvest between 2002 and 2006.⁹ This growth occurred at the expense of both the resource and historic fisheries (subsistence, sport and setline) since scientifically defined harvest limits have been fully harvested since the early 1900s. Southeast charter fishing lodges operate fleets of high powered, highly efficient yachts serving non-resident anglers. These yachts exceed the average setline halibut boats in size, and eclipse them in terms of horsepower. Because the fleet's catching capacity long ago outgrew existing monitoring and accounting systems, resource impacts are likely dramatically underestimated. To illustrate: a 2008 report prepared by the Alaska Department of Fish and Game states that existing catch accounting systems for halibut charter harvest in Southeast may **under-estimate** that harvest by 20%.¹⁰ Actual GHL overages—and the resultant resource overharvest—may be far greater and a significant causal in the rapid decline of the 2C halibut stocks.

⁸ Study in Science Reveals Recreational Fishing Takes Big Bite of Ocean Catch. ScienceDaily. August 2004.

⁹ Pacific Fishery Management Council 2007. Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis for a Regulatory Amendment to Implement Guideline Harvest Level Measures in the Halibut Charter Fisheries.

¹⁰ Meyers et al.. March 24, 2008. Evaluation of the 2006 ADF&G Charter Logbook Scott Meyer, Alaska Department of Fish and Game, Division of Sport Fish, Anchorage, AK.

Local Depletion and Impacts of Overages on subsistence

Local depletion of fish stocks occurs when harvest in an area exceeds replenishment. With fish stocks that have high site fidelity and are long-lived, such as the rockfish taken as bycatch in the halibut charter fishery, local depletion can reduce genetic diversity and persist for decades.¹¹ Halibut stocks can repopulate an area more quickly due to their migratory nature, but only if fishing pressure is relieved. Since 1993, the Council has received testimony from Southeast sport and subsistence fishermen documenting local depletion associated with charter overfishing. To quote the Council's EA/RIR of April, 2008:

Since 1993, the Council has discussed the expansion of the charter halibut sector. The issue gained prominence in 1993 when some small Alaskan communities, such as Sitka, expressed concerns about local depletion of the halibut resource”¹²

Local depletion and its effects on the resource and sport and subsistence fishermen has been part of the problem statement guiding action on the halibut charter management plan ever since, and played an important role in the Council's GHM decision. As recently as October 2008 the Council received and cited on the record substantial testimony from both Native and non-Native subsistence harvesters highlighting the impacts of charter overharvest on their access to the halibut resource and calling for effective reductions in that harvest. To cite from one testimony:

My name is Frank Wright, Jr., president of Hoonah Indian Association, a federally recognized Tribe. I am from the Tlinget village of Hoonah, Alaska in Port Fredrick. I am here to represent our people. I am from a culture that believes in taking only what is needed. 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 lack of fish. Hoonah people are traditionally a fishing people and we pretty much depend on the waters for our cultural existence. Whenever any component of our identity is taken away, like a loss of fishing opportunity would be, it diminishes our existence as a Tribe. And we are concerned about the halibut, which are a big part of my people. It is getting hard to catch a halibut. My people are a subsistence gathering people. (from oral testimony of Frank Wright to NPFMC, Oct. 08)

This testimony is part of the public record and the impacts should have been discussed in this proposed rule. Again, because the proposed rule did not include any mention of subsistence impacts, the paragraphs below are provided to address this vital issue.

¹¹ Parker, S.J., et al. March 2000. Management of Pacific Rockfish: AFS Policy Statement. p.2

¹² North Pacific Fishery Management Council. April 20, 2008. EA/RIR/FRFA for a regulatory amendment to implement GHM measures in the halibut charter fisheries in IPHC regulatory Area 2C. p. 2.

The 1993 problem statement developed by the Council to guide development of a halibut charter management plan captured concerns raised in public testimony that documented local depletion and the impact of concentrated charter harvest near towns on subsistence fishermen, as well as impacts to setline fishermen. This problem statement has guided Council action on halibut charter issues through 2008, and specifically highlights preemptions of sport subsistence fishermen:

”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”¹³

Local depletion was also the theme of charter operators testifying before the Council in March 2007 on the halibut charter moratorium with operators describing the ever increasing distances they were forced to travel in order to access productive halibut fishing grounds.

I will note here, that halibut fishing close to port in Juneau is not anywhere near what it once was. At one time, you could go to locations within 1 hour of the dock and find halibut. This is no longer the rule, it is the exception. (from: Ole and Sandy Bartness/Islander Charters. Testimony to NPFMC February, 2007)

Impacts to subsistence harvesters was again emphasized in testimony to the Council in October, 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 charter fleet in Southeast Alaska and the decline in halibut abundance in the Southeast Alaska area. Many subsistence users have reported that it is becoming much more difficult to catch halibut near communities where they had traditionally harvested in the past. We encourage the North Pacific Fisheries Management Council to develop a management strategy that will allow the continuation of subsistence uses in areas adjacent to rural communities.”¹⁴

Confirming this public testimony, effort data from the Alaska Department and Game indicates that charter halibut catch per rod hour has declined near two Southeast communities, Sitka by approximately 50%, and Craig by 58%.¹⁵ This is a clear indication of localized depletion. Local sport fishermen have seen increasing fishing grounds preemption from charter vessels and have suffered declining catch as well. Many coastal Southeast residents depend on sport and

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¹⁴ Bertrand Adams, Sr. Chair, Southeast Alaska Subsistence Regional Advisory Council. Letter to Eric Olson, Chair, North Pacific Fishery Management Council. September, 24, 2008.

¹⁵ See Tersteeg, Diane L. and Jaenicke, Michael J. Alaska Department of Fish and Game Summary Data from the Sport Fishery for Pacific Halibut in the IPHC Area 2C portion of Southeast Alaska, 2007

subsistence fishing to meet cultural and nutritional needs. In the Southeast coastal community of Port Alexander, for example, 23% of residents live below the poverty level.¹⁶ Subsistence harvest ensures that there will be enough food for the long Alaska winter.

The critical importance of locally abundant and accessible subsistence foods is currently heightened by increased fuel costs, which have hit isolated communities with high transportation costs particularly hard. Subsistence is not only culturally important in Alaska; it is an economic imperative for many residents, particularly native residents who have an extensive history of depending on cultural and traditional foods. Because charter harvest is concentrated near towns to accommodate day clients, allowing charter harvest that is disproportionate to halibut abundance is directly and immediately causing irreparable harm to subsistence residents of rural communities throughout Southeast.

Charter operators have contested their responsibility for local depletion. A review of data from the Sitka area, where approximately 40% of the 2C halibut charter harvest is taken, provides insight to this issue. Although sport and commercial management and reporting areas do not match exactly, the closest comparison of catch rates in the Sitka Management Area indicates that between 1995 (the year the halibut quota share program was implemented) and 2006 the setline halibut harvest **decreased** by 42% and charter halibut harvest **increased** by 55%.¹⁷ As is the case many Southeast towns, local depletion has been driven by charter harvest and is extending from towns in an ever increasing radius as charter businesses upgrade to larger and faster boats, increasing horsepower and electronic “fish finding” capability (i.e., Global Positioning Systems and enhanced fish finders), to access more remote and still productive fishing areas. Notably, these “new” productive areas have been fished by setline families for generations, yet remain productive—until the charter fleet arrives. Now setline fishermen are forced to run further, increasing overhead costs, to find healthy concentrations of halibut while subsistence fishermen go home with empty hooks. Subsistence and personal use fishermen have joined the Halibut Coalition to support efforts to limit halibut charter harvest to the GHL both to protect the resource and their own access to the resource. In Alaska, subsistence harvest has priority over all other uses. The lack of charter regulation has violated that priority, imposing impacts that are unfair, inequitable and legally suspect. Non-resident visitors, enjoying an expensive vacation in Alaska with their discretionary surplus funds, **should not** be allowed to displace resident subsistence, sport and setline families who depend on the resource for sustenance and livelihood. The record for the Final Rule must be supplemented to capture these substantial and long standing impacts.

Economic Impacts

¹⁶ Effort data from the Alaska Department and Game indicates that charter halibut catch per rod hour has declined near two Southeast communities, Sitka by approximately 50%, and Craig by 58%.

¹⁷ <http://www.iphc.washington.edu/HALCOM/commerc/tables/1998nation&stat.html>

The proposed rule does not reference the social and economic impact of charter overages on the setline sector, again failing to provide the complete rationale for limiting charter harvest to the current GHL. Additional documentation is provided below.

Effect of overages on setline sector

Until 2007, increased charter harvest resulted in a direct reallocation of halibut from the setline to the charter sector. This occurred as a result of the IPHC quota setting process, which subtracts from the total area CEY the estimated sport, subsistence, charter, bycatch and wastage removals of halibut, then establishes the remainder as the fishery CEY, or setline catch limit. Setline fishermen expected the reallocation to end when the GHL was established. However, because charter harvest control measures were not in place in 2005 and 2006 the IPHC used projected catch, instead of the GHL, to estimate charter harvest, and charter GHL overages were deducted from the setline quota in an effort to constrain total harvest to the area CEY. In other words, the charter sector's overages, totaling over a million pounds, continued to be deducted from the IFQs of setline fishermen even after the GHL was implemented, despite the substantial investments setline fishermen have made in those quota share (see below for greater detail), and the adherence of setline fishermen to IPHC catch limits. Without question it is **unfair and inequitable** to punish fishermen who are carefully living within restrictive catch limits for the harvest excesses of a sector that ignores resource constraints and consistently over fishes.

When the Southeast charter harvest exceeded even the IPHC's harvest projections in 2006 and caused the area CEY to be exceeded, the IPHC recommended "conservation actions to restrain the total removals within this Total CEY."¹⁸ The IPHC recommended a halibut daily limit for charter clients in 2C and, assuming the management measure would be implemented, did not subtract charter halibut overages from the setline catch limit for 2007. In 2008, the IPHC again assumed the one halibut daily bag limit would be in place to prevent GHL overages, and established the setline catch limit accordingly. For this reason, the lawsuit filed by Southeast charter operators that stayed implementation of the one halibut daily limit (pending a hearing on the merits of the case) resulted in an unaccounted for Southeast CEY overage in 2008. Because NMFS published the one halibut daily limit proposed rule on December 22, 2008, the IPHC assumed 2009 charter harvest would be restricted to the 2C GHL and recommended setline catch limits accordingly. Failure to implement the rule will, in the short-term, result in overharvest of the 2C resource. In the long-term, the IPHC has indicated that the absence of effective measures to control charter harvest to the GHL would force them to either deduct charter GHL overages from the setline quota, which has remained below catch limits for over a decade, or recommend charter harvest control measures as it did in 2007. (see attached IPHC letters; Appendix 3). Again, it would be grossly unfair for the setline fishermen, who have worked hard to conserve the resource and to abide by conservation limits, to pay for charter over harvest.

To understand the impact of the reallocation, the Secretary must understand halibut quota share (QS) ownership in IPHC Area 2C, the cost of entry, and the composition of the 2C halibut fleet.

¹⁸ IPHC letter to Council Chair Madsen, Dec.1, 2006 (Appendix 2)

First, QS was initially issued in 1995 based on historic participation in the halibut fishery during a specified base period. Fishermen who did not receive QS or received an amount insufficient to support their families and fishing operations have purchased shares from the initial recipients. On an annual basis, that QS is translated to Individual Fishing Quotas (IFQ), which is the pounds of halibut a QS holder may harvest in that particular year. As of 2006, thirty three percent of the halibut QS holders in 2C were new entrants, having purchased all the QS they currently fish.¹⁹ Sixty-seven percent of the 2C QS (which includes the 33% referenced above) was held by persons who purchased some or all of their QS. In 2008, the average 2C quota share holder owned approximately 5,000 pounds of Southeast halibut IFQ, where 79% of the 1,339 QS holders own 10,000 pounds or less of Southeast halibut IFQ and 57% hold less than 3,000 pounds of 2C halibut IFQ.²⁰ Ninety per cent of the entire Southeast halibut harvest is delivered to southeast coastal communities, providing essential employment and revenue to remote communities with few alternatives. Ninety-three percent of the Southeast halibut QS holders have QS designated for vessels less than 60 feet, which characterize the Southeast fleet.²¹ Seventy-four percent of the Southeast QS is held by residents of Alaska's coastal communities and 83% is held by Alaskans, many of whom fish with their families. Halibut quota share in 2C costs approximately \$18 per pound, and the ex-vessel price of halibut has varied in recent years between \$4 and \$5 per pound.

Many 2C quota holders who have purchased shares are still making substantial loan payments and have their homes or vessels at risk as collateral. The 53% reduction in the 2C quota combined with the 20% deduction that could be forced by charter overages will cause some fishermen, those who can no longer generate enough income to make payments, to lose their QS. For families who depend on halibut fishing, losing QS is an economic disaster; for families that pledged their vessels or homes as collateral the losses will be devastating.

Commercial fishing is one of few sources of employment in rural Alaska communities, supporting a uniquely independent way of life. The economic insecurity inflicted by the combination of reduced quotas, reduced access to subsistence resources due to charter driven local depletion, and the federal government's stalled effort to restrict charter harvest to established catch limits, after 15 years of policy reversals and ineffective actions, has intensified conflicts in small coastal communities. These tensions are manifested as stress, hostility, and other socially destructive responses that are pitting neighbor against neighbor. Effective charter harvest control measures are long overdue and MUST be in place prior to the start of the 2009 season.

Effects on charter sector

The proposed rule concludes that: "nearly all charter businesses qualify as small businesses and for purposes of this analysis, all entities were assumed to be small entities." (p.78280) The

¹⁹ McDowell Group, April 2007. Economic impact of the commercial halibut fisheries in Areas 2C and 3A. 33% of 2C (Southeast) QS holders are new entrants, having purchased or received by gift all the QS they hold.

²⁰ NMFS/RAM Division data base

²¹ <http://www.fakr.noaa.gov/ram/ifqreports.htm>

Halibut Coalition challenges this statement. By their own testimony before the Council, a number of 2C lodges have gross annual revenues in excess of \$7 million, the defining number between large and small entities. During development of the Southeast halibut GHL, a 2C charter lodge owner provided harvest data during public testimony indicating that clients operating from his lodge harvested approximately 80,000 pounds of Southeast halibut per year. During the April, 2008 Council meeting, the same lodge owner testified that the annual gross income of his lodge is approximately \$12 million; a different 2C lodge owner claimed his lodge grosses \$7-8 million annually (Council record, April 2008). These are luxury lodges catering to the wealthy.

Contrast this to the average community based family fishing businesses of the Southeast setline halibut fleet, whose estimated annual gross earnings from halibut fishing, using the 2008 figures quoted above and 2008 halibut prices of \$4.50 per pound, ranges from \$13,500-45,000. Most Southeast commercial fishing families have diversified their fishing businesses and depend on income from salmon as well as halibut, but incomes and life-styles are modest in comparison. The hard working setline fishermen **live** in these remote communities; fishing is a way of life, not an expensive vacation. They work hard to provide quality seafood to an American public that increasingly values their commitment to sustainable harvest, sustainable communities, and seafood a person can feel good about eating. The trade-offs should be captured in the rule and the record should clarify that while most charter businesses in 2C qualify as small entities, many of the lodges, which account for a significant proportion of the total 2C charter halibut harvest, are not.

Allocation

Calculated to Promote Conservation

As discussed above, limiting the charter fleet to established catch limits is necessary to conserve the halibut resource, particularly during this time of reduced abundance. Resource conservation depends on restricting total harvest to sustainable levels established by qualified fisheries managers. The action proposed in the rule can be reasonably expected to achieve conservation goals to the degree it is effective in reducing charter halibut harvest to the annual GHL. In 2009, that GHL is .788 million pounds. With average demand reduction assumptions, the one halibut daily limit may reduce the 2C charter harvest to the 2008 GHL of .931 million pounds, but can not, on its own, be calculated to reduce harvest to the lower GHL recently dictated by biomass declines. **The proposed rule must be corrected to include the 2009 GHL and the harvest control measures must be supplemented to include a maximum size on the retainable halibut to ensure conservation objectives are met.** In the absence of supplemental restrictions, the charter harvest can be expected to exceed the GHL by 200,000 to 700,000 pounds (according to NMFS calculations in the proposed rule), compromising the rebuilding potential of the 2C stock, placing excess harvesting pressure in depleted near town areas essential to subsistence harvesters, and threatening coastal fishing families with additional reallocation of hard-earned shares.

Fair and Equitable

On page 78277 of the proposed rule, NMFS states “[t]his action also addresses an allocation of halibut fishing privileges among U.S. fishermen...” The charter allocation, or GHL, was established in 2000 and reaffirmed numerous times since by the Council after a lengthy public and analytical process. In establishing the allocation, or GHL, the Council evaluated and balanced the needs of all halibut sectors, including subsistence, sport, setline and charter. As described above, local depletion and the impact of concentrated charter harvest near towns played a significant role in determining the appropriate allocation, as did current and historic catch levels of both setline and charter fishermen. When setting the GHL allocation, the Council received testimony from all sectors, and made a very carefully deliberated decision in 2000. The charter sector did not challenge that allocation when the Final Rule was published to implement the GHL in 2003. The GHLs defined the initial allocation for the Council’s 2001 charter QS program, which was later rescinded. In short, all sectors understood that the GHL established a charter allocation, the “**maximum poundage**” that generously awarded the charter sector 125% of their historic high harvest years.

When the Council established the setline QS system, initial QS recipients received on average 80% of their recent annual harvest levels. As outlined above, close to 70% of current QS holders in 2C have purchased additional QS at great expense to maintain viable fishing businesses. Setline fishermen have accepted dramatic reductions in their annual IFQ in response to biomass declines. Subsistence and sport halibut harvesters have been forced to go without traditional foods because near-town areas are depleted. And the charter industry has continued to fight restrictions both in management forums and in the court while **increasing** its harvest by 55% in violation of the GHL and exceeding the 2008 GHL by a staggering 105%. Again, the overharvest has: compromised conservation and management objectives; depleted near shore areas, leaving subsistence and sport fishermen without access to essential traditional foods; allowed reallocation of essential resources from residents of fishery dependent communities to wealthy non-resident recreational anglers; and undermined the social harmony of coastal fishing communities. In sum, the Council recommended and the Secretary established a fair and equitable allocation. What is unfair and inequitable has been the inability of NMFS to manage the charter sector to that allocation. The one halibut daily limit, with an appropriate size restriction on the retainable halibut, will finally address this inequity.

Since establishing the GHL, the Council has adopted a charter QS system, which was overturned by representatives of the charter fleet, a moratorium on new entrants to the charter business (pending implementation) and most recently (October 2008) a catch sharing plan that relies on charter harvest control measures, such as the one halibut daily limit and maximum size restrictions, to restrict charter harvest to an annual percentage-based allocation. In evaluating the impacts of management actions and their fairness to all sectors, the Secretary should recognize that the moratorium, which charter operators generally support, prevents new entrants from eroding the resource share of established charter operators while the one halibut daily limit, which many charter operators oppose, prevents the charter sector from continuing to erode the setline sector’s resource share. Taken together, the fair and equitable management plan

developed by the Council eight years ago may finally be effectively implemented through this action by NMFS.

Preventing Excessive Share

When the IFQ program was developed in 1995, Southeast fishermen successfully sought low individual QS ownership caps to limit consolidation of access privileges; owner-on board requirements to prevent absentee-ownership and to protect the working waterfront; and vessel size classes that prevent QS initially issued to the small community-based setline boats from being fished from larger boats or processed off-shore. The Southeast excessive share cap, or limit on amount of QS any person may own or control, is set at 1% of the Southeast quota, or 599,799 QS units. In 2008, those units translated to 62,100 pounds of harvestable Southeast halibut IFQ.²² In 2009, those units translate to approximately 50,300 pounds. Currently only one Southeast QS holder owns QS equal to the 1% ownership cap and the average 2C QS holder holds less than 5,000 pounds. In short, the Council carefully guarded against any entity acquiring an excessive share of the 2C halibut resource.

In formulating the charter GHL, the charter moratorium, and the 2008 catch sharing plan the Council established individual and sector limits to prevent any entity from receiving or acquiring an excessive share of the resource. While it is true that the setline industry harvests a larger portion of the 2C resource than other harvesters, that harvest crowns 100 years of sustainable harvest and management and the historic dependence of approximately three thousand setline fishermen and crewmembers. Setline harvesters supply a thriving halibut processing and marketing sector plus millions of consumers. Subsistence and non-guided sport harvest will continue to be afforded priority. Given that setline fishermen were forced to buy their way back to recent historic harvest levels, while charter operators were granted 25% **above** historic catches, the current allocation could easily be considered overly fair to charter operators. Under the catch sharing plan charter fishermen will have the option of increasing their individual share by investing in setline IFQ, but only up to limits that prevent excessive share for aggregating to any entity.

Again, the allocation established by the GHL is fair, prevents excessive share, and equitably divides the resource while providing essential conservation protections. Each element of the allocation should be clarified and explained in the final rule to adequately support the proposed action.

Defining the GHL

The regulatory language at 50 C.F.R. § 300.65(c)(3) needs to be revised. In the preamble to the proposed rule NMFS states repeatedly that the purpose of the rule is to carry out the Council's intention with respect to managing to the GHL. For example, in the third column on page 78277 NMFS states that the Council policy is to limit the charter harvest to the GHL. The Council has

²² <http://www.fakr.noaa.gov/ram/08caps.pdf>

repeatedly committed to managing the charter sector in 2C to the established GHL. The Council has NEVER referred to the GHL as a “benchmark.” To assist NMFS in correcting the record, the Coalition provides the following history.

The GHL as a domestic target: a brief history of the GHL.

GHL: “[the] level of allowable harvest by the charter vessel fishery”

(§ 300.61 Definitions, 68 Fed.Reg. 47256,47257(August 8, 2003).

The Final Rule implementing the GHL states that: ***“The GHLs represent a pre-season specification of acceptable annual halibut harvests in the charter vessel fisheries in Areas 2C and 3A.”*** (August 8, 2003; 68 FR 47256). Yet a portion of the current proposed rule describes the GHL as ***“benchmarks for charter halibut harvest,”***(50 C.F.R. § 300.65(c)(3)) despite repeated phrases in the preceding paragraphs clarifying that ***“this action by NMFS is consistent with the Council’s intent to limit the catch to the GHL.”*** (page 78277). The Council has committed on at least six occasions to limiting charter harvest to the GHL, as has NMFS in the Federal Register (2003). Referring to the GHL as a benchmark is erroneous and can only be considered a deliberate attempt by NMFS to reinvent history and misinterpret Council intent. **The terms “benchmark” and “approximately to the GHL” should be removed from the record** in the Final Rule.

The facts, and NOAA Fisheries’ own statements, show that the existing GHL is a clearly defined fixed allocation and domestic target. The origins of the GHL are traced to a decision by the Council to address the growth in the charter fleet. In 1993, the rapid increase in that fleet caused concerns in the Council about localized depletion of the halibut resource and about the reallocation of halibut from the commercial sector to the charter sector. In 1995, the Council developed a Problem Statement to direct its analysis of issues associated with the guided sport halibut fishery. One element of that Problem Statement noted:

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. This reallocation may increase if the projected growth of the charter industry occurs. The economic and social impact on the commercial fleet of this open-ended reallocation may be substantial67 Fed. Reg. 3867 (Jan. 28, 2002).

In September 1997, four years after its initial concern about the expansion of the charter fishery, the Council adopted GHLs. NOAA Fisheries described the purpose and intent of the North Pacific Council in the following words:

The [North Pacific] Council stated its intent that guided recreational harvests in excess of the G-L ... would trigger other management measures to take effect in years following attainment of the G-L. These measures would restrict the guided recreational fishery

and maintain harvests within the GHL allocation. 68 Fed. Reg. 47256, 47257 (August 8, 2003).

By NOAA Fisheries' own admission the GHL was intended to be a fixed harvest level. Management measures would be adopted to prevent that harvest level from being exceeded. However, because the Council did not propose specific management measures in 1997 to accompany the GHL, NOAA Fisheries refused to consider the Council's GHL recommendation. In response to NOAA Fisheries' refusal to consider the GHL, the Council in February 2000 adopted a redefined GHL, this time establishing a suite of harvest restrictions that would be triggered if the GHL was exceeded. According to NOAA Fisheries, the purpose of the GHL and the framework management measures was to constrain the charter harvest within the GHL. *Id.* at 47258.

However, NOAA Fisheries objected to the proposed management measures because they were part of a framework management plan. Leaving aside for the moment whether NOAA Fisheries' position on framework management plans is legally defensible, the facts are that the Council viewed the GHL as a fixed allocation to be enforced by appropriate management measures. Ultimately, NOAA Fisheries approved the GHL in a final rule but refused to approve the framework management measures. That an enforcing mechanism was not included in the GHL at the time it was established does not mean that the GHL is not a fixed allocation. In fact, the preamble to the final rule promulgating the GHL states unequivocally: “[t]he GHLs are established as a total maximum poundage ...” to be harvested by the guided sport fishery. *Id.* NOAA Fisheries also admitted that the Council fully intended that management measures to maintain the GHL would be established. NOAA Fisheries summarized the Council's intent as follows:

The Council stated its intent that GHLs would not close the fishery [in season], but would instead trigger other management measures in years following attainment of the GHL. Id. at 47259.

That the Council intended the GHL to be a maximum harvest amount which would be maintained by management measures is a fact NOAA Fisheries acknowledges in the 2007 Proposed Rule (72 Fed. Reg. at 17073). NOAA Fisheries recognizes that “GHLs were not designed to increase above their maximum amounts.” *Id.* Finally, NOAA Fisheries acknowledges: “it is the [North Pacific] Council's policy that the charter vessel fisheries should not exceed the GHLs” *Id.*

NOAA Fisheries also acknowledges that if the GHL is exceeded, that exceedance results in a reallocation of halibut from the commercial sector to the charter boat sector. After noting that the commercial quota is determined by subtracting the estimates of all noncommercial removals (sport, subsistence, bycatch, and wastage) from the CEY, with the remaining CEY being available for commercial harvest, NOAA Fisheries notes that the “*growth in the charter vessel*

fishery in recent years ... has resulted in a de facto allocation of the halibut resource away from the commercial fishery to the charter vessel fishery.” Id. at 17072-17073. In short, failure to manage to the GHL results in a reallocation in violation of the Halibut Act and of the Council’s policy and intent in establishing the GHL, a GHL approved by the Secretary and codified in Federal regulation.

It is irrelevant that NOAA has twice rejected the GHL enforcing management regulations recommended by the Council. The Secretary has the authority to promulgate regulations implementing the Halibut Act. 16 U.S.C. § 773c(a) and (b). Once the Council has recommended, and the Secretary approved, an allocation, the Secretary can issue implementing regulations. Indeed, the Secretary is obligated to issue regulations implementing established and approved policy objectives such as the GHL allocation. The Halibut Act states the Secretary “shall” issue such regulations as are necessary to carry out the purposes and objectives of the Halibut Act. Once the GHL was promulgated by final regulation, it became one of those purposes and objectives. Implementation of the one halibut daily limit to restrict harvest to the current GHL is long overdue. Because biomass declines demand lower exploitation rates, including a reduced GHL, the one halibut bag limit must now be supplemented by a maximum size limit on the retained fish to ensure the 2C GHL is not exceeded.

Maximum size limit on retained halibut

Because final 2008 harvest numbers are not yet available, NMFS has relied on 2007 data. The proposed rule indicates that a one halibut daily limit will not reduce charter harvest to the GHL unless demand reduction further reduces harvest. The rule also states that the charter vessel harvest may have doubled the 931,000 lb GHL in 2008 under the status quo management option (p. 78278), which translates to an estimated 1,862,000 pound harvest. The Council’s 2007 2C GHL analysis indicated that a one fish bag limit for the entire 2008 would have resulted in a harvest reduction of 808,000 pounds of halibut in 2C (Table 4 in analysis). Given that the correct 2009 GHL in 2C is 788,000 pounds, the one halibut daily limit can be expected to allow a 200,000-700,000 pound GHL overage. Clearly an overage of this magnitude does not meet the Council intent to limit harvest to the GHL, hence additional restrictions are imperative.

Establishing a maximum size limit on the retained halibut is the management measure identified to control charter harvest at times of low abundance in the recently adopted Council catch sharing plan (October, 2008). This measure was identified by the Council as less onerous to the charter industry than a season closure, but reasonably calculated to achieve the necessary reductions based on existing analysis. The Halibut Coalition expects NMFS to correct the GHL in the Final Rule and to add the appropriate maximum size limit to restrict harvest to that GHL.

Years of low abundance are difficult for all sectors, but have particularly severe implications for subsistence fishermen, who depend on the resource for sustenance and cultural survival, and for the setline fishermen who have made substantial investments in access privileges. Setline fishermen that exceed individual catch limits are heavily penalized with confiscation of catch and fines. Charter fishermen, who have been allowed to access the resource without cost, have

chronically exceeded catch limits with impunity. It is time for NMFS to prevent GHL overages with the gravity and commitment appropriate to the level of impact. To do less is unfair, inequitable, and irresponsible to the resource and all who depend on that resource.

Retention of Halibut Carcasses

The Halibut Coalition OPPOSES eliminating the requirement that halibut carcasses be brought to shore by charter clients. This requirement, which was implemented in 2007, has greatly improved data quality. Prior to implementation of this requirement, ADF&G Sportfish noted that in some ports, such as Sitka, 90% of the halibut retained by the charter fleet was disqualified from being measured in the Creel survey because they were filleted at sea. Accurate Creel survey lengths are fundamental to estimating the catch of the charter fleet. During this time of low resource abundance, it is imperative that provisions that improve the accuracy of documenting halibut removals remain in place. Carcass retention is also necessary to enforce size restrictions, which must be implemented as part of this action to restrain charter harvest to the 2009 GHL. Regulations included in the Final Rule can not eliminate the regulation to retain halibut carcasses if NMFS is to accomplish its stated management goal of limiting charter harvest to the 2009 GHL.

National Standard 1 – Annual Catch Limits

The rule to implement National Standard 1: Annual Catch Limits (ACL) reinforces the importance of restricting charter harvest to the GHL. The rule is clear that accountability measures are to be used “to prevent ACLs, **including sector-ACL’s**, from being exceeded, and to correct or mitigate overages of the ACL if they occur.” (FR 74, 3178-3213, January 16, 2009). The rule goes on to discuss use of in-season management measures to prevent ACLs from being exceeded. Although halibut is managed under the Halibut Act, National Standard 1 establishes essential policy to restore and protect all U.S. marine fish stocks. It would be inconsistent and legally suspect for NMFS to manage halibut stocks by a different standard. NMFS has a responsibility to the public and to the fishery dependent communities of Alaska to ensure the halibut resource is protected from overharvest. Given the projections of 2009 charter harvest, the charter industries’ history of overharvest, and the fact that the ACL rule becomes effective February 17, 2009, the Halibut Coalition expects NMFS to impose effective accountability measures in the 2C charter fleet for the entire 2009 fishing season.

Conclusion

In conclusion, the Halibut Coalition appreciates the effort NMFS has expended to reissue the one halibut daily limit for IPHC area 2C, and supports implementation of this management measure. We applaud NMFS for clarifying that in order to achieve conservation objectives, management measures must be in place to PREVENT GHL overages, rather than react to them after they occur. That said, Coalition members are disturbed by NMFS’ failure to fully explain: 1) the conservation basis for the proposed rule, including area-wide and local depletion issues; 2) include the impacts of chronic GHL overages on sport, subsistence and setline fishermen; 3) document the lengthy public process that informed the Council’s decision in establishing the

GHL allocation; and, 4) represent Council intent to manage the charter sector to remain BELOW the GHL, rather than treat the GHL as a “benchmark”. Each of these oversights must be corrected in the record prior to publication of the Final Rule. Additionally, the rule must be corrected to include the accurate 2009 GHL and additional harvest control measures to restrict 2C charter harvest to that GHL during this time of low abundance. Accurate recording of catch and enforcement of the necessary size limits on retained fish depends on retention of carcasses; this requirement must not be deleted.

To provide critical protection to the halibut resource, protect the interests of resident sport, subsistence and setline fishermen and processors, and to meet the Council’s and NMFS’ stated objective of restricting charter catch to the GHL, the one halibut daily limit, supplemented by a maximum size on the retained fish, must be in place for the 2009 charter season.

Thank you for the opportunity to comment.

Sincerely,



Julianne Curry, Petersburg Vessel Owners Association



Rochelle van den Broek, Cordova District Fishermen United



Jeff Stephan, United Fishermen’s Marketing Association



Robert Alverson, General Manager, Fishing Vessel Owners Association



Linda Behnken, Alaska Longline Fishermen’s Association



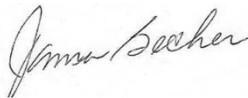
Roland Maw, Upper Cook Inlet Driftnetters Association



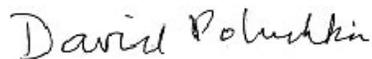
Tim Henkel, President, Deep Sea Fishermen's Union



Rhonda Hubbard, Kruzof Fisheries, LLC



James Becker, United Southeast Alaska Gillnetters



David Polushkin
Kachemak Bay Fisheries Association



Peggy Parker, Executive Director, Halibut Association of North America



Chairman, Seafood Producers Coop

Charles Wilber, Chairman Seafood Producers Cooperative



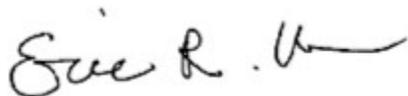
Kathy Hansen, Executive Director, Southeast Alaska Fishermen's Association



Joe Childers, President, Executive Director, Western Gulf of Alaska Fishermen



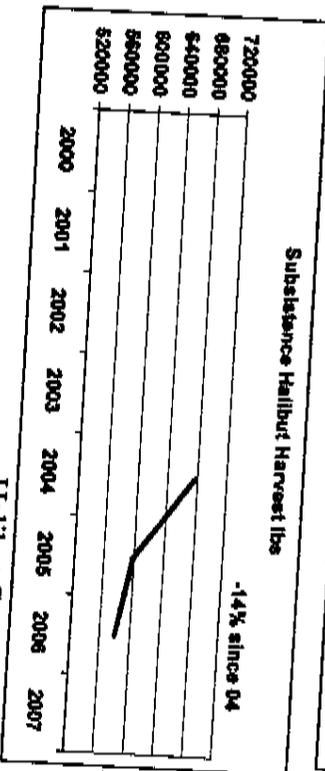
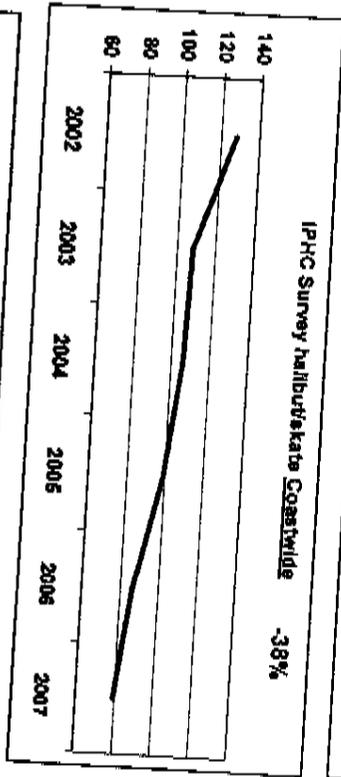
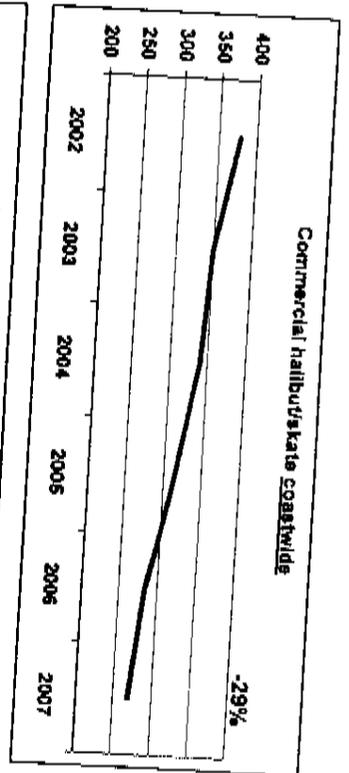
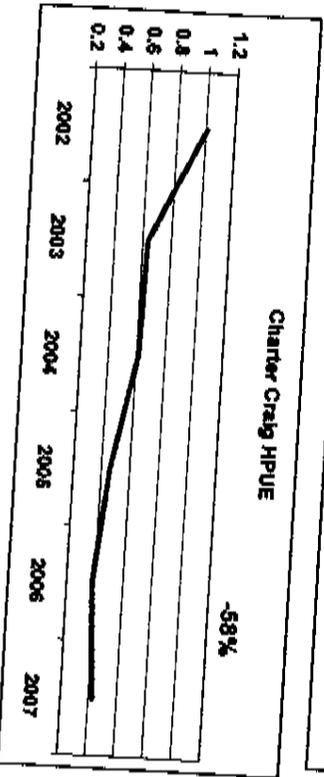
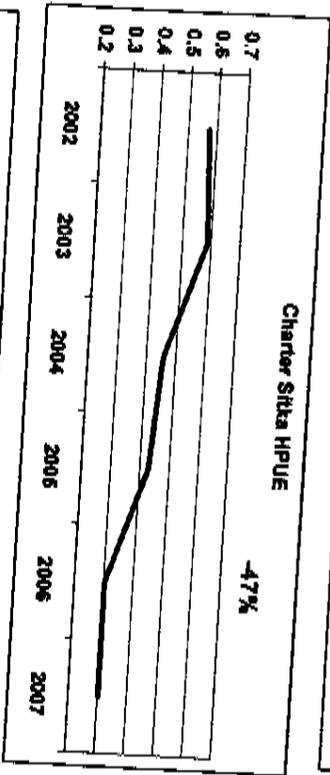
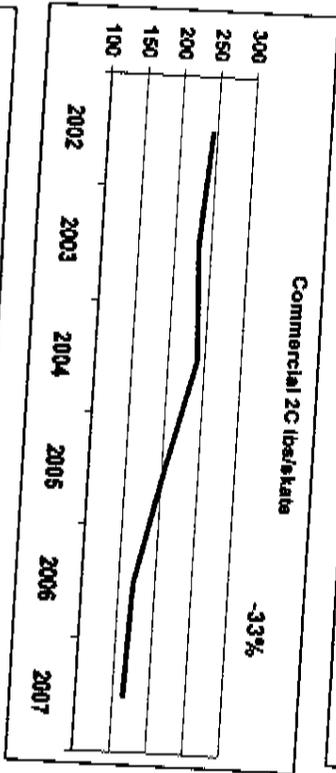
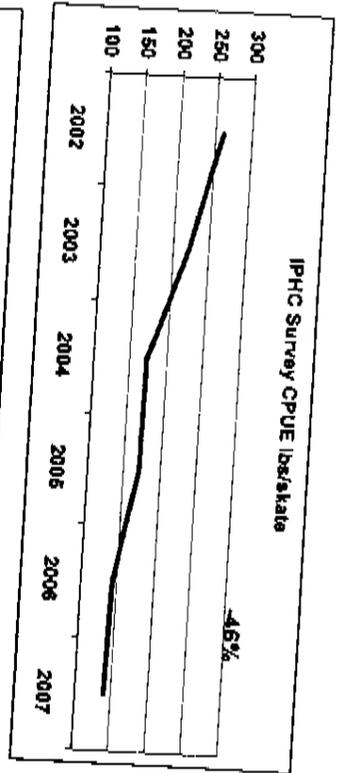
Buck Laukitis, North Pacific Fisheries Association



Eric Norman, Taku Smokeries, Juneau

Appendix: (1) IPHC Survey CPUE
(2) IPHC to NPFMC Chair Madsen December 1, 2006

Copy: Governor Sarah Palin (ATTN: Ms Cora Crome)
Senator Mark Begich
Senator Lisa Murkowski
Congressman Don Young



Concerns regardless of model used in assessments: recent catch unit effort is down significantly in all sectors in 2C and also Coastwide for survey and setline:

Halibut Conservation

per

COMMISSIONERS:

CLIFF AYLEO
 PORT ALBERNI, B.C.
 JAMES BALSIGER
 JUNEAU, AK
 RALPH G. HOARD
 SEATTLE, WA
 PHILLIP LESTENKOF
 ST. PAUL, AK
 LAURA RICHARDS
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 GARY ROBINSON
 VANCOUVER, B.C.

INTERNATIONAL PACIFIC HALIBUT COMMISSION

ESTABLISHED BY A CONVENTION BETWEEN CANADA

AND THE UNITED STATES OF AMERICA

AGENDA C-1
 Supplemental
 DECEMBER 2006

TELEPHONE
 (208) 634-1836

FAX:
 (206) 632-2983

December 1, 2006

Ms. Stephanie Madsen, Chair
 North Pacific Fishery Management Council
 605 West 4th, Suite 306
 Anchorage, AK 99501

RECEIVED
 DEC - 4 2006
 N.P.F.M.C.

Dear Stephanie:

The recent publication of the recreational harvests of halibut in IPHC Regulatory Areas 2C and 3A in 2006 by the Alaska Department of Fish and Game has, with other removals, indicated that the Total Constant Exploitation Yield (CEY) established by the Commission for these areas has been exceeded. Exceeding the Total CEY for an IPHC regulatory area requires that the Commission undertake conservation actions to restrain the total removals within this Total CEY. The achievement of the Commission's conservation mandate is dependent on adherence to catch limits and total yield.

While the Commission regularly undertakes actions to restrain total removals within the Total CEY, the potential regulatory actions take on a different character if: a) there is a need for Commission conservation actions, and; b) domestic agencies have adopted targets or limits for recreational fisheries that have been exceeded. Under such conditions the Commission could adopt regulations that address both the need to restrain total removals and the needs of either contracting party to achieve domestic management targets for recreational fisheries, e.g. different seasons, bag limits, or different combinations of bag limits and seasons for each regulatory area, etc.

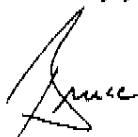
The IPHC staff notes the difficulty experienced by the Council in achieving its goal of adhering to the adopted GHL levels. The staff wishes to apprise the Council of the potential to use the Commission regulatory framework to supply the Council with tools that may either be incorporated in, or substitute for, domestic regulations until they are developed. This is not without precedent. For example, it would be similar to the IPHC actions concerning sublegal halibut retention in Areas 4D and 4E, or concerning interim regulation of the commercial fishery while the domestic Alaskan IFQ regulations were being developed. Both of these actions were implemented in furtherance of Council goals. The Commission and its staff understand clearly that any changes in IPHC regulations for recreational fisheries should be accomplished only through joint discussion with the NPFMC and National Marine Fisheries Service (NMFS), and not through unilateral action by the Commission. Further, in the absence of a specific request from the Council to the contrary, the Commission regulations would apply uniformly to all recreational fishery sectors.

At the 2006 IPHC Interim Meeting, the Commissioners directed the staff to undertake discussions with NPFMC and NMFS to determine if these agencies wish to explore the use of Commission recreational fisheries regulations to effect both the Commission's conservation mandate and the domestic allocation goals for Areas 2C and 3A. Should these agencies support such action, the Commission would consider a proposal to change its recreational fisheries regulations at the upcoming IPHC Annual Meeting on January 16-19, 2007 in Victoria, B.C.

The alternative to an action by the IPHC concerning recreational fishing regulations is to continue with the present Commission process of ensuring adherence to the Total CEY by subtracting the projected recreational harvest from the Total CEY for each regulatory area, and adopting catch limits for the commercial IFQ fishery based on the remaining CEY. In effect, if the recreational fishery exceeds domestic limits, there is a transfer of yield from the commercial fishery to the recreational fishery.

I and Gregg Williams of the IPHC staff will be attending your December meeting, and will be available to discuss this with the Council.

Sincerely yours,



Bruce M. Leaman
Executive Director

cc: Commissioners