
**ALLOCATION OF HALIBUT FOR THE CANADIAN
COMMERCIAL AND RECREATIONAL FISHING SECTORS
IN THE PACIFIC REGION**

**STEPHEN KELLEHER, Q.C.
Vancouver, B.C.
October 31, 2002**

Table of Contents

| | <u>Page</u> |
|--|--------------------|
| 1. Mandate | 3 |
| 2. History and Nature of the Pacific Halibut Fishery | 5 |
| 3. History of Allocation | 7 |
| 4. Process Followed | 9 |
| 5. Position of the Commercial Sector | 10 |
| 6. Position of the Recreational Sector | 12 |
| 7. Observations | 14 |
| 8. Conclusions | 15 |

1. Mandate

I have been engaged by Fisheries and Oceans Canada to provide advice on two matters:

1. An allocation arrangement of pacific halibut for the commercial and recreational fishing sectors; and
2. How allocations may change over time.

This report addresses these two questions. The report describes the nature of the pacific halibut fishery, the allocation efforts to date, the process in which I engaged, the position of the commercial and recreational sectors some observations and my conclusions.

My terms of reference from Fisheries and Oceans Canada set out my tasks:

Tasks

To provide Fisheries and Oceans Canada with advice on an initial allocation arrangement of the halibut resource for the commercial and recreational fishing sectors as well as advice on how allocations may change over time. The advisor will be required to undertake the following tasks:

1. Meet with Fisheries and Oceans to:
 - Review the goals and objectives of the process,
 - Identify background material and DFO resources required to establish allocation
 - Set a meeting timetable, and
2. Meet with designated representatives from the Halibut Advisory Board and the Sport Fishing Advisory Board to seek their views on an allocation framework for halibut for the commercial and recreational fisheries.

3. Identify and engage other interests (e.g., non-government organizations, community participation) that need to participate in the process.
4. Prepare a comprehensive report that:
 - i) Provides advice and recommendations in the form of options on allocation for the commercial and recreational sectors and outlines the rationale for the advice.
 - ii) Provides options describing how allocations can be adjusted or modified over time.
 - iii) Describes how the recommended allocation arrangement would be implemented consistent with the following components:
 - *International considerations.* How the amount of fish to be allocated for harvest in Canadian waters is estimated by the International Pacific Halibut Commission through existing international processes, and how new allocation arrangements would affect this process.
 - *First Nations.* The Department has fiduciary and treaty obligations to First Nations. Departmental policy confirms this obligation and outlines that the Aboriginal right to fish for food, social and ceremonial purposes has priority, after conservation, over other uses of the resources.
 - *Operational considerations.* Catch data is essential to achieve conservation objectives and to monitor allocations. Therefore, there is a need to clarify whether basic catch reporting and monitoring standards in both sectors meet allocation requirements. Further, the progression of the British Columbia treaty process, negotiations related to fish, fishing arrangements, fisheries management and other matters are under discussion during treaty negotiations. Outcomes of these negotiations will set out fisheries resources to be provided to the First Nations under treaty. More clarity on the impact that treaty negotiations would have on allocation arrangements is required.

2. History and Nature of the Pacific Halibut Fishery

There has been halibut fishing on the west coast of North America by First Nations for hundreds of years. Commercial fishing began some 125 years ago. As early as the 1910's concern respecting overfishing led to efforts by the governments of the United States and Canada to manage the resource. In 1923 they were successful in signing a convention resulting in the formation of the International Fisheries Commission. The Convention has been modified several times since then and the Commission is now called the International Pacific Halibut Commission.

The Commission originally limited the season with a closure each year of three months. By 1932 it had become necessary to set catch limits.

As the years went on the fleet grew in number and became more skilled. The seasons became shorter as it took less and less time for the fleet to reach the catch limit. In 1953 a new convention provided for the establishment of separate seasons for Canada and the United States.

In 1977 both countries enacted legislation extending jurisdiction over fisheries to 200 miles from shore. This led to a bilateral protocol in 1979 which restricted Canadian and American fishers to their own waters.

At approximately the same time Fisheries and Oceans took steps to limit entry into the commercial fishery. The apparent intent was to protect stocks by stopping the expansion of catch capacity.

This goal was not achieved. Instead license holders attempted to improve their competitiveness by using larger vessels, larger crews and more sophisticated equipment.

The halibut fishery soon had all the characteristics of a fishing derby. By 1990 the season had shrunk from 82 days (in 1982) to six days. These developments had several

adverse effects: the fishery was intensive and therefore dangerous. Most of the catch ended up in the less lucrative frozen fish market. The catch consistently exceeded the Total Allowable Catch (“TAC”) set by the International Pacific Halibut Commission.

In 1990 the commercial halibut industry developed an individual vessel quota (“IVR”) system. It was implemented by Fisheries and Oceans Canada in 1991. Each vessel was provided with a percentage of the Total Allowable Catch. This was based on the size of the vessel and the history of fishing. The quota holder could harvest the fish at any time over the season which ran from March to November.

This IVQ system is regarded as a success by the commercial industry. It has led to conservation, improvements to fishing safety and increased economic benefits. Fishers can sell in the lucrative fresh fish market virtually throughout the season. The IVQ system remains in effect today.

Since the IVQ has been introduced, the commercial sector has not exceeded the TAC.

The halibut sport fishery was relatively small before 1973. The Commission did not consider it a significant concern in the management of the fishery. In 1973, after consulting Canadian and state governments, the IPHC adopted sport regulations.

At that time halibut was incidental to salmon fishing for recreational fishers. Since that time the popularity of halibut fishing has increased substantially. As is discussed below the measurement of it is comparatively difficult and, to date, inexact. Nonetheless it is clear that sport fishing of halibut has increased dramatically.

3. Allocation Efforts to Date

Fisheries and Oceans Canada has been working since 2000 with recreational and commercial interests on developing an allocation system. Dr. Edwin Blewett, a British Columbia economist, was engaged by Fisheries and Oceans Canada in 2000 to facilitate discussions between the two sectors. A series of meetings led to consensus on a number of principles:

Principles Acceptable to Both Sectors

Early in the discussions, both commercial and recreational representatives identified certain points that both sectors might be able to accept, assuming that their fundamental interests, as outlined above, could be satisfied. These are summarized in the following list.

- Growth in one sector beyond its initial share should not be at the expense of the other sector.
- Any allocation system should be kept as simple as possible to avoid if possible the need to calculate and trace “debits” and “credits”.
- Should the need for additional quota (beyond initial shares) arise, transfer of quota between sectors would be based on the market system.
- Any catch sharing arrangement must be protected from arbitrary and uncompensated infringements from any source that erodes the share of either sector.
- An allocation sharing arrangement should be based on total mortality in all fisheries.
- All Canadian TAC should be harvested. This implies that any recreational TAC not harvested by the recreational sector should be harvested by the commercial sector.
- There should be an annual accounting of a catch sharing arrangement.
- Settlement of any outstanding deficits or surpluses under a catch sharing agreement should occur reasonably frequently so that significant deficits/surpluses do not accumulate for a prolonged period of time and thereby grow to an onerous size.

- Credible and timely catch data are critical for managing the fishery properly and for managing any catch sharing arrangement developed by the sectors.
- If recreational catch data are not available in-season, adjustments to accommodate a catch sharing agreement would have to occur in the subsequent season.
- The Neah Bay/Swiftsure catch by US fishermen should not be recorded against the Canadian TAC. If it is, some sort of compensation should be worked out through international agreement.

Beyond these principles, however, little agreement was achievable. The two sectors took starkly different positions on the percentage each sector should be allocated. As will be seen below, these positions have been maintained by the sectors in the discussions I have held. The parties also disagreed on how to reconcile surpluses and deficits.

Dr. Blewett concluded that the facilitated discussions should not continue. The parties had exhausted the possibility of reaching mutually satisfactory arrangements for sharing halibut. He recommended a form of arbitration by an independent third party:

I conclude that initial shares will have to be determined by an independent third party. If arbitrated initial shares are not such as to cause either sector to walk away from any voluntary process, it is possible that the sectors will be able to finalize an agreement on the process by which a sharing arrangement would operate. If either sector does quit the process, it too would have to be subject to arbitration.

4. Process

The process was one of consultation. I met with Fisheries and Oceans Canada and received extensive written material from Fisheries and Oceans and from the International Pacific Halibut Commission. I then met separately with the two groups, the Commercial Sector Allocation Subcommittee of the Halibut Advisory Board and the Executive Committee of the Sport fishing Advisory Board. Both groups provided me with comprehensive written submissions outlining their respective positions and reasons. These submissions were provided to the other sector to give it an opportunity to reply.

I also obtained useful background information from the International Pacific Halibut Commission.

I have appreciated the cooperation of all concerned in assisting me to understand a complex industry and the competing interests involved in this undertaking.

5. Position of the Commercial Sector

The commercial halibut sector's proposal is that 95 per cent be allocated to the commercial sector and 5 per cent to the recreational sector. This proposal is based on an average of the catch share from 1979 to 2001. The sector argues that certainty and fairness can be achieved by basing initial allocations on historical catch shares. The sector put forward this data:

| | Commercial Sector | Recreational Sector |
|----------------|------------------------------|--------------------------------|
| 1979 | 99.8% | 0.2% |
| 1980 | 99.9% | 0.1% |
| 1981 | 99.8% | 0.2% |
| 1982 | 99.4% | 0.6% |
| 1983 | 99.1% | 0.9% |
| 1984 | 99.3% | 0.7% |
| 1985 | 97.5% | 2.5% |
| 1986 | 98.4% | 1.6% |
| 1987 | 98.0% | 2.0% |
| 1988 | 98.1% | 1.9% |
| 1989 | 97.1% | 2.9% |
| 1990 | 96.8% | 3.2% |
| 1991 | 96.2% | 3.8% |
| 1992 | 96.0% | 4.0% |
| 1993 | 97.1% | 2.9% |
| 1994 | 92.0% | 8.0% |
| 1995 | 91.6% | 8.4% |
| 1996 | 91.6% | 8.4% |
| 1997 | 93.5% | 6.5% |
| 1998 | 93.8% | 6.2% |
| 1999 | 93.6% | 6.4% |
| 2000 | 91.4% | 8.6% |
| 2001 | 91.2% | 8.8% |
| Average | 95.5% | 4.5% |

The commercial sector naturally opposes any allocation which reduces the traditional catch share of the commercial fleet. It argues from a conservation standpoint

that this makes no sense. That is because the recreational halibut fishery is, by comparison to the commercial sector, uncontrolled. There are trip limits and possession limits but there are no controls on the number of trips that can be made or the amount of halibut that can be caught.

The commercial sector argues that it has made substantial investments: vessels, gear and additional growth. The initial allocation by relying on historical catch shares will ensure that neither group is made significantly worse off or better off by the decision.

The sector argues that the data indicates that in recent years there has been an uncompensated reallocation of halibut from the commercial to recreational sector.

The sector argues that the lodge and charter businesses account for some two-thirds of the halibut harvested. These fishing businesses, unlike the commercial fishery, profit from the exploitation of fishing resources without paying a license fee or cost recovery levy.

6. Position of the Recreational Sector

The recreational sector characterizes itself as a “reluctant participant” in this process. It feels that the present system works reasonably well.

The recreational sector expressed a concern about being disadvantaged by the treaty processed with First Nations. Its concern is as treaties are concluded halibut will be transferred to First Nations either for food, social and ceremonial purposes or for economic use. This will affect the proportion available to recreational anglers. It says the commercial sector has been assured that treaty fish will come from quota purchased from current IVQ holders. The share for recreation is defined by reference to the amount left to the commercial sector after it has been compensated for transfers to First Nations.

The recreational sector argues that the inefficiency of sport anglers means that the total sport catch inevitably changes slowly and that the recreational sector has little ability to increase its catch. In declining abundance recreational share will rise. It will decline when abundance increases.

The basic position of the recreational sector is that an allocation of 20 per cent should be assigned to the recreational sector. It points to a 50 per cent share in the American states to the south and close to 20 per cent in Alaska.

The proposal is based on the premise that this allocation process should recognize the “anticipated needs” of the recreational sector for the foreseeable future. It bases its argument on the anticipation of the IPHC that abundance will decline by 10 per cent per year. Based on an abundance in 1998 of 14,132,000 lbs. and recreation catch being maintained at 930,000 lbs. a 10 per cent allocation would put the recreational sector in difficulty after one more year. At 15 per cent a deficit is reached after 2005. Even 20 per cent only takes the fishery until 2008.

The recreational sector does not accept that after it exceeds 20 per cent it ought to be responsible for compensating commercial quota holders. The need for compensation only arises because of the creation of IVQ's by government. Therefore any compensation ought to be publicly funded.

7. Observations

A couple of matters were brought to my attention which are not part of my mandate but bear mentioning in this report.

1. There is a debate between the commercial and recreational sectors regarding the respective contribution of each sector to the economy or well-being of Canada. This may be a matter for consideration in the future. It is certainly not within my current mandate to make a determination about allocation by drawing any conclusions about the economic contribution of either sector.

2. The Sport Fishing Advisory Board does not accept any distinction between “ordinary resident anglers” and the “commercial sport fishery”. It argues that it is individuals who purchase a license and thereby acquire the right to go fishing. Charter operators and lodges provide a service to the recreational angler.

The Board is technically correct in making this point. But the anglers who fish without using lodges or fish charter businesses make up some 33 per cent of the recreational halibut fishery. In any future discussion with stakeholders it would be useful to attempt to include this group.

8. Conclusions

(a) Options on Allocation.

The commercial and recreational sectors provide allocation options that are described above. I conclude that neither sector makes a compelling case and that a third option must be considered.

The position of the recreational sector really comes down to no allocation at all. I say that because it argues that 20 per cent be allocated but there is no need to compensate it when less than 20 per cent is achieved. Then as the biomass decreases in several years, the recreational sector will exceed 20 per cent. At that stage it opposes any notion of compensation from it to the commercial sector.

The numbers chosen by the two sectors are not possible to justify. The commercial sector proposes 5 per cent for the recreational sector. The recreational sector proposes that it be allocated 20 per cent.

The difficulty with the 5 per cent figure is that it is based on data over the last 22 years. As I explain below the data is suspect. As the data from the recreational sector has improved, the numbers have been rising.

I conclude that the initial allocation should be, as much as possible, a neutral event. By that I mean that neither sector should receive a windfall. Neither sector should be significantly disadvantaged. To adopt the position advocated by either sector would have both consequences: it would be a windfall to the sector whose position was selected and would substantially disadvantage the other sector.

The third option, and the option I recommend, is to base the allocation on current data. Over 2000 and 2001, the commercial catch and the recreational catch averaged

10,627,000 lbs. and 1,018,000 lbs., respectively, totaling 11,645,000 lbs. (plus wastage and First Nations' food, social and ceremonial). The recreational share was just under 9 per cent. In my view that is a useful figure for allocation in the future.

(b) How options can be adjusted or modified over time.

A successful process of allocation depends on effective monitoring and record keeping. Currently the catch data from the commercial sector is of high quality. Log books document the catch; vessels hail out before fishing and hail in at the end of fishing; the commercial sector pays for an independent third party who weighs and tags each halibut. In addition, there is a program of at-sea monitoring. The commercial sector also described to me the development of a video monitoring system which will provide greater levels of at-sea coverage.

The catch data from the recreational sector is not of this quality. While the data has improved over the last several years it is not nearly as reliable as the commercial data. The difficulty was highlighted in the 2000 Annual Report of the International Pacific Halibut Commission:

Tough to count in Area 2B

Sport harvests along the British Columbia coast of Area 2B are estimated by a variety of means, none of which is completely satisfactory. As interest in halibut sport fishing increases in B.C. waters, the importance of a scientifically-based catch estimate intensifies. Right now, one of the estimates used by the IPHC is the 1.5 million-pound catch figure, which is based on DFO's National Postal survey of sport harvests for 1995.

The Pacific Region of Canada's DFO, seeking a more accurate estimate, combined results of several creel survey and logbook programs and derived a different estimate – this one far lower – of 44,400 halibut, or 959,000 *round* pounds (719,000 pounds net). It is very possible that the mail surveys, on which the National DFO survey bases its estimates, are too high, since the more avid and successful anglers tend to return more questionnaires than less avid and successful folks. It is also

possible that the alternate Pacific Region estimate is too low, because it is based on a number of partial estimates rather than on a comprehensive reporting or sampling program. Clearly each may be biased in different directions, and for assessment purposes we seek the most accurate figure.

In my view efforts must continue to be made to improve this data. It is beyond the scope of this report and well beyond my expertise to recommend specific ways in which the data could be improved. But it appears to me that better recreational data is obtained in Alaska through Alaska Fish and Game's state wide harvest survey. The five year survey in Canada could be used to supplement the creek surveys and logbook records maintained by Fisheries and Oceans Canada. It may be as well that charter operators and lodges could be more closely monitored to ensure that log books are fully completed.

This, then, is a principal way in which allocation may change over time. The recommendation I make in this report is based on the data that is available. If improved data established that the actual recreational catch in 2000 and 2001 was higher, for example, than the current data discloses, it is my recommendation that the allocation should be adjusted accordingly.

Allocation may also change in the future based on an exchange of IVQ between the commercial and recreational sectors. At present, of course, this is not possible. Moreover, the Sport Fishing Advisory Board resists any change in this direction. But this possibility may be a useful method of addressing problems in a decreasing biomass. Both sectors should be discussing the possibility of developing a method of exchanging IVQ.

What should occur if the recreational or commercial sector exceeds the allocation? In the commercial sector the IVQ system ensures that a predetermined amount of halibut will be harvested. The recreational sector is far less predictable. It depends on decisions by anglers to fish for halibut and the availability of fish.

One possibility is compensation by one sector to another. Although that model may exist in other fisheries, it is problematic in halibut. Individual recreational license holders can hardly incur liability for what the sector as a whole accomplishes. Although I recommend above that the possibility of exchange of IVQ be considered in the future, that is not a current option.

My view is that in each year Fisheries and Oceans Canada should determine what share was achieved. If the recreational sector does not obtain its allocation that should be credited to a nominal account. It can be drawn upon in the future when its allocation is exceeded.

The recreational sector may exceed its allocation. That is not unlikely. The International Pacific Halibut Commission projects a decline in abundance. In the absence of any notion of individual quota, the allocation must be brought into line through a process of consultation with stakeholders. The options for Fisheries and Oceans Canada to consider include new management measures such as closing areas to recreational anglers and reducing daily limits or possession limits, imposing annual limits and restricting fishing times and areas.

A further possibility would be the mid-season closure of recreational halibut fishing. That is seen by the Sport Fishing Advisory Board as the least desirable option. I fully agree.

(c). Other components.

- **International Considerations**

The process I have described is not inconsistent with the International Pacific Halibut Commission's procedures.

The commercial TAC is currently determined as follows. The IPHC determines the harvestable surplus available in Canada, Area 2B. Deducted from that is an amount

allocated to First Nations for food, social and ceremonial purposes pursuant to Section 35 of the *Constitution Act*, commercial wastage and by-catch mortality. The Commission then deducts the estimated recreational catch. What is left is the commercial TAC. The recreational catch is estimated by reference to the previous year.

Under the procedure advocated in this report, the Commission would start as it presently does with the harvestable surplus. Again, First Nations food, social and ceremonial allowance would be deducted, as would bi-catch mortality. The remaining amount would be the catch limit for both commercial and recreational. An amount would be allocated to recreational. The commercial allocation would have deducted from it commercial wastage, leaving the commercial TAC.

- **First Nations**

The plan I have described takes account of food, social and ceremonial fish. In addition, if treaty obligations are incurred, consideration must be given to compensating not only commercial IVQ holders but the recreational sector.

- **Operational Considerations**

In my terms of reference there is mention of the need for catch reporting and monitoring standards which meet allocation requirements. I have addressed in an earlier part of this paper the importance of improving catch records and monitoring.

All of which is respectfully submitted this 31st day of October, 2002.

STEPHEN KELLEHER, Q.C.