



## Decision-making and dispute settlement

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### PURPOSE

To provide the PRIPHC02 with information regarding the Performance Review Criteria 5: Decision-making and dispute-settlement

### BACKGROUND

#### Criteria 5: *Decision-making and dispute settlement*

- i. Decision-making
  - Extent to which IPHC has transparent and consistent decision-making procedures that facilitate the adoption of management regulations in a timely and effective manner.
- ii. Dispute settlement
  - Extent to which the IPHC has established adequate mechanisms for resolving disputes among Contracting Parties.

### DISCUSSION

The information currently available relating to Performance Criteria 5 are provided at [Appendix A](#).

### RECOMMENDATION

That the PRIPHC02 **NOTE** paper IPHC-2019-PRIPHC02-07 which provides information related to the Performance Review Criteria 5: *Decision-making and dispute settlement*

### APPENDICES

[Appendix A](#): Performance Review Criteria 5: *Decision-making and dispute settlement*

## APPENDIX A

### PERFORMANCE REVIEW CRITERIA 5: DECISION-MAKING AND DISPUTE SETTLEMENT

#### Criteria 5: *Decision-making and dispute settlement*

- i. Decision-making
  - Extent to which IPHC has transparent and consistent decision-making procedures that facilitate the adoption of management regulations in a timely and effective manner.

The Commission progressively decided to treat all meetings (Commission and its subsidiary bodies) as open unless specifically closed (sessions pertaining to personnel remain closed). All sessions are also live webcast to the public and the web broadcast incorporates the ability to receive questions from and respond to the on-line audience. Audio recordings of all sessions are also published on the website, and youtube channels for the public record. For example, see the following two links, the first being for the 95<sup>th</sup> Session of the IPHC Annual Meeting, and the second being a sublink to the audio recording from the same meeting posted on youtube. The link is included in the 'Meeting results' of the AM095 page:

**AM095 meeting page:** <https://www.iphc.int/venues/details/95th-session-of-the-iphc-annual-meeting-am095>

**Youtube link:**

<https://www.youtube.com/playlist?list=PLww0sbZpeo2dBacOa8qPmBQyOW0LkDvD1>

In session, all attendees, including observers and members of the public, as well as the webinar audience are able to pose questions and have them answered by the Commission in two-way dialogue during the meeting.

The Commission also directed the CB and PAB to open their meetings to the public from 2017. Thus, all IPHC subsidiary bodies are open to the public. In addition, meetings of the Management Strategy Advisory Board (MSAB) are webcast (one-way only), and the meetings of the MSAB, the Scientific Review Board (SRB), and the Research Advisory Board (RAB) are recorded.

The Commission's Rules of Procedure have been updated three times since the PRIPHC01.

**IPHC Rules of Procedure (2014):** Minor improvements made to clarify the functions of the Commission.

**IPHC Rules of Procedure (2017):** Substantially updated by incorporating terms of reference and processes for each subsidiary bodies. A requirement for review and revision every two (2) years.

**IPHC Rules of Procedure (2019):** Further revisions to refine the terms of reference and procedures the subsidiary bodies to reduce potential overlaps in mandate. In addition, a 'code of conduct' was added to guide the interactions of the subsidiary bodies. The decision making process in-session and also intersessionally are clearly defined in the IPHC Rules of Procedure (2019), Rule 11 – Decision making.

Meeting invitations for Commission and subsidiary body meetings are issued not later than 90 days in advance of the session (<https://www.iphc.int/uploads/pdf/basic-texts/iphc-2019-rules-of-procedure.pdf>).

All documents for Commission and subsidiary body meetings are prepared in a standard format and posted at the IPHC website (<https://www.iphc.int/iphc-meetings>). Documents prepared for meetings

are posted not later than 30 days in advance of the session, and a comprehensive meeting report is posted as quickly as possible following each session.

In addition to posting at the IPHC website, meeting results are published to stakeholders and the public via IPHC News Releases and Circulars. (See the IPHC Documents webpage at <https://www.iphc.int/library/documents> for examples.)

The IPHC operates on a regular annual meeting cycle, with a three-year calendar of meetings approved annually by the Commission. (See <https://www.iphc.int/uploads/pdf/am/2019am/iphc-2019-am095-22.pdf> for the current IPHC calendar.)

The timing of the IPHC annual meeting cycle, with major decisions made by the Commission in January or early February of each year, is geared to support the needs of the domestic regulatory processes for the Pacific halibut fisheries in both Contracting Parties. (See discussion in <https://www.iphc.int/uploads/pdf/am/2019am/iphc-2019-am095-22.pdf>.)

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ii. Dispute settlement

- Extent to which the IPHC has established adequate mechanisms for resolving disputes among Contracting Parties.

Each Contracting Party actively manages its fisheries in accordance with the IPHC Fishery Regulations (current [IPHC Fishery Regulations 2019](#)). The Pacific halibut Fishery Regulations published are however for information purposes only. Official regulations are adopted by the Contracting Parties, and are available at the following web-links:

- [Canada](#): Canada Gazette and on the 'Condition of License'
- [United States of America](#): The Federal Register

Contracting Parties may choose to object and thus not enact specific IPHC fishery regulations, and notify the other party accordingly. As the IPHC currently acts in a bilateral context, consent by both parties is required to adopt a new regulatory measure. In instances where agreement is not reached, the parties will enter into an inter-sessional discussion process. Should agreement be reached intersessionally, an intersessional decision may be made by consensus of all 6 Commissions (unwritten, however this is the current practice and needs to be added to the Rules of Procedure).

Alternatively, the decision is moved to the next session of the Commission for deliberation (ref. IPHC Rules of Procedure 2019, Rule 11, para. 5-10. At that point, only 2 commissioners from each Contracting Party (4 in total) are required to be in favour for a decision to be adopted. The IPHC Rules of Procedure (2019) describe how the above process works.

The Commission receives regular reports from each Contracting Party on management actions they have taken and the results, including data on removals in the directed and non-directed fisheries.

Because they each directly manage the fisheries in their own waters, disputes or disagreements between the Contracting Parties tend to be focused on the annual decision-making process, in particular the setting of mortality limits (catch limits) for each IPHC Regulatory Area.

Regulations adopted by the IPHC remain in force until changed or superseded by the Commission. The IPHC Convention<sup>1</sup> requires that in session, "all decisions of the Commission shall be made by a concurring vote of at least two of the [three] Commissioners of each Party." In the absence of such agreement, existing regulations remain in force, thus the operation of the fisheries is not hampered or restricted in the event the Commission fails to update regulations. The Commission strives to avoid this situation and it is rare, occurring only twice in the past 96 years.

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<sup>1</sup> "Protocol amending the Convention between Canada and the United States of America for the Preservation of the [Pacific] Halibut Fishery of the Northern Pacific Ocean and Bering Sea" (1979)