



Central Bering Sea Fishermen's Association

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September 30, 2020

Mr. Simon Kinneen, Chairman
Mr. David Witherell, Executive Director
North Pacific Fishery Management Council
1007 West Third, Suite 400
Anchorage, Alaska, 99501-2252

Re: C6 – Halibut ABM

Dear Mr. Kinneen:

The Central Bering Sea Fishermen's Association (CBSFA) appreciates the opportunity to provide the North Pacific Fishery Management Council (NPFMC) with comments on the Initial Review Draft Environmental Impact Statement (DEIS) regarding BSAI Halibut Abundance-Based Management (ABM) of PSC Limits, and the Discussion Paper (DP) on Approaches to Abundance-Based Halibut PSC Limits, both under agenda item C-6 Halibut ABM.

CBSFA believes that Alternative 4, with the inclusion of Element 8, and with further analysis and adjustment, could best respond to the purpose and needs statement and the objectives established by the NPFMC for this action. CBSFA asks for another initial review, and requests that:

- **the Council instruct the ABM working group to analyze the effect on the starting point element, the floor and the ceiling of removing all sectors except A80;**
- **the Council instruct the ABM working group to identify and correct the inaccuracies in the analytic model so that it more closely reflects management reality, and bring results and analysis to the Council;**
- **the Council modify the objective “Provide for directed halibut fishery operations in the Bering Sea” to add “. . . at a level that achieves equity through providing for the historic average proportion of directed halibut use from 2002 to 2011” and,**
- **the Council add a performance metric and further analysis to reflect the need for equity between the directed halibut users and the bycatch users.**

These requests are detailed in Sections IV, V, VI and VII.

I. Background:

CBSFA is the management organization for St. Paul Island under the Western Alaska Community Development Quota Program (CDQ). Through the CDQ Program, which was created in 1992, the federal government has awarded various species of fish, including halibut, (CDQ allocations) from the Bering Sea and Aleutian Islands (BSAI) commercial fisheries to six CDQ groups including CBSFA. Pursuant to the CDQ Program Statute (16 U.S.C 1855(i)(1)), the CDQ groups manage these allocations to promote social and economic development in their respective regions.

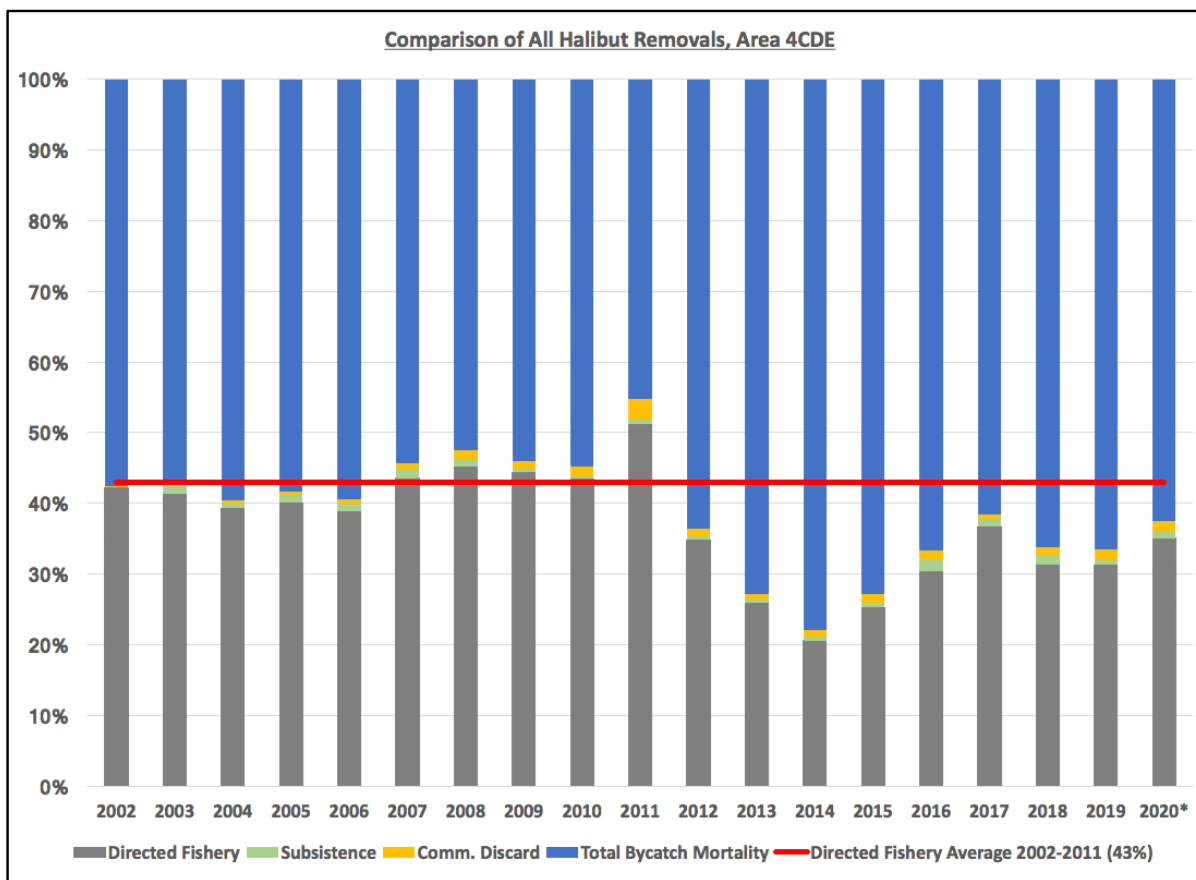
As the CDQ organization for St. Paul Island, CBSFA is actively engaged in the Pacific halibut fishery in IPHC Area 4CDE and is committed to developing a fishery-related economy that enhances the social and economic well-being of our community. A number of our residents also hold halibut IFQ. From a historic, cultural, subsistence, and commercial perspective, halibut is a critically important species to the mostly Unangan (Aleut) residents of St. Paul Island. As such, CBSFA has a direct interest in ensuring that Pacific halibut stocks are equitably utilized among user groups and that they are managed to ensure a viable and sustainable fishery for St. Paul Island in the long-term.

CBSFA also manages pollock and groundfish allocations that are important to CBSFA's business operations and its ability to fund projects and programs that benefit St. Paul Island in furtherance of CDQ Program objectives. Given its stake in both the halibut stocks and the groundfish fisheries that use halibut PSC, CBSFA is uniquely positioned to understand the balancing that is needed under the Magnuson-Stevens Act's (MSA) National Standards to provide for healthy, diversified, fisheries-based economies in halibut and groundfish dependent communities in the BSAI.

II. Unfair and Inequitable Use of the Halibut Resource:

Since 2012, as area 4CDE halibut landings declined by as much as two thirds from over 3.4 million pounds in 2011 and earlier years, to 1.2 million pounds in 2015, an ever greater share of the halibut resource has been taken as bycatch/PSC. On average this has resulted in a situation where the groundfish fisheries took close to 70% of the resource as PSC from 2015 to 2019, leaving about 31% for the directed fisheries, whereas from 2002 to 2011 the share of the resource averaged 55% PSC use, 43% directed¹.

¹ IPHC-2018-AM094-09. Table C2. Time-series of removals from all sources by regulatory Area, Table C1. Time-series of fishery landings by regulatory Area; IPHC-2020-AM096-00. Table 3. Recent mortality of Pacific halibut from all sources by IPHC Regulatory Area.; IPHC-2020-AM096-00. Table 2. 2019 estimates of total removals



This development has had a detrimental impact on halibut dependent fishermen and communities throughout the BSAI most of whom are Alaska Native. Reduced FCEYs have in many instances made the directed fisheries unviable. As noted by the ABM Draft Social Impact Assessment, the halibut quota was too low to economically run processing operations in many communities. In St. Paul's case, in order to maintain the economic and social benefits of its halibut fishery at such low levels, CBSFA has had to subsidize the operations of the local processing plant. Clearly, directed fishermen and their home communities have borne the brunt of the conservation effort of the halibut resource at the current lower levels of abundance. This is inequitable, unfair, and in violation of the MSA's National Standards.

In recognition of this reality, the NPFMC took action in June of 2015 to reduce halibut PSC limits by an overall 21%. This was an important action and resulted in achievable bycatch reductions. These reductions, however, have not been constraining on the groundfish sector as evidenced by the fact that in the intervening years, PSC usage has been well below the new PSC limits. Meanwhile, the ongoing instability in the BSAI directed halibut fishery and the continued decline in halibut abundance and directed fishery amounts, and in participation by dependent fishermen and communities is further evidence of the limited benefits of the June 2015 action.

At the time, the NPFMC recognized that compliance with the MSA's National Standards required further action. A majority of Council members, including the NMFS representative, stated on the record that the proposed PSC reductions were only a "first step." *See* News and Notes, NPFMC, June 2015. Indeed, the analysis for the action conceded this very point.² This was a tacit admission that the action to reduce bycatch failed to reach "the extent practicable." The MSA does not accept promises of future action in place of compliance. *Pacific Marine Conservation Council v. Evans*, 200 F. Supp. 2d 1194, 1201 (N.D. Cal. 2002). Action on halibut ABM is long overdue.

III. BSAI Halibut Abundance-based Management of PSC Limits:

In 2016, after presentation of the first discussion paper on ABM, the NPFMC adopted a Purpose & Needs Statement for this action (subsequently modified in 2017) which noted that "[t]he current fixed yield-based halibut PSC caps are inconsistent with management of the directed halibut fisheries and Council management of groundfish fisheries, which are managed based on abundance." To guide the development of the action, the NPMFC derived several objectives roughly based on the pertinent National Standards, and reflective of the Purpose and Needs Statement:

- Halibut PSC limits should be indexed to halibut abundance
- Halibut spawning stock biomass should be protected especially at lower levels of abundance
- There should be flexibility provided to avoid unnecessarily constraining the groundfish fishery particularly when halibut abundance is high
- Provide for directed halibut fishing operations in the Bering Sea
- Provide for some stability in PSC limits on an inter-annual basis

CBSFA believes that Alternatives 3 and 4 are potentially most responsive to the purpose and needs statement and to the objectives listed above, with the suggested modifications. These alternatives are also responsive to the balancing required by the National Standards.

A majority of fisheries are managed based on abundance. It makes sense that use of a fishery, whether directed or through PSC be based on the abundance of the resource. At times of low abundance use of the resource must be constrained in order to conserve it. The fundamental problem in the way halibut is managed by both the IPHC and the NPFMC (through groundfish PSC limits) is that the PSC limits are fixed, inflexible while the directed halibut limits are governed by abundance. This means that at times of low abundance, as has been the case since

² See pages 55-57 of the Draft Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis for a Proposed Amendment to the Fishery Management Plan for Groundfish of the Bering Sea/Aleutian Islands Management Area, dated May 2015 (Draft EA/RIR/IRFA).

2012, the directed fishermen bear the burden of conservation through cutbacks. This has impacted a number of fishermen and halibut dependent communities. Many have left the fishery entirely. This is unfair, unequitable, and a violation of National Standards 4 and 8.

Although the modeling and the ranges examined by the DEIS currently show that the benefits of ABM to the spawning stock biomass (that is the sustainability and conservation of the resource) are limited, that does not detract from the sound basis for managing halibut based on abundance. We address the shortcomings of the model and analysis in Section V. The halibut resource has clearly declined since 2011 and ABM is the most flexible, sensitive, and responsive tool for responding to fluctuations in the fishery, as well as the resulting impacts on the multiple user groups.

The objectives established by the NPFMC for this action, as well as the National Standards, are collectively best served through ABM, whether: indexing halibut PSC limits to abundance; protecting halibut spawning stock biomass especially at low levels of abundance; providing flexibility to avoid constraining the groundfish fishery particularly when halibut abundance is high; provide for directed halibut fishing operations in the Bering Sea; or providing for some stability in PSC limits on an interannual basis. The status quo which involves a fixed PSC limit is not responsive to conserving the resource at low levels of abundance.

In the absence of ABM, the other possible tool is to further reduce PSC limits either through an action similar to the one the NPFMC undertook in Sitka in 2015 or by adjusting the setting of PSC limits annually through the groundfish specifications process. At the low levels of halibut abundance currently being experienced, an additional option is through Emergency Action under MSA Section 305 to cut PSC on an ad hoc basis in order to preserve the directed fisheries. While potentially one or two of the NPFMC objectives and National Standards might be addressed by the above, these tools are clearly not as responsive to the collective National Standards. In recognition of this, the NPFMC has specifically rejected these approaches when previously proposed.

IV. Council Action at this Meeting:

Given the dependence of St. Paul Island on the halibut fishery, our continuing concern for the declining halibut resource, and the clear need for equitable management of halibut bycatch, particularly in times of low halibut abundance, **CBSFA supports the Council going forward with another initial review of this action, with the additional analysis, changes and revisions identified in this comment letter.**

Regarding staff's suggestion to review the Purpose and Need Statement in light of the reduced scope of the action to apply only to the Amendment 80 sector, we point out that we did not advocate for removing the other sectors. Indeed, having one sector's bycatch managed according to abundance, and the other sectors, especially TLAS and CDQ, managed under static

caps, presents potential operational issues, and reduces the overall effectiveness of the alternatives in achieving Council objectives.

As one CDQ group, CBSFA would like to reaffirm our commitment to an abundance-based and equitable approach to bycatch management. As an indication of that commitment, in 2015 and 2016, CBSFA left our CDQ flatfish species allocation in the water, as the halibut bycatch saved are seen as more important to the local community-based halibut fisheries in Western Alaska.

In addition, we ask for further analysis of the effect of removing other sectors on the original intent of the starting point, the floor and the ceiling. The removal of all other sectors, and the method used to determine the A80 share of the starting point, the floor and the ceiling, may alter the intended outcomes of the stakeholder-derived alternatives. We have already seen that the working group's method of arriving at the A80 share of the Council-imposed floor of 1000 MT overall involved a choice not made by the Council, and affects the outcomes of Alternative 4.

Regarding **the Objectives**, we request the addition of clarifying language to the objective **“Provide for directed halibut fishery operations in the Bering Sea.”** We recommend making clear what **“providing for the directed fishery”** actually means. We propose that equity be the goal, and that equity be described in relation to the historic proportion of halibut available to the directed fishery before the current decline that began in 2011. We request the addition of **“... at a level that achieves equity through providing for the historic average proportion of directed halibut use (FCEY?) from 2002 to 2011.”**

We continue to support the potential for Alternative 4 with its essential elements to meet the Council's objectives. It is imperative to include the starting point identified in Alternative 4, and the added Element 8, with the ability to reduce the PSC cap beyond the floor in case of halibut abundance below B30. However, analysis should be focused on the effect on the starting point of removing sectors from this action: the resulting starting point applied just to A80 needs particular consideration.

Also, if the PSC cap is permitted to be responsive to halibut abundance going down, as far as needed to maintain equity of access as well as protection of the resource, the Council could consider allowing the PSC cap to also be responsive to very high abundance of halibut.

However, **we are deeply concerned that shortcomings in the model are resulting in outcomes across the alternatives that are not representative of reality.** We ask that the model be corrected. Without better information provided by the model, and subsequent qualitative analysis, the public will be unable to see the true outcomes of the action alternatives, and the Council will be unable to make informed policy decisions. The origins of the inexplicable inconsistencies of the model results must be made transparent. Closed meetings of the Council working group during the development and discussion of the operating model has resulted in very little public understanding of the process, the assumptions and the parameters. This is in

contrast to the public meetings of the Crab and Groundfish Plan Teams where models pertaining to those species' abundances are discussed and shared.

We also ask that the Council consider the addition of a performance metric to the analysis, one that acknowledges the difference between the last nine years (2011-2019) average proportion of directed fishery to bycatch use of halibut, and the previous 10 years (2002-2011) historical proportion. The performance metric would measure the level of adherence to the equity concept expressed in the Objective modification language recommended on Page 4.

V. DEIS/Model Corrections Needed:

Effects on the directed fishery and SSB:

While we see that both Alternative 3 and Alternative 4 constrain A80 and add to the directed fishery, we believe that **the model outcomes are underestimating the effect of the alternatives on the directed halibut fishery, particularly in Area 4CDE.** For a variety of reasons, the model is dampening the feedback loop between PSC and the directed fishery.

Also, the analysis shows that there are basically no observable impacts to Spawning Stock Biomass (SSB) across the alternatives (Figure 6-13). They have no significant effect on SSB. As long as $TCEY > \text{Total Mortality}$ this result would hold, since the directed fishery acts as a buffer against PSC mortality. When the model was run with an extreme low abundance scenario there is a noticeable impact to SSB. But in the analysis as currently constructed, are there any area specific effects that are masked by considering the BSAI as a whole? To expand more on that question, are there any results that show Area 4CDE Total Mortality exceeding the 4CDE TCEY (no directed fishery for 4CDE) but in which SSB could still be protected as long as the BSAI TCEY is still greater than Total Mortality. We have come very close in reality to having significantly reduced FCEYs in 4CDE.

Why is the model generating results that do not match expectations and management reality in these two areas? Generally, there may be confusion about the difference between a projection model, which is based roughly on the IPHC halibut stock assessment, and a prediction model. The projection model was not designed to be used as a prediction model, as it is here.

Also, there are many places where the IPHC process may not be accurately reflected in the model, and without direct understanding of the model it is difficult to pinpoint those areas. **We request that the Council direct the ABM working group to identify and correct the aspects of the operating model that result in inconsistencies in these areas,** and as needed elsewhere, and specifically ask the SSC for their advice in doing so. In addition, we suggest that the Council explore the possibility of engaging independent modeling experts to identify and remedy these model issues:

1. The assumption of TCEY related to SSB is quite flat, showing a 10% change in the TCEY with 1 unit change in the spawning biomass. This is missing the importance of small fish in determining the TCEY and doesn't account for the population structure like Spawning Potential Ratio (SPR) does. The model uses approximation rather than Spawning Potential Ratio (SPR) to drive results, which dilutes the impacts on PSC limits and thus on the directed fishery.
2. Fish movement was taken from IPHC research, but the BSAI here is modelling 4A, 4B, and 4CDE. Perhaps movement of young fish is high (ages 2-6 are fixed to be the same). In the IPHC Management Strategy Evaluation (MSE) Operating Model, different movement rates can correlate with other parameters to produce similar results, and movement is probably one of the most important areas to investigate further.
3. One of the most unexpected results is that directed fishery yield is not responsive to changes in the PSC. Benefits of O26 bycatch reductions to the directed fishery should be at least one to one – for every pound of O26 bycatch reduction the directed fishery should benefit by approximately a pound³. In the discussion paper, on page 36, analysts say “In the most recent years, the yield-gain ratio has been approximately a 1.2 pound gain to the coastwide directed fishery for a one-pound reduction in coastwide bycatch mortality.” The current outcomes of the model do not reflect that reality.
 - a. Figure 6-2 shows a slight gain to directed fishery yield. It is hard to determine the gain in yield because it is not clear what the y-axis is (it is not 1 t, but may be 1000 t). If 1000 t, then the gain could be maybe 10-20%. That doesn't seem reasonable, especially in 2021 where you would expect a much greater trade-off between a drop in PSC and the directed fishery yield. Furthermore, Figure 6-6 shows large declines in PSC limit but little gain in directed fishery.
 - b. Is this because trawl fishery selectivity is highest for small fish? The selectivity scenarios seemed to have little effect. Perhaps movement of fish out of BSAI is high before they are encountered by the directed fishery, but there doesn't seem to be an effect on the “other” area.
 - c. The percentage of the TCEY that goes to the directed fishery seems high in Table 6-6 (see Errata) which shows it at 77% under status quo in 2025, even though currently the directed fishery limit is 48% of the TCEY. This occurs with a decline in Spawning Biomass over the next 5-10 years in the model. Regardless of

³ Stewart et al., 2020. Analysis of the effects of historical discard mortality in non-directed fisheries. IPHC- 2020 AM096-INFO6. Accessible at: <https://iphc.int/uploads/pdf/am/2020am/iphc-2020-am096- inf06.pdf>.

the actual values in this table, the key outcome is that Alternatives 3 and 4 result in a higher percentage.

4. The analysis' conclusion that O26 bycatch reductions offer no benefit to the SSB does not make sense. If there is a reduction in bycatch mortality, how can that reduction not accrue to the directed fishery and/or to the SSB. If there isn't a 1:1 benefit to the directed fishery, then what is happening to the fish? Would they not provide a benefit to the SSB if the directed fishery isn't harvesting them?
5. The model does not include the effect of under-26 inch (U26) bycatch on the TCEY (Total Constant Exploitation Yield) and the directed fishery.
 - a. The IPHC incorporates the impact of U26 bycatch as part of arriving at the TCEY for each regulatory area. The anticipated O26 bycatch is then subtracted to arrive at FCEY – those halibut that will be available to the directed fishery. The treatment of U26 is particularly important in the first few years of the simulation as is appears the biggest differences among alternatives are occurring in U26 usage. The IPHC includes the effects of U26 in each year's TCEY calculation, even if they are spread out over the entire coastwide TCEY. Treatment of U26 did not seem so crucial when all sources of PSC were under consideration, but now that the focus is on only the A80 sector, these effects are much more important.
 - b. In addition, the amount of halibut allocated to Canada is augmented by 50% of the U26 bycatch in the Alaska areas. This certainly affects the directed users in Area 4, as it does all Alaska directed users.
 - c. Also, the DEIS does not show how reductions in U26 bycatch will benefit the directed users throughout the range in future years.
6. The spatial effects in the Bering Sea are not accounted for in the model. The variability in year-to-year PSC usage by individual IPHC Regulatory Area is potentially a large contributor to variability in directed fishery limits, but is not included in the current analysis as the focus is at the level of the entire BSAI. The model outputs are in relation to ALL of Area 4, with the inclusion of 4A and 4B with Area 4CDE. So the model is calculating effects that are for the entire BSAI rather than for just the Bering Sea. It is Area 4CDE where directed halibut availability is most affected by the magnitude of A80 bycatch, occurring mainly on the shelf. Bycatch could be reduced in Areas 4A and 4B while increasing in 4CDE. It is possible for PSC removals in 4CDE to cause a negative TCEY in this area, resulting in no directed fishery in this area
7. The no-recruitment scenario (extreme low scenario for Spawning Biomass (SB)) may not be the best way to investigate the effect of Element 8 (application of the 30:20 control

rule to the PSC limit). This is because the dynamic Relative Spawning Biomass is used to determine the status which accounts for recruitment. As stated in point b) on page 23, “... *changes in stock status are insensitive to changes in recruitment regimes, and other life history changes and only sensitive to changes in fishing mortality levels. In these results, this means that the population is unlikely to fall below 30% of unfished spawning biomass unless the TCEY or PSC limits are large.*” The low recruitment scenario will have a feedback on the fishing mortality because the biomass will decline and fishing intensity will increase, and this is seen in Figure A2-4, but it takes 40 years to get there. Also, the Control Rule 0 run indicates that the 30:20 control rule was not applied to the directed fishery limit as well. An important comparison is between the Control Rule applied only to the directed fishery, and CR applied to both the directed fishery and the PSC limit.

VI. Element 8, and Effects on the SSB:

Another distinct and problematic aspect of the model, and the resulting analytical narrative, is the treatment of Element 8. This element was requested by stakeholders and added at the February NPFMC meeting in order to illustrate the effect of more steeply reducing PSC caps in times of low halibut abundance, or when the coastwide stock is below B30. This was suggested in response to observations in October 2019 that none of the alternatives as written had an appreciable effect on the Spawning Stock Biomass (SSB), even at low levels of abundance.

Apparently, the current operating model inputs/assumptions regarding the abundance indices did not go below B30. However, the SSC had recommended that the modelers provide a scenario that DID assume very low abundance indices, well below B30, which resulted in the clear conclusion in the DEIS (Appendix 2) that imposing Element 8 in those instances reduced the PSC cap to lower levels, and did indeed have an effect on the SSB.

A related issue is the imposition of a floor no lower than 1000 metric tons (for all sectors combined at that time) on each alternative. That barrier would not permit the PSC cap to go down to very low levels in response to very low levels of halibut abundance, and would thus not be protective of the halibut stock under very low scenarios.

In order to illustrate the potential effect of Element 8, indeed the effect of very low halibut abundance, the cap would need to be allowed to go below the floor. The analysts only provided the results of Alternative 4 using Element 8, and did so both with and without a floor.

Finally, the analysis should acknowledge the clear need for an eventual rule to include management responses to low levels of abundance. This condition should be reflected in the operating model itself, not just in a separate scenario as it is currently. All managed species fisheries in the Council purview operate with rules that include the management response to low levels of abundance. Council management of the halibut bycatch fishery should as well. A

system for management at low abundance of halibut would need to be part of any action alternative.

VII. Other DEIS Issues and Conclusions:

1. Equity needs to be defined and measured:

This action sprang from the Council's determination in June 2015 that bycatch reduction should be further considered, and the Council's subsequent decision that abundance-based management was the best way to proceed. The clear connection between halibut abundance and the directed halibut fishery is captured in the purpose and need statement:

“When halibut abundance declines, PSC becomes a larger proportion of total halibut removals and thereby further reduces the proportion and amount of halibut available for harvest in directed halibut fisheries”.

Refer to Page 3, bar graph on proportions, with average proportions from 2002-2011 and from 2012 to 2019.

That was the nut of the matter then, and it remains a driving issue for this Council. The signal that was flashing five years ago has become blindingly clear, as halibut abundance has declined and the proportion available to the directed fishery has further declined. However, this severe and growing lack of equity between the two user groups has not been directly addressed in the analysis, and needs to be highlighted by additional language in the Council objectives. We recommend making clear what “providing for the directed fishery” actually means. We propose that equity be the goal, and that equity be described in relation to the historic proportion of halibut available to the directed fishery before the current decline that began in 2011.

Also, none of the performance metrics have been explicitly designed to measure the proportional change, and the attainment of equity. Indeed, there has been very little discussion by the Council of the performance metrics, which were constructed by the working group in response to some suggestions gathered by the now defunct stakeholder committee.

The directed halibut fishery stakeholders proposed a performance metric in 2019 that addressed the equity issue, but it was not chosen by the working group, and the Council passed the working group recommendations with little discussion.

To address equity, we ask the Council to add language to one of the Objectives and add a Performance Metric.

Recommended addition to the Objective: “Provide for directed halibut fishery operations in the Bering Sea.” We request the addition of “. . . at a level that achieves equity through

providing for the historic average proportion of directed halibut use (FCEY?) from 2002 to 2011.”

Recommended additional performance metric: Number of years that the proportion of halibut available to the directed fishery compared to the halibut harvested by the bycatch fishery is equal to the historical proportion of those fisheries in the period 2002 through 2011. (higher is better)

We also request that the analysis address the extent to which each alternative meets this performance metric.

2. Status Quo Starting Point is counter to the Council objectives:

It is clear from the analysis that any rule that adopts the current usage as a starting point is not going to make a difference in the directed fishery, or likely in the halibut stock.

As illustrated on page 21, the directed fishery would have been worse off under Alternative 2 (which uses the current status quo cap as a starting point) from 2013 through the present than it was and is under status quo. Over the years, the BSAI directed fishery has fallen further, and the 4CDE directed fishery catch limit has threatened to fall to zero. The Council will not restore a measure of equity to the directed fishery unless the starting point is at or below the current use--and can continue to drop if abundance continues to decline.

Page 69 in the analysis shows that since 2015, when PSC cap reductions were approved and further reductions discussed, abundance has dropped by an additional 15% to 33%, depending on which of the Council’s selected indices are used. No starting point should be selected that results in a PSC limit that is higher at 2015 levels of abundance than the cap set in 2015 (1745 mt); only Alternatives 3 and 4 meet this criterion. Alternative 2 would establish bycatch caps **higher at 2015 levels of abundance** than the 1745 mt limit approved by the Council—clearly a step away from the objectives of providing for a directed fishery.

3. Trawl survey as index

It is also clear that using the trawl survey as an index provides for a large disconnect in this action. The U26 fish portion of the trawl survey numbers have less of an immediate impact on the calculation of the halibut available to the directed fishery than do the O26 fish in that survey, and the O26 fish captured in the longline survey.

VIII. Comments on the Social Impact Assessment:

1. St. Paul’s Dependency on Halibut:

CBSFA believes the Initial Review Draft Social Impact Assessment (SIA) that is included as an appendix to the ABM DEIS, does a good job of describing St Paul’s halibut dependency, noting

for example that from 2010-2019 “the St Paul halibut fleet was the highest producing halibut fleet of any community in any CDQ region” and was exceeded among all Alaska communities only by the GOA communities of Homer and Kodiak (see SIA p. 79). The SIA further notes that “the St. Paul halibut fleet is 100% dependent upon BSAI halibut...with virtually no revenue diversification” (SIA p. 79).

CBSFA and the entire community of St. Paul are proud of their achievements in this regard. Pursuant to the directives of the CDQ Program, CBSFA has used the development and maintenance of a local halibut fishery as a major source of employment, income, and subsistence for the community and its members, hence its efforts with the NPFMC and the IPHC to both reduce halibut PSC limits in 2015 and construct a halibut abundance-based management system that is responsive to conserving the resource and providing for directed halibut fishing operations in the Bering Sea.

2. Regulatory Context, National Standard 4 Guidance Missing:

There is a topic in the SIA section on the Regulatory Context (see SIA pp. 3-4) which CBSFA finds is missing. The SIA indicates in this section that its assessment of the proposed action is guided largely by MSA National Standard 8, NEPA, and Executive Order 12898 regarding Environmental Justice in Minority and Low Income Populations. CBSFA believes that in addition to these, an important guide to SIA and the NPFMC is National Standard 4 – Equity in Allocations, and more specifically the NMFS guidelines to National Standard 4 (Section 3 Factors in Making Allocations) which state that “[w]here relevant, **judicial guidance and government policy concerning the rights of treaty Indians and aboriginal Americans must be considered in determining whether an allocation is fair and equitable.**”⁴

The SIA has highlighted 17 Bering Sea halibut-dependent communities in its assessment, most of which are overwhelmingly Alaska Native. Many of these communities have been severely impacted by the status quo and several are no longer participants in the fishery. As such, failure to properly manage the groundfish fisheries responsible for halibut bycatch to the detriment of these Native communities may have already violated federal trust responsibilities and treaty rights towards Alaska Natives. The ‘trust responsibility’ is a legal principle that the U.S. Supreme Court noted in United States v. Mitchell (1983) is “the undisputed existence of a general trust relationship between the United States and the Indian people” and requires the federal government to support tribal self-government and economic prosperity, duties that stem from the government’s treaty guarantees to protect Indian tribes and respect their sovereignty. The purpose behind the trust doctrine is and always has been to ensure the survival and welfare of Indian Tribes and people. This includes an obligation to provide those services required to protect and enhance tribal lands, resources, and self-government, and also includes

⁴ See: 50 CFR 600.325

those economic and social programs which are necessary to raise the standard of living and social well-being of the Indian people to a level comparable to the non-Indian society.⁵

Since the current action, which is partly allocative in nature, could have a disproportionate impact on Alaska Natives, National Standard 4 is a key guide to the NPFMC's decision-making on this action. As noted in the National Standard 4 guidelines, the NPFMC must take into account the government to government relationships and treaties that the pertinent Tribal Governments have with the Federal Government and which may be affected by future NPFMC action. In the case of St. Paul and St. George in particular, as noted by the Department of Interior in 2015, the tribal governments and members have federally protected fishing rights, the protection of which is vitally important (see DOI Letter attached). The DOI letter further notes that this requires access to the halibut fishery resource at a level sufficient to sustain the local fishing economy and the subsistence needs of the Tribe.

Obligations by the federal government and its agencies towards the Pribilof Aleuts are further spelled out in the Fur Seal Act of 1983 (P.L. 98-129) and the Pribilof Islands Transition Act of 2000 (P.L. 106-562). The primary objective of both of these acts of Congress was to direct federal agencies and provide funding to "promote the development of a stable, self-sufficient enduring and diversified economy not dependent on sealing" in the Pribilofs which was understood in the Congressional Record as providing for the sustained participation of both Pribilof communities in the Bering Sea fisheries. Cognizant of these obligations and of the tragic history of the Pribilof Aleuts, both as slaves of the federally managed and highly profitable fur seal harvest, and during the World War II removal of the entire population to Funter Bay which resulted in the death of 30% of the Pribilof Aleut population due to neglect and mistreatment, Congress has further authorized and appropriated close to \$150 million since 1983 for the development of harbors and other fisheries-related infrastructure on St. Paul alone, as well as enacted legislation such as the Crab Rationalization Program to protect, through regionalization, the stake of the Pribilof Aleuts in the fisheries that sustain them.

As noted by the SIA concerning CEQ guidance on NEPA, "the identification of a disproportionately high and adverse human health or environmental effect ... on a low-income population, minority population, or Indian Tribe does not preclude agency action from going forward... Rather, the identification of such an effect should heighten agency attention to alternatives, mitigation strategies, monitoring needs, and preferences expressed by the affected community or population" (see footnote 4, SIA p. 4). In the context of ABM, directed halibut fishermen including those that are represented by CBSFA who are also members of the St. Paul Tribe, have expressed a clear preference for Alternative 4 of the action, which they believe and the DEIS shows, is most responsive to the purpose and needs statement and the NPFMC

⁵ See: bia.gov/frequently-asked-questions

objectives, as well as to federal laws and trust responsibilities towards the Pribilof Aleuts and other Alaska Natives.

IX. Discussion Paper on Possible Approaches to ABM Halibut PSC Limits:

We have wrestled with the uncertainty created by the introduction of potential additions to the main action alternatives, several of which fall outside an abundance-based management action. Our comments on the inadmissible nature of two of the three discussion paper suggestions are below.

However, there was clarity provided in the discussion paper that added to our understanding of this action.

Table 2-2 (p. 9) and Figure 2-4 (p. 10) show that eight out of ten years may have resulted in PSC limits that could have potentially been constraining. Note that with implementation of deck sorting, the effective DMR in recent years has been 48-53%. For 2015 and prior years, it was closer to 80%. If the DMR under deck-sorting is applied to those prior years, then the PSC limit under the proposed 3x2 would NOT have been constraining. Note that 2019 has the highest “Encounter” in the last 10 years.

Figure 2-5 shows how disconnected the current PSC management is. From 2017-2019, both indexes have trended downward while A80 mortality has increased. Catch/Encounters from 2015-2019 has an upward trend while the indices have a downward trend over the same time period. That should not be allowed to happen in a properly managed fishery.

1. Lookup Table:

Of the three suggestions, only one is based on halibut abundance: the concept of using a look-up table rather than a continuous line to arrive at a PSC cap. Element 7 in the main motion is the use of a lookup table, and may be included in an alternative; the element is a relic of a proposed alternative from the freezer longline sector, removed in February by the Council. The freezer longline sector proposal used a 9 by 9 lookup table. This iteration uses what is actually a 3 by 2 lookup table, and is thus even more coarse in its results – as pointed out in the discussion paper. The discussion paper makes clear that a table with more dimensions would be more responsive to the changes in abundance in the indices, and would also allow for more stability. The paper does a good job of describing the potential volatility of a PSC cap which is based on very few steps in a stairstep approach.

If such an approach is taken, CBSFA would support a lookup table that is closer to 9 by 9.

In contrast to the Council’s earlier direction – reflected in the February motion – to use only one index to determine halibut abundance, the lookup table uses both indices, the trawl survey and

the longline survey. Instead of breakpoints and the magnitude of the changes at those breakpoints expressed in Elements 4 and 5, the lookup table approach expresses those breakpoints in its definition of high, medium and low values, and in the magnitude of the PSC cap at the intersecting abundances. Clearly, the Council would be making decisions about those values in the same way they would be making decisions about the values expressed using Elements 4 and 5.

Perhaps the main contrast between the lookup table and the current alternatives is the use of indices. As stated, the lookup table uses both indices. The current Alternative 2 uses the trawl index; Alternatives 3 and 4 use the setline survey index. The use of quite different indices is one of the factors leading to the widely different outcomes of the two alternative types. If a new alternative is introduced with the use of both indices once again, there could be wide differences among the alternatives' outcomes caused in large part by the differences among the indices used.

We have no issue with using both indices – our original Alternative 4 used both indices, with the setline survey as the primary index. However, we would reject as unreasonable an alternative using both indices that did NOT give more influence to the setline survey. The setline survey is the index used by the IPHC to determine halibut abundance, and hence has a large impact on directed halibut fishery numbers. As such it is more applicable to the objectives of this action. The trawl survey captures a large percentage of smaller fish.

As proposed, the State's look-up table, with both indices currently at low levels, would place the PSC limit starting point in the low:low tier **with nowhere lower to go**. If abundance continues to drop, as it is projected to do based on the IPHC stock assessment, the full burden of conservation will again be placed on the directed fishery since the PSC limit would not be reduced. In essence, the look-up table equates the starting point to the floor and ties PSC limits to abundance only in coarse stairsteps upward. We believe this is a blunt tool for addressing the Council's identified objectives for this action. The Council would be better served by modifying Element 6 in Alternatives 3 or 4, which controls PSC responsiveness, if additional PSC stability is a Council objective.

We would ask the Council to very carefully consider the values in the lookup table and design them to achieve those objectives of the Council related to providing for a directed fishery. These objectives should include the language suggested in Section VII to help define the concept of equity.

If the Council decides to add the concept of a lookup table to the action, we would like the opportunity to develop a directed halibut stakeholder alternative that uses the lookup table approach, and also ensures that the most important aspects of Alternative 4 remain intact: appropriate breakpoints and values for low, medium and high; the lower starting point, and the application of Element 8 in response to very low levels of halibut abundance. The floor should

at least be as low as 496MT (the A80 share of 1000 MT), and Element 8 should be overriding if abundance declines below B30.

Finally, since the lookup table results would presumably be run through the same modeling process as the current process results, **it would remain imperative that the model shortcomings be effectively addressed.**

2. Performance Standard Concept:

As the discussion paper states, the performance standard concept as presented is not part of an abundance-based management strategy for halibut bycatch. Rather, it revolves around the current, status quo, fixed PSC cap. As such, the concept as drafted by A80 should be dismissed from this action.

In addition, as the discussion paper illuminates, the performance standard approach using a number of years is problematic when applied to this action. Should the Council desire to create a regulatory performance standard, a different method would need to be developed to account for the very direct, annual relationship between bycatch use assumptions and the halibut available to the directed fishery.

Conversely, should A80 desire to use a performance standard program, the Council may consider endorsing a voluntary program that is designed by A80 to best meet their needs and goals, upon the conclusion of this action.

3. CDQ Compensation Concept:

CBSFA has concerns with the consideration of this concept for several reasons, some of which were detailed in the discussion paper.

A. NEPA:

Under the National Environmental Policy Act (NEPA) this concept may lie outside the scope of the current action, which is focused on managing halibut based on abundance. The CDQ compensation concept assumes the current, status quo, fixed PSC limit of 1745 tons for A80, and as such is not linked to the NPFMC's ABM action. In addition, if the CDQ compensation concept were the action taken by the NPFMC, under NEPA standards it would likely be invalidated because the NPFMC and NMFS failed to adequately consider all the responses or because it failed to consider a wide enough range of alternate management measures, including those that would prevent damage to the environment or have conservation benefits.

B. Area 4CDE Catch Share Plan:

Broadly speaking, the compensation concept could be a useful tool to provide for directed halibut fishing operations in the Bering Sea under low abundance conditions, but ONLY if it was based on a management system in which PSC limits were indexed to halibut abundance, AND if conservation of the halibut resource remained a priority of the NPFMC's action.

Also, as noted by the discussion paper, as proposed, the benefits would be limited due to the Catch Share Plan applicable to area 4CDE. The Catch Share Plan includes CDQ users, non-CDQ commercial IFQ holders and subsistence/recreational sectors. Since only 46% of additional directed fishery pounds associated with a reduction to the A80 PSC limit accrues to the CDQ groups, this concept would fail to meet its intent to directly create additional catch opportunity for all user groups in the Bering Sea.

C. MSA:

Finally, as pointed out by the discussion paper, a direct allocation of any additional halibut catch limits to CDQ groups would require amending the CDQ Statute that is part of the MSA. This would require an act of Congress – perhaps as part of the long-pending reauthorization of the MSA, or some other germane fisheries-related legislation. This is unlikely and uncertain at this time. Moreover, such an initiative would likely be contentious among CDQ groups, over long-standing differences regarding the proper level of fisheries allocations between the groups, as well as with other user groups that might be excluded from this allocation.

X. The MSA, the National Standards, and ABM:

Congress enacted the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to create a “national program for the conservation and management of the fishery resources of the United States.”⁶ When the provisions of the original act were insufficient to fulfill the conservation purpose of the Act,⁷ Congress passed the Sustainable Fisheries Act in 1996 to “put our fisheries back on a sustainable path.”⁸ The MSA also directs the Regional Fishery Management Councils to “exercise sound judgment in the stewardship of fishery resources.”⁹ The objectives of the MSA, particularly after the Sustainable Fisheries Act amendments, prioritize sustainability of the fishery resource over other objectives. Thus, any action by the Council must abide by that priority and cannot be “sound judgment” unless it does so.

⁶ 16 U.S.C. § 1801.

⁷ See, e.g., 142 Cong. Rec. H11418, 11439 (Sept. 27, 1996).

⁸ 142 Cong. Rec. S10794, 10811 (Sept. 18, 1996).

⁹ *Id.*

The overriding priority of fisheries management and any NPFMC action is to foster the long-term biological and economic sustainability of the nation's fisheries. Abundance-based Management of halibut and its derivative benefit of reducing bycatch at times of low abundance allows juvenile halibut to grow and contribute to the long-term sustainability of the population. Common sense compels the conclusion that bycatch reduction at low levels of abundance benefits the MSA's conservation objectives. The MSA requires that NPFMC action to promote these goals, yet the results of the DEIS minimize the conservation benefits of ABM. CBSFA believes that by addressing the recommendations made in sections IV, V, and VI of these comments, the DEIS will be more responsive to the MSA.

To further assist the Councils and NMFS in carrying out the requirements of the MSA, Congress mandated that all plans and regulations must be consistent with ten national standards,¹⁰ several of which are pertinent to halibut ABM.

- **National Standard 1 - Optimum Yield.**

National Standard 1 requires the Council and NOAA Fisheries to establish harvest limits that prevent overfishing while ensuring, on a continuing basis, the optimum yield from each fishery.¹¹ Notably, halibut bycatch is the only major species fishery that is not managed by the NPFMC on the basis of the overall health and abundance of the resource. Indexing PSC limits to abundance would help optimize yield across the fisheries as halibut PSC mortality directly reduces the fishery yield available to the directed fishery.

The IPHC has steadily reduced directed halibut catch limits over the last two decades in response to a declining available halibut resource and the need to conserve total halibut biomass in the face of massive removals by fishery sectors outside the Commission's regulatory jurisdiction.¹² Yet the halibut PSC limits remained virtually unchanged for 20 years at levels set during a period of high halibut abundance, subject only to minor reductions with the adoption of voluntary measures sporadically implemented within the A80 and groundfish fisheries.¹³ The NPFMC action in June 2015 which reduced overall PSC limits by 21% and A80 PSC limits by 25% was a significant, yet insufficient step in the right direction. Since 2015, the use of PSC by A80 has been under the PSC limits of 1745 MT and the sector has remained viable.

The imbalance between halibut PSC mortality permitted by the caps for the BSAI groundfish fisheries, and the yield available to the directed halibut fishery remains. At the NPFMC meeting in June 2015, CBSFA and other directed halibut stakeholders pointed out that only a 50-percent

¹⁰ 16 U.S.C. § 1851.

¹¹ 16 U.S.C. § 1851(a).

¹² Leaman, et al. 2015. Considerations Concerning Bycatch Controls and Abundance-based Prohibited Species Catch Limits for Pacific Halibut in the Bering Sea/ Aleutian Islands. Joint NPFMC-IPHC Meeting: 26.

¹³ Williams, G.H. Halibut bycatch limits in the 2014 Alaska groundfish fishery. Int. Pac. Halibut Comm. Report of Assessment and Research Activities 2014: 340.

reduction of halibut PSC could rebalance these fisheries and optimize yields among the various fishery sectors. The groundfish fisheries, including A80 and BSAI TLAS fisheries, could continue to function and remain economically viable at levels then under consideration. Furthermore, a reduction of 50 percent provided an appropriate buffer against lower TCEY in the future and would preserve more juvenile halibut to increase future fishery yields. CBSFA also noted that a decision by the NPFMC not to require these reductions would effectively close the directed fishery in Area 4CDE in favor of continued exploitation in the groundfish fisheries.

Neither the MSA nor the National Standard rules define optimum yield purely on financial terms. Keeping the profits of the A80 fleet virtually or entirely whole is not the “greatest overall benefit to the Nation”, when directed halibut fishermen and their home communities are being progressively excluded from the fishery. In the five-year period since 2015, the FCEY determined by the IPHC for area 4CDE has been so low as to make a directed halibut fishery unviable on at least two occasions. Keeping the 4CDE fishery viable required commitments made by the A80 sector to reduce halibut bycatch and mortality. This situation is unsustainable, inequitable and creates instability in the directed fisheries, and through the potential for emergency actions, the A80 sector and other groundfish fisheries as well.

- **National Standard 2 - Best Available Scientific information**

The proposed action is required to use the best available scientific information. If the intent of the Council model was to reproduce the IPHC modeling process, would it be more appropriate to use the IPHC model? The IPHC conducts their stock survey and assessment using peer-reviewed science; all products of the IPHC system use the best available science and should be incorporated into the analysis. Further, over the last five years, the IPHC has been engaged in further refining their management processes, and has developed a model, including a spatial model, that should be considered in the analysis of this action.

- **National Standard 4 – Equity in Allocations.**

National Standard 4 sets forth three requirements that must be met whenever fishing privileges are allocated: (i) the allocation must be fair and equitable; (ii) it must be reasonably calculated to promote conservation; and (iii) it must not allocate an excessive share of privileges to any particular group.¹⁴ Failure to ensure a viable directed fishery in area 4CDE is inconsistent this standard.

The BSAI halibut fishery is allocated among various halibut user groups, including the CDQ, IFQ, charter, and subsistence sectors. The CDQ and IFQ halibut harvesters operate under true catch share management programs. In contrast, participants in other BSAI groundfish fisheries,

¹⁴ C & W Fish Co. v. Fox, Jr., 931 F.2d 1556, 1563 (D.C. Cir. 1991); 16 U.S.C. § 1851(a)(9).

most notably A80, have no allocation of the halibut fishery resource.¹⁵ As such, they are not entitled to any halibut per se. Instead, their significant impacts on halibut abundance—and thus the halibut available to the directed fishery—are merely an incident of their allocation in *other* fisheries under the BSAI Groundfish FMP.

That said, the A80 sector impacts halibut abundance at a grossly disproportionate rate. Over time, bycatch mortality in this sector has reduced halibut abundance approaching levels that could practically preclude the harvest of any halibut through a directed fishery in Area 4CDE. As the NPFMC allocates fishing privileges among participants in the various BSAI groundfish fisheries, it must take these impacts into account.

The NPFMC's allocation of the BSAI groundfish have dramatically different impacts on the conservation of halibut resources. When allocating a fishery to one sector or gear type would have an exponentially larger impact as compared to another—and when the allocation to the former could potentially destroy the economic viability of another fishery but an allocation to the latter would not—a decision to allocate resources to the more destructive sector or gear type cannot possibly be reasonably calculated to promote conservation. Nor would it be fair and equitable. As noted in the National Standard 4 guidelines, **an FMP objective to preserve the economic status quo cannot be achieved by excluding a group of long-time participants in the fishery**. This would be the case, if no action is taken on ABM and long-term participants in the directed halibut fishery are effectively excluded from the fishery.

The above is especially true when, as here, the NPFMC has the authority to establish effective, flexible, and practicable PSC limits based on abundance that would mitigate the effect of its allocation decisions. Any action that fails to exercise those powers to address the erosion of the halibut resource caused by its groundfish allocation decisions—and that fails to maintain even the already reduced directed fishing levels in Area 4CDE—would fail each of the requirements of National Standard 4.

Of further consideration under National Standard 4, and more specifically the NMFS guidelines is that “[w]here relevant, **judicial guidance and government policy concerning the rights of treaty Indians and aboriginal Americans must be considered in determining whether an allocation is fair and equitable.**” As discussed earlier in these comments, the 17 Bering Sea halibut-dependent communities highlighted in the SIA are overwhelmingly Alaska Native and have been severely impacted by the status quo. Failure to properly manage halibut bycatch may have already violated federal trust responsibilities and treaty rights towards Alaska Natives.

Since the current action is partly allocative in nature and could have a disproportionate impact on Alaska Natives, National Standard 4 guidelines are important to the NPFMC's decision-making

¹⁵ 50 C.F.R. § 600.325(c)(1) (“An ‘allocation’ or ‘assignment’ of fishing privileges is a direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete user groups or individuals.”)

on this action and require that the NPFMC take into account the “rights of treaty Indians and aboriginal Americans.” In the specific case of St. Paul, many of the federal government’s obligations were spelled out in various of acts of Congress adopted since the phase-out of the commercial fur seal harvest in 1983 (see Section VIII).

- **National Standard 8 – Sustained Community Participation.**

National Standard 8 requires the Council and NMFS to adopt management measures that account for the importance of fishery resources to local fishing communities. It requires that management measures provide for the sustained participation of local fishing communities, and that fishery management decisions be tailored to minimize the economic impacts on communities that depend on fishery resources.

When proposing rules for National Standard 8, NMFS succinctly outlined the priorities in addressing economic impacts. The rules are clear that only if alternatives are conservation-neutral do economic impacts come into play.

In successive drafts of standard 8, Congress clarified that the importance of fishery resources to fishing communities must be considered within the context of the conservation requirements of the Magnuson-Stevens Act by including in the final standard the phrase “consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks).” Therefore, the proposed guidelines emphasize that national standard 8 must not compromise the conservation goals of the Magnuson-Stevens Act.¹⁶

In the final rule, NOAA was equally, if not more, pointed.

This standard requires that an FMP take into account the importance of fishery resources to fishing communities. This consideration, however, is *within the context of the conservation requirements* of the Magnuson-Stevens Act. Deliberations regarding the importance of fishery resources to affected fishing communities, therefore, must not compromise the achievement of conservation requirements and goals of the FMP. **Where the preferred alternative negatively affects the sustained participation of fishing communities, the FMP should discuss the rationale for selecting this alternative over another with a lesser impact on fishing communities. All other things being equal, where two alternatives achieve similar conservation goals, the alternative that provides the greater potential for sustained participation of**

¹⁶ NOAA, Magnuson-Stevens Act Provisions; National Standard Guidelines, 62 Fed. Reg. 41,907, 41,910-11 (Aug. 4, 1997).

such communities and minimizes the adverse economic impacts on such communities would be the preferred alternative.¹⁷

The rules are thus clear that only if alternatives are conservation-neutral do economic impacts come into play

St. Paul's dependence on the BSAI halibut fishery is well documented in the SIA and earlier submissions. However the dependence of St. Paul and other local fishing communities in Alaska is measured, it stands in stark contrast to Seattle, Washington, where all of the A80 fleet is based. Seattle has thriving, broad-based economies that are many orders of magnitude larger than the halibut dependent communities in the Bering Sea.

As a result of excessive halibut PSC limits in other sectors, the directed fishery harvest limits for St. Paul Island and other fishery-dependent communities have been dramatically reduced. These levels are economically unsustainable in the longer term. They affect the viability of the local halibut fishery and the important role it plays in the community as documented in the SIA, and the ability to maintain and sustain the considerable fisheries-related infrastructure that has been built on St. Paul since 1983 to provide a platform for the Bering Sea's commercial fisheries and the local fishing operations.

Further reductions in halibut PSC are therefore necessary to conserve the halibut resource, avoid dire economic consequences to St. Paul Island and other halibut-dependent fishing communities, and to ensure their continued participation in the fishery going forward. Linking PSC limits to abundance would result in the sharing of the burdens of conservation between directed and PSC users, especially at low levels of abundance, and is responsive to the requirements of National Standard 8.

- **National Standard 9 – Bycatch.**

National Standard 9 provides that conservation and management measures “shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.” Applicable regulations do not permit Councils to address bycatch in any way other than wholeheartedly.

Inconvenience is not an excuse; bycatch must be avoided as much as practicable, and bycatch mortality must be reduced until further reductions are not practicable. Adherence to the national standards is not discretionary.¹⁸

¹⁷ 50 C.F.R. § 600.345(b)(1).

¹⁸ NOAA, Magnuson-Stevens Act Provisions; National Standard Guidelines, 63 Fed. Reg. 24,212, 24,224 (May 1, 1998).

In promulgating the National Standard rules, NMFS explained further that “the Councils will need to prioritize their actions to address those fisheries where actions to reduce bycatch can have the greatest impact.”¹⁹ As explained earlier in these comments, halibut PSC currently accounts for the majority of halibut removals in the BSAI. Under ABM, there are reasonable and practicable means to minimize this bycatch, consistent with the requirements of National Standard 9.

Despite predictions of doom and gloom, previous mandatory PSC reductions in this and other fisheries and sectors have been achieved without significant disruption of the regulated fisheries. This is not surprising. Mandatory PSC limits are forcing mechanisms that drive innovation in the fishery, and move participants to develop creative means to avoid PSC while continuing to prosecute and profit from their target fishery.

There is ample evidence that meaningful halibut bycatch reductions are achievable, both in the form of prior experience with fishing regulations, and in the academic literature addressing this issue. It should be noted that the ability of regulatory requirements to reduce halibut bycatch has been recognized for 30 years when a 50 percent reduction was mandated for foreign fishery fleets operating in the BSAI in 1982 through 1985.²⁰

This has been borne out by the facts since the NPFMC action in 2015 reduce PSC limits. The A80 and other groundfish fisheries have adopted innovations such as the use of excluder devices to reduce bycatch levels; deck sorting; and spatial/temporal changes in fishing behavior that have reduced PSC interactions. Given prior experience, CBSFA anticipates a similar response when mandatory halibut PSC limits are indexed to abundance and further reductions in PSC would be required at low levels of abundance.

In estimating the impact of a bycatch reduction, it can be tempting to simply assume that to achieve a given percentage reduction in bycatch there will be a proportional reduction in fishing effort, and therefore harvest. Such an approach is unrealistic, grossly conservative and is belied by historical fishing data and basic economic analysis. Vessel operators will seek to maximize their catch while minimizing bycatch to the extent necessary to meet any bycatch limits. To the extent that the halibut encounter rate can be reduced, the bycatch can also be reduced without necessarily reducing the A80/groundfish harvest.

¹⁹ Id. at 24,227; see also 62 Fed. Reg. 41,907, 41,912 (Aug. 4, 1997) (“Because limited resources are available to the Councils and NMFS to address bycatch problems, and a variety of bycatch problems exists in most fisheries, each Council should identify and prioritize the bycatch problems in its fisheries, based on the benefits to the Nation expected to accrue from addressing these problems.”); id. at 41,911 (“This standard applies to all existing and planned conservation and management measures, because most of these measures can affect amounts of bycatch or bycatch mortality in a fishery, as well as the extent to which further reductions in bycatch are practicable.”) (emphasis added).

²⁰ Report of the Halibut Bycatch Work Group, IPHC, Technical Report No. 25, 1992, at 4. (“Of special note was the scheduled reduction of halibut bycatch rates specified for the Bering Sea Aleutian Islands area (BSAI) foreign trawl fisheries. This resulted in a 50 percent reduction in bycatch rates between 1982 and 1985.”).

Use of the word “practicable” necessarily implies the exercise of agency judgment about the level of acceptable impact resulting from efforts to minimize bycatch and bycatch mortality. Where, as here, bycatch mortality threatens the continued viability of a longstanding and important directed fishery—and the record conclusively establishes that other fisheries can be prosecuted at great profit in most years—it is not impracticable under National Standard 9 to require lower PSC limits on other fisheries in order to achieve the objectives of National Standards 1, 4, and 8.

Thank you for considering our comments on the ABM action. CBSFA believes that the deliberative Council process has the potential to result in an equitable outcome for all halibut users, and one that will benefit the halibut resource and the health of the North Pacific.

Sincerely,

A handwritten signature in black ink, appearing to read "Phillip Lestenkof", with a long horizontal flourish extending to the right.

Phillip Lestenkof, President

Central Bering Sea Fishermen's Association



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

MAY 26 2015

The Honorable Eileen Sobeck
Assistant Administrator for Fisheries
National Oceanic Atmospheric Administration
United States Department of Commerce
1404 Constitution Avenue, NW, Room 5128
Washington, DC 20239

Dear Ms. Sobeck:

Earlier this year, I wrote to Deputy Assistant Administrator Rauch regarding the issue of halibut bycatch and the Aleut Community of St. Paul's (Tribe) federally protected fishing rights in the Bering Sea. I appreciate the work National Oceanic Atmospheric Administration (NOAA) has done to date to ensure that the Tribe's harvest quota is not further diminished while the regulatory community works to address the issue of halibut bycatch. Pursuant to our government-to-government relationship with federally recognized tribes, protection of tribal fishing rights is a vitally important shared role of our respective agencies.

Based on recent discussions with the Tribe, we understand that NOAA intends to commence a rulemaking regarding halibut bycatch based on recommendations to be provided by the North Pacific Fishery Management Council (Council). We are hopeful that the Council will recommend, and NOAA will propose in its rulemaking, an approach to regulate the halibut fishery through meaningful reduction in halibut bycatch. We understand under current conditions a reduction of 45 percent to the overall halibut prohibited species catch (PSC) caps in the Bering Sea groundfish fisheries would limit the directed halibut fisheries in the Central Bering Sea to the same volume as in 2014 and 2015. Given that over the past 10 years the Tribe's directed halibut fishery has been severely impacted by the increase in bycatch of halibut by other users, maintaining the same volume as 2014 and 2015 allows only a minimal, maintenance fishery for the Tribe.

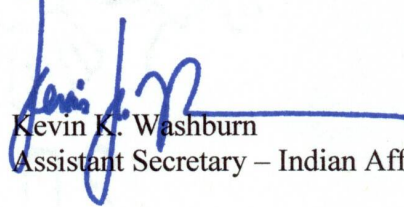
We appreciate NOAA's work to ensure that the Tribe's harvest quota was not further diminished this year. The Tribe's longstanding use and reliance on the fishery for the community's health, welfare, and livelihood has been heightened since 1983 with the end of commercial fur seal harvesting. Access to the fishery resource at a level sufficient to sustain the local fishing economy and subsistence needs of the Tribe is critical to its health and welfare. The fishery not only provides employment and revenue to satisfy the community's most basic needs, it reflects a way of life that has defined this tribal community for generations.

As we explained in our letter dated February 19, 2015, we intend to share with you soon the Department of the Interior Solicitor's Office analysis of the Tribe's federally reserved fishing rights. My staff and attorneys within the Solicitor's Office have initiated conversations with NOAA officials and attorneys regarding the Tribe's federally reserved fishing rights.

My office continues to stand ready to assist NOAA and the Tribe on this important matter. Should the Council issue final action on halibut bycatch at the June 2015 meeting that does not meet the needs of the Tribe, the Department will support NOAA in taking action to ensure a viable directed halibut fishery for the Tribe for 2016 and beyond.

Thank you for your hard work to help us meet our responsibilities to Alaska Natives.

Sincerely,



Kevin K. Washburn
Assistant Secretary – Indian Affairs

Cc: Chairman Amos Philemonoff, Sr.
Aleut Community of St. Paul Island