

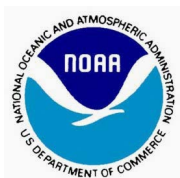
**Comment Summary Report**  
**for the**  
**Draft Environmental Impact Statement**



**on the**  
**Bering Sea Aleutian Islands Halibut Abundance-Based Management (ABM)**  
**of Amendment 80 Fleet Prohibited Species Catch Limit**

**United States Department of Commerce**  
**National Oceanic and Atmospheric Administration**  
**National Marine Fisheries Service, Alaska Region**

**November 2021**



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# Table of Contents

- Introduction..... 1**
- Overview of the Purpose and Need and Alternatives ..... 6**
- Public Comment Summaries by Topic ..... 8**
  - Topic 1: Purpose and Need: Tie halibut PSC limits to halibut abundance indices ..... 8**
    - 1.a. Support tying halibut PSC limits to halibut abundance indices..... 8**
    - 1.b. Oppose tying halibut PSC limits to halibut abundance indices ..... 10**
  - Topic 2: Alternatives/Options..... 10**
    - 2.a. Support alternatives/options ..... 10**
    - 2.b. Oppose alternatives/options..... 12**
    - 2.c. Additional alternative suggestions ..... 14**
  - Topic 3: Comments on Analysis Methods and Content ..... 16**
    - 3.a. Economic, social, and cultural considerations ..... 16**
      - 3.a.i Amendment 80 trawl fleet..... 16**
      - 3.a.ii Directed halibut fisheries..... 19**
      - 3.a.iii Dependent communities..... 22**
      - 3.a.iv Subsistence fisheries ..... 25**
      - 3.a.v Alaska Natives / Tribes..... 26**
      - 3.a.vi Environmental Justice and other cultural and social interests..... 31**
    - 3.b. MSA National Standards and Net Benefit to the Nation ..... 33**
    - 3.c. Climate change / Greenhouse gas emissions ..... 42**
  - Topic 4: Consistency with NEPA Requirements ..... 45**
  - Topic 5: Document Format ..... 47**
  - Topic 6: General Bycatch Concerns..... 48**
  - Topic 7: Out of the Scope of the Purpose and Need for the Action ..... 49**
- List of Preparers..... 51**

## Introduction

### The Role of Public Comment Under NEPA

The National Environmental Policy Act (NEPA) is a procedural law intended to facilitate better government decisions concerning the management of our lands and oceans. The law has an environmental emphasis. Drafters of the law believed that by requiring a process designed to provide decision-makers with the best information available about a proposed action and its various alternatives, fewer adverse impacts would occur. NEPA does not dictate protection of the environment, but instead assumes that common sense and good judgment, based on a thorough analysis of impacts of a reasonable range of alternatives, will result in the development of the Nation's resources in a way that minimizes adverse impacts to our environment. This is achieved by requiring a public process whereby the responsible government agency, together with the stakeholders associated with a particular natural resource and development project, present relevant information for use in making decisions.

A Draft Environmental Impact Statement (DEIS) was prepared for the action under consideration by the North Pacific Fishery Management Council (Council) to implement abundance-based management of Pacific halibut prohibited species catch (PSC) by the Amendment 80 (A80) trawl fleet in the Bering Sea and Aleutian Islands (BSAI) Management Area. This DEIS was initiated and promulgated under the 1978 Council on Environmental Quality (CEQ) regulations for implementing NEPA (40 CFR 1503.4). According to the 1978 regulations, an agency shall assess and consider comments on the DEIS both individually and collectively stating its response in the final EIS (FEIS). The FEIS must describe any changes made to the DEIS as a result of those comments. NMFS and Council staff will ensure to take a careful and deliberate approach to review, consider, and respond to all substantive public comments in the FEIS. Possible outcomes of this process can include the following:

1. Modification of alternatives including the proposed action.
2. Development and evaluation of alternatives not previously given serious consideration by the agency.
3. Supplementation, improvement, or modification of its analysis.
4. Factual corrections.
5. An explanation as to why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

### Where Are We in the NEPA Process Now?

In April 2021, the Council reviewed a preliminary DEIS for this action. After extensive review and discussion, the Council recommended releasing the analysis for final action after addressing the Council's Scientific and Statistical Committee's (SSC's) comments to the extent practicable. Council and NMFS staff revised the DEIS based on the Council's recommendation. On September 8, 2021, NMFS published a Notice of Availability in the **Federal Register** (86 FR 50331) announcing the availability of the revised DEIS and invited public comment through October 25, 2021. In accordance with NEPA, NMFS distributed a "Dear Reviewer Letter"<sup>1</sup> to further disseminate the availability of the DEIS and describe the public comment process.

<sup>1</sup> Available at: <https://media.fisheries.noaa.gov/2021-09/Dear-Reviewer-Letter-halibut-ABM-DEIS-0921.pdf>

This Comment Summary Report summarizes the public comments received during the comment period on the DEIS and informs NMFS, the Council, and the public of the issues that will be addressed in the FEIS. If the Council takes final action on this issue at its December 2021 meeting as expected and makes a recommendation to NMFS on a preferred alternative, a FEIS will be prepared. The FEIS will identify the preferred alternative, including the rationale for its selection, and will incorporate the responses to public comments prepared by NMFS Alaska Region and Council staff and any other warranted changes with the reasons for those changes. The Notice of Availability for the FEIS will publish in the **Federal Register** just prior to or at the same time as the proposed rulemaking for this action (Figure 1). Information on this action as it progresses through the NEPA process will be available on the NMFS Alaska Region website: <https://www.fisheries.noaa.gov/alaska/bycatch/bering-sea-and-aleutian-islands-bsai-halibut-abundance-based-management>.

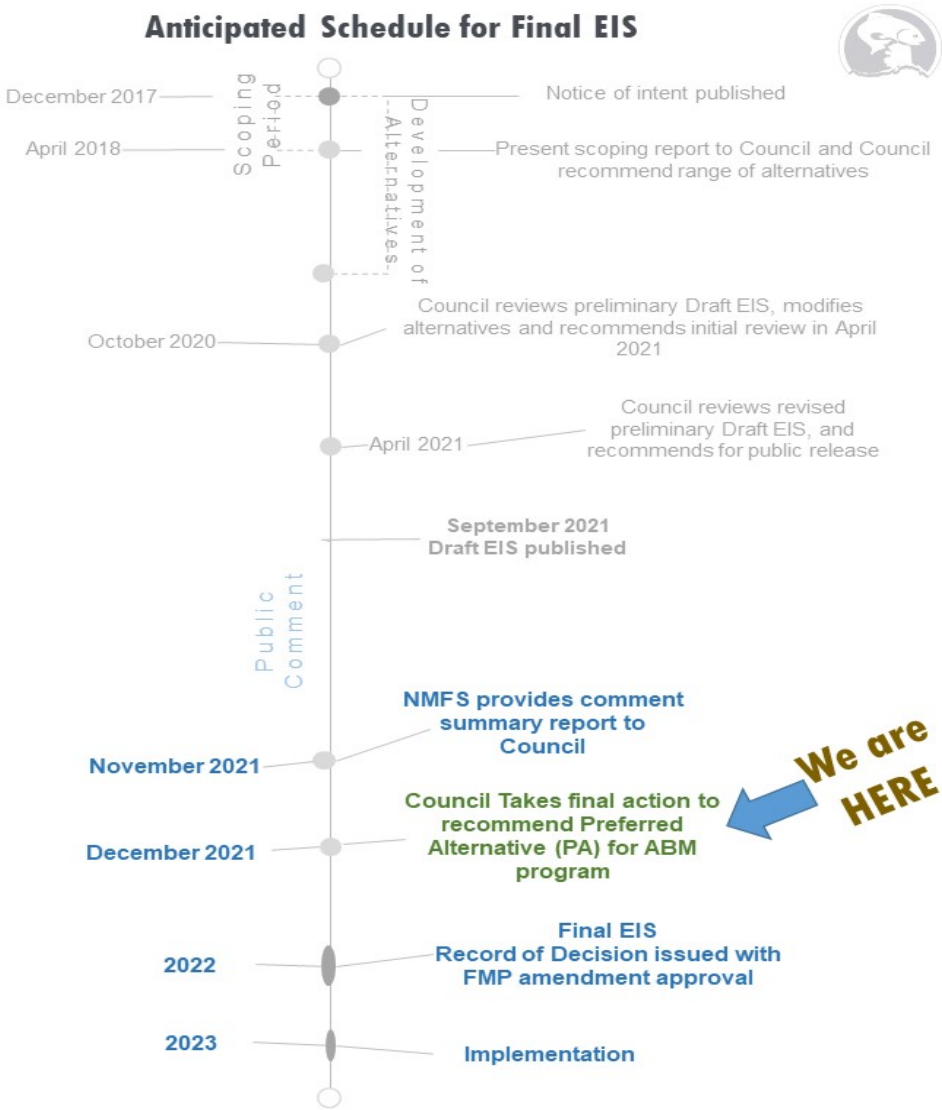


Figure 1. Anticipated schedule for the proposed action as it moves through the Council process.

## Tribal Engagement

NMFS received public comments on the DEIS from Alaska Tribal representatives and the Department of Interior that specifically addressed Tribal issues related to this action and Tribal consultation in general. NMFS has also engaged with Alaska Tribal governments and entities and Alaska Native Claims Settlement Act (ANCSA) Corporations regarding the development of the subject DEIS, inviting their participation in the Council process and Tribal consultation.

NMFS has special obligations to consult and coordinate with Tribal governments and ANCSA corporations pursuant to Executive Order 13175 on “Consultation and Coordination with Indian Tribal Governments” and the Executive Memorandum of April 29, 1994, on “Government-to-Government Relations with Native American Tribal Governments.” Additionally, a recent Presidential memorandum affirms the Federal government’s commitment to including Tribal voices in policy deliberations that affect Tribal communities and recognizes that strong communication is fundamental to a constructive relationship.<sup>2</sup>

In recognition of these obligations, NMFS sent two letters<sup>3</sup> to Alaska Tribal governments and entities and ANCSA Corporations regarding the development of the subject DEIS, inviting their participation in the process. Both the April 2021 and August 2020 letters invite interested parties to participate in the continued development of the DEIS through the Council process and to reach out directly to NMFS on any issues of concern. Both letters also note NMFS's special obligations to consult and coordinate with Tribal governments and ANCSA Corporations pursuant to Executive Order 13175 and the Executive Memorandum of April 29, 1994. The letters specifically noted the opportunity for Tribal governments or ANCSA Corporations to consult with NMFS at any time under E.O. 13175. The only direct response to either letter requesting a consultation with NMFS or expressing Tribal concerns about the issue was from the Aleutian Pribilof Islands Association, Inc (APIA), a Tribal organization. As a result, NMFS met with the APIA in July 2021. The summary of that meeting, approved by APIA, including their issues of concern can be found on the NMFS Alaska Region Website<sup>4</sup>.

In response to a request submitted through public comment on the DEIS, NMFS plans to consult with the Aleut Community of Saint Paul, a Tribal government, prior to the December Council meeting.

Additionally, NMFS acknowledged public testimony from Alaska tribal governments and entities and ANCSA Corporations at the October 2021 Council meeting. NMFS noted that halibut bycatch issues

<sup>2</sup> More information can be found at the following website: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-tribal-consultation-and-strengthening-nation-to-nation-relationships/>.

<sup>3</sup> One letter from April 2021 and another from August 2020 are available on the NMFS Alaska Region website through this link: <https://www.fisheries.noaa.gov/alaska/consultations/alaska-fisheries-tribal-consultation-documents-and-workgroup> under the *Halibut Abundance Based Management* heading.

<sup>4</sup> The Summary of Tribal Consultation Teleconference to Discuss Halibut ABM Concerns with Aleutian Pribilof Islands Association, July 2021 is available on the NMFS Alaska Region website through this link: <https://www.fisheries.noaa.gov/alaska/consultations/alaska-fisheries-tribal-consultation-documents-and-workgroup> under the *Halibut Abundance Based Management* heading.

were raised as a primary concern. NMFS is carefully monitoring these issues in the Council process and wanted to offer an opportunity to discuss these topics. Therefore, NMFS is holding a virtual engagement opportunity on halibut bycatch issues for Alaska Native representatives on:

- November 29th, 11-1 pm AKST, Halibut Bycatch
  - Call in: +1 386-753-7850, PIN: 860 125 148#

Tribal governments and ANCSA corporations have the opportunity to comment to NMFS at any time; however, comments submitted during the Council process of developing and analyzing alternatives for actions are very helpful and informative for the Council's decision making process.

More information on the consultation process and contact information is provided at the following website: <https://www.fisheries.noaa.gov/alaska/consultations/tribal-consultations-alaska>.

## Summary of Public Comments

NMFS received 542 individual submissions of comment. Comments were submitted by fishing industry, community, and tribal representatives; fishery participants and other individuals; the U.S. Department of Interior; and the Environmental Protection Agency. NMFS Alaska Region staff compiled all incoming submissions of comment, maintaining a comprehensive list of all public comments. Staff assigned each submission a unique identification. The submissions of comment and their attachments are available directly at <https://www.regulations.gov/document/NOAA-NMFS-2021-0074-0002/comment>.<sup>5</sup>

This Comment Summary Report is intended to present a summary of substantive comments for the Council to consider in its deliberation for final action on this issue. Comment submissions with substantive content pertinent to the DEIS are included in this Comment Summary Report. Substantive content includes assertions, suggested alternatives or actions, data, background information, or clarifications relating to the DEIS document or its preparation. Responses to these comments are not included in this report due to the short time frame between the close of the public comment period and the December 2021 Council meeting, when the Council is expected to take final action on this issue. The Final EIS will include responses to all substantive issues submitted during the public comment period on the DEIS. The responses will consider the full content of the original comments, rather than the synopses presented in this report. Therefore, presentation of the comments and responses in the FEIS may vary slightly from the comment summaries in this report.

Substantive comments are summarized by topic for this report. In many cases comments from more than one commenter address the same concern. In those cases, similar comments are presented in a combined comment or by a summarized representative comment that most fully articulates the concern expressed by multiple commenters. Therefore, the number of unique comments under each section in this report does not reflect the number of individual comments on any particular topic or subtopic. Comments with a distinct perspective have generally been summarized in part or whole or are partially extracted from the full comment and may include specific details to convey the context of the point being made. Further, some individual comments address more than one interrelated topic in such a way that the comment is not easily separated into the topic framework of this report. For example, a single comment may reference the interconnected topics of the directed halibut fishery, halibut fishery-dependent communities, and Alaska Native issues. Depending on the context of the comment, it could

<sup>5</sup> Alternatively, visit [www.regulations.gov](http://www.regulations.gov) and enter the docket number NOAA-NMFS-2021-0074 in the search bar.

have been included in the section that covers any one of those categories in this report. However, such comments are included in only one topic section of the report. This approach is meant to reduce duplication within the report and is not intended to minimize the importance of the other topics within a particular comment. For the full text of individual comments, please reference the comments directly at <https://www.regulations.gov/document/NOAA-NMFS-2021-0074-0002/comment>.

During the process of identifying substantive content for this report and the development of responses to comments for the FEIS, all comments are treated equally. The emphasis is on the content of the comments. They are not weighted by organizational affiliation or other status of commenters. No effort has been made to tabulate the number of people for or against a specific aspect of the DEIS. In the interests of producing a FEIS that both meets the mission of NMFS and best serves all stakeholders, all comments are considered equally on their merits.

## Quality Control and Review

This Comment Summary Report was reviewed by the DEIS preparers and NOAA General Counsel-Alaska Section. Additionally, various procedures were established in the summary process to prevent a submission or comment from being inadvertently omitted. Communication and cross-checking between the submissions and the comments have ensured that all submissions received during the comment period are included in the report. This process of quality control and review is ongoing through the development of the FEIS. All comments and responses will be reviewed by the FEIS preparers and NOAA General Counsel-Alaska Section.

## List of Comment Topics

Topic 1: Purpose and Need: Tie halibut PSC limits to halibut abundance indices

- 1a. Support tying halibut PSC limits to halibut abundance indices
- 1b. Oppose tying halibut PSC limits to halibut abundance indices

Topic 2: Alternatives/Options

- 2a. Support specific alternatives/options
- 2b. Oppose specific alternatives/options
- 2c. Additional alternative suggestions

Topic 3: Comments on DEIS analysis methods and content

- 3a Economic, social, and cultural considerations
  - i. Amendment 80 trawl fleet
  - ii. Directed halibut fisheries
  - iii. Dependent communities
  - iv. Subsistence fisheries
  - v. Alaska Natives / Tribes
  - vi. Environmental Justice and other cultural and social interests

3b. MSA National Standards and Net Benefit to the Nation

3c. Climate change / Greenhouse gas emissions

Topic 4: Consistency with NEPA requirements

Topic 5: Document Format

Topic 6: General Bycatch Concerns

Topic 7: Out of the scope of this analysis and Purpose and Need



## Overview of the Purpose and Need and Alternatives

### Purpose and Need

The Council amended its purpose and need statement for this action in October 2020 to be the following:

*Halibut is an important resource in the Bering Sea and Aleutian Islands (BSAI), supporting commercial halibut fisheries, recreational fisheries, subsistence fisheries, and groundfish fisheries. The International Pacific Halibut Commission (IPHC) is responsible for assessing the Pacific halibut stock and establishing total annual catch limits for directed fisheries and the North Pacific Fishery Management Council (Council) is responsible for managing prohibited species catch (PSC) in U.S. commercial groundfish fisheries managed by the Council. The Amendment 80 sector is accountable for the majority of the annual halibut PSC mortality in the BSAI groundfish fisheries. While the Amendment 80 fleet has reduced halibut mortality in recent years, continued decline in the halibut stock requires consideration of additional measures for management of halibut PSC in the Amendment 80 fisheries.*

*When BSAI halibut abundance declines, PSC in Amendment 80 fisheries can become a larger proportion of total halibut removals in the BSAI, particularly in Area 4CDE, and can reduce the proportion of halibut available for harvest in directed halibut fisheries. The Council intends to establish an abundance-based halibut PSC management program in the BSAI for the Amendment 80 sector that meets the requirements of the Magnuson-Stevens Act, particularly to minimize halibut PSC to the extent practicable under National Standard 9 and to achieve optimum yield in the BSAI groundfish fisheries on a continuing basis under National Standard 1. The Council is considering a program that links the Amendment 80 sector PSC limit to halibut abundance and provides incentives for the fleet to minimize halibut mortality at all times. This action could also promote conservation of the halibut stock and may provide additional opportunities for the directed halibut fishery.*

Although fishermen are required by the BSAI groundfish FMP to avoid the capture of any prohibited species in groundfish fisheries, the use of halibut PSC limits in the groundfish fisheries provides a constraint on the bycatch of halibut and promotes conservation of the halibut resource. Halibut PSC limits provide a regulated upper limit to mortality resulting from halibut interceptions because continued groundfish fishing is prohibited once a halibut PSC limit has been reached for a particular sector and/or season. This management tool is intended to balance the optimum benefit to fishermen, communities, and U.S. consumers that depend on both halibut and groundfish resources.

## Alternatives

### Alternative 1

No action. BSAI halibut Amendment 80 PSC limit is 1,745 mt.

### Alternative 2

A 3X2 look up table with PSC limits that range from current PSC limit to 20% below current limit. PSC limit is determined annually based on the most recent survey values.

		EBS shelf trawl survey index (mt)	
		Low < 150,000	High ≥ 150,000
IPHC setline survey index in Area 4ABCDE (WPUE)	High ≥ 11,000	1,571 mt (10% below current)	1,745 mt (current limit)
	Medium 8,000 – 10,999	1,483 mt (15% below current)	1,571 mt (10% below current)
	Low < 8,000	1,396 mt (20% below current)	1,483 mt (15% below current)

### Alternative 3

A 4X2 look up table with PSC limits that range from 15% above current PSC limit to 30% below current limit. PSC limit is determined annually based on the most recent survey values.

		EBS shelf trawl survey index (mt)	
		Low < 150,000	High ≥ 150,000
IPHC setline survey index in Area 4ABCDE (WPUE)	High ≥ 11,000	1,745 mt (current limit)	2,007 mt (15% above current)
	Medium 8,000 – 10,999	1,396 mt (20% below current)	1,745 mt (current limit)
	Low 6,000-7,999	1,309 mt (25% below current)	1,396 mt (20% below current)
	Very Low < 6,000	1,222 mt (30% below current)	1,309 mt (25% below current)

### Alternative 4

A 4X2 look up table to determine PSC limits based on survey states, with PSC limits that range from current PSC limit to 45% below current limit.

		EBS shelf trawl survey index (mt)	
		Low < 150,000	High ≥ 150,000
IPHC setline survey index in Area 4ABCDE (WPUE)	High ≥ 11,000	1,396 mt (20% below current)	1,745 mt (current limit)
	Medium 8,000 – 10,999	1,222 mt (30% below current)	1,396 mt (20% below current)
	Low 6,000-7,999	1,047 mt (40% below current)	1,222 mt (30% below current)
	Very Low < 6,000	960 mt (45% below current)	1,047 mt (40% below current)

## Public Comment Summaries by Topic

### Topic 1: Purpose and Need: Tie halibut PSC limits to halibut abundance indices

#### 1.a. Support tying halibut PSC limits to halibut abundance indices

##### *Summary of Comments*

Comments in this section voiced support for the action. Generally, comments were in favor of an ecosystem-based management approach to addressing halibut bycatch in the A80 sector. Comments also voiced support for the analysis because it helps to address impacts to the directed halibut fishery and inequity among user groups.

##### *Comment 1.a-1:*

We support an ecosystem-based management approach to bycatch which is responsive to the status of the stocks. Ecosystem-based management is the cornerstone of sustainable fishing and provides a pathway to maintain ecosystems in a healthy, productive, and resilient condition. The current fixed halibut prohibited species catch limits are inconsistent with management of the directed halibut fisheries, groundfish fisheries, and crab, all of which are managed based on abundance.

##### *Comment 1.a-2:*

We support Abundance-Based Management of halibut PSC. Minimizing bycatch is a primary objective of the MSA under National Standard 9, and the current downtrend in the Pacific halibut stock requires work from every sector to reassess impacts on the resource and reduce waste. We believe the analysis offers Alternatives and Options that allow for practicable reductions in A80 PSC usage. The purpose and need statement captures the necessity of this action. 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. Equity among user groups must be restored. The current management regime has resulted in directed fisheries losing access to a fair share of the exploitable halibut biomass, with halibut bycatch removals exceeding the directed halibut fishery removals since 2011.

##### *Comment 1.a-3:*

We support the concept of abundance-based management for halibut bycatch for the BSAI A80 trawl fleet. The current fixed halibut prohibited species catch (PSC, or bycatch) limits are inconsistent with management of the directed halibut fisheries. Bering Sea halibut bycatch mortality under a fixed limit began to exceed halibut harvests in the Bering Sea directed fisheries in 2012. Abundance-based PSC management can mitigate some of those adverse impacts by providing some resource conservation at low abundance levels rather than resting the full conservation responsibility on the directed fishery.

##### *Comment 1.a-4:*

As the directed halibut fishermen and halibut fishery have adapted to reductions in catch limits and allocation to support conservation efforts and management that is based on abundance, the PSC halibut bycatch limits continue to remain static and in turn become a larger proportion of the total halibut removals. Subsequently, the fishermen that have invested in the directed halibut fishery, many of whom live and work in small coastal fishing communities in Alaska, have been losing access to the available biomass.

*Comment 1.a-5:*

Development and meaningful implementation of a comprehensive and data-based scientific approach to address halibut PSC by the A-80 trawl sector in the Bering Sea region is essential for supporting the integrity of the Bering Sea and broader Gulf of Alaska ecosystem that supports all sectors our fishing economies. As a commercial halibut fisherman, as a subsistence fisherman, and as a scientist, I adamantly support Abundance- Based Management (ABM) of halibut PSC and the implementation of an ecosystem-based fishery management approach for addressing and reducing bycatch which is responsive and beneficial to the status of all stocks. Anything short of a conservative, comprehensive and enforceable ABM fisheries management structure will inevitably result in an ecosystem cascade effect and a collapse of the viability of the Bering Sea ecosystem, which is already under-going rapid ecological change from the impacts of climate change.

*Comment 1.a-6:*

The current fixed halibut prohibited species (PSC) catch limits are inconsistent with the basic principles of scientific fisheries management and the management of the directed halibut fisheries, groundfish fisheries and crab, all of which are managed based on abundance. The directed halibut fishery carried out under abundance based management resulting in fluctuations in annual harvest limits is directly and negatively impacted by the current management structure of the A80 fishery. The directed halibut fishery with low PSC rates is marginalized with reduced fishing opportunity and the A-80 fleet with exceptionally high PSC rates of sexually immature halibut is rewarded with an arbitrary static PSC cap, despite the high PSC rates and demonstrable marine eco-system impacts.

*Comment 1.a-7:*

The fact that PSC limits do not fluctuate with halibut abundance is indefensible. Accounting for PSC halibut is deeply flawed because the IPHC is primarily focused on Over 32-inch halibut. When considering the millions of pounds of PSC halibut bycatch, it is important to remember that the fish are mostly small and would recruit into the directed and sports fisheries as larger fish. In this case the numbers of fish are a more appropriate yard stick when contemplating the theoretical trickle up effect to directed users.

*Comment 1.a-8:*

We support the perspective that, until surveys indicate that total halibut abundance is not declining and is stable, then the returns for PSC mitigation are necessary and worthwhile.

*Comment 1.a-9:*

Robust abundance based management with strong enforcement supports equitable access and opportunity for BSAI coastal communities participating in directed commercial and subsistence halibut fisheries. Concurrently supporting ecosystem integrity allows the A-80 fleet to fish in congruence with the abundance based management practice of the directed halibut fishery. This is the only scientifically defensible trajectory for achieving and maintaining a sustainable optimal yield. Balanced equability, healthy coastal communities with fisheries access and opportunity and a robust, intact, and functioning marine ecosystems provide the greatest long-term net benefit to the nation and all fishing sectors. The removal of fish from the ecosystem through fishing is a contributing factor in ecosystem dynamics and health. Therefore, conservative fishery management and PSC limits afford a path forward to minimize unintended removal of non-targeted species, which contributes to maintaining ecosystem integrity. This supports the health and viability of all stocks.

## 1.b. Oppose tying halibut PSC limits to halibut abundance indices

### *Comment 1.b-1:*

ABM is not supported by sound science. The ABM concept rests on the assumption that the A80 sector's ability to avoid halibut correlates with abundance as measured in the surveys. Analyses performed by stakeholders and NMFS/Council staff have repeatedly shown that survey abundance (i.e., from the indices currently under consideration) does not reflect halibut encounter rates in the A80 fisheries. For all of the reasons set forth in the April Comment Letter, ABM alternatives based on the indices under consideration do not reflect the real-world conditions encountered by the sector and do not provide a mechanism to substantively account for the variability in the sector's ability to avoid halibut.

## Topic 2: Alternatives/Options

### 2.a. Support alternatives/options

#### *Summary of Comments*

Comments in this section voiced support for specific Alternatives/ options. Some comments voiced their support for Alternative 4 because it allows for the greatest reduction in possible halibut PSC limits. Some of these comments also included support for option 3 which would include a performance standard for the A80 sector. Some comments were in support of Alternative 3 because it would allow for the greatest reduction in halibut PSC while not overly constraining the A80 sector. Some comments supporting Alternative 4 also advocated for further PSC limit reductions from those being proposed by the action.

#### *Comment 2.a-1:*

We commenters support Alternative 4 with a lookup table with PSC limits that range from the current PSC limit to 45% below the current limit at lower levels of halibut abundance. After multiple reviews and discussions, it is clear that a lookup table approach to set the PSC limit based on the status of halibut indexed to both the IPHC setline and the EBS trawl surveys provide the most comprehensive data and best available science to track the halibut stock in the Bering Sea. Of the listed alternatives, Alternative 4 option 3 is closest to being acceptable, but is only a necessary first step in the right direction. Only Alternative 4 restores a measure of equity among user groups for social, environmental and cultural connections of rural, Alaskans natives and small boat fishermen to the halibut resource by: 1) reducing bycatch commensurate with declines in halibut abundance since halibut PSC limits were set; and 2) adequately incorporating social equity and the cultural connections of rural Alaskans to the halibut resource.

#### *Comment 2.a-2:*

Only Alternative 4 meaningfully addresses the Environmental and Social Justice equitably in relation to BSAI regional residents, subsistence harvesters, and directed halibut fishers who are disproportionately impacted by the current A-80 PSC allowances. In the context of balancing the National Standards, Environmental Justice, Advancing Equity and Climate Change Considerations, Alternative 4 provides the only reasonable path forward to address A-80- halibut PSC. It addresses the relevant National Standards and still provides ample opportunity for the A-80 fleet to fish in a manner that limits bycatch to the benefit of all user groups, including the A-80 fleet.

#### *Comment 2.a-3:*

Alternative 4 provides the most equitable option for conservation of the halibut resource with the lowest possible PSC limits (45% below current) at lowest levels of halibut abundance. This will preserve more adult and juvenile halibut to contribute to the coastwide biomass and will benefit thousands of families, businesses and communities that depend on the health of the halibut resource. Option 3 provides

incentives for the A-80 fleet to minimize bycatch and operate under the established limits. Incentive programs have worked well in the Bering Sea trawl sector and the fleet is experienced in the collaborative efforts which make the incentive programs function. Only option 3 can preserve meaningful PSC reductions and ensure continued participation in the directed fishery for hundreds of Alaska's small-boat fishing businesses.

*Comment 2.a-4:*

Halibut bycatch must be reduced immediately to protect the resource and those who depend on it. That decision must be supported by a scientifically sound document that adequately captures biological, economic, and social coastwide impacts. The current DEIS is arbitrary in its treatment of bycatch impacts and benefits. That said, there is more than adequate data in the DEIS appended Social Impact Assessment (SIA) demonstrating substantial impacts to Bering Sea halibut dependent communities over the past decade to support Alternative 4--the highest level of bycatch reduction under consideration.

*Comment 2.a-5:*

We note that the data in the appended SIA showing significant loss of resource access for Bering Sea halibut dependent communities over the past decade is sufficient to support the highest level of bycatch reduction under analysis in Alternative 4.

*Comment 2.a-6:*

We support Alternative 4. While this is the alternative most in alignment with addressing our concerns, many of us feel that this is still not enough to prevent further decline of these populations that we are already witnessing first hand.

*Comment 2.a-7:*

We support Alternative 3, adding Option 1 (rolling average) and some form of Option 3 that would provide a standard incentivizing A80 to perform better than the cap in turn for more flexibility. Groundfish harvest above the 1396 mt threshold tends to be constrained by Groundfish Catch Limit rather than PSC Limits and Alternative 2 offers no reductions in PSC limits below that point, effectively requiring no modification from the A80 fleet. We also believe that ABM decisions should focus on A80 performance since 2016 which captures application of current bycatch avoidance techniques. A80 PSC mortality is near or below Alternative 3 limits as they would have been applied since 2016. In correlation, the analysis finds that Alternative 3 shows only a 3%-9% potential for reduction in revenue under Alternative 3 modified PSC caps.

*Comment 2.a-8:*

We support Alternative 4 because DEIS fails to consider the benefits of bycatch reductions to halibut fishermen and communities in the Gulf of Alaska. The DEIS uses a coast wide assessment of the halibut stock while discussing the impact of A80 bycatch on halibut users in the Bering Sea. This approach makes the impact look insignificant when comparing the revenue of the A80 fleet to the number for commercial halibut fishermen and economic benefit they could gain in Area 4. The same document looks at the coast wide percentage of BS/AI halibut PSC compared to total removals as a relatively small percentage even though it is a huge percentage of Area 4 removals. A stakeholder in the IFQ Halibut fishery can't help but view this document as biased against the interests of Halibut users in every way. The DEIS routinely suggests that the primary cause of low halibut abundance is slow growth rates and lack of recruitment. That is an assumption that cannot be proven. A lack of consequential PSC limits in the Bering Sea has contributed to the historically low halibut abundance

we now observe. If a PSC limit is never reached, it really isn't working to change behavior in fisheries encountering bycatch.

*Comment 2.a-9:*

Of the alternatives provided, we prefer Alternative 4, but it lacks sufficient analysis of the very real potential of the extinction of 10,000-year-old cultures. We are concerned with all alternatives in the Draft Environmental Impact Statement (DEIS), as they do not consider the disproportionately high and adverse impacts on direct halibut users – most of whom represent minority and underserved populations. We call your attention to National Standards 1, 4, 5, and 8, which collectively require conservation and management measures to prevent overfishing, rebuild depleted stocks, and ensure the long-term health and sustainability of fisheries. The advancement of any one of the Alternatives 1-3 will produce adverse economic impacts on our communities, as well as impact the overall health and well-being of fishing communities, and likely preclude continued participation in the future.

## 2.b. Oppose alternatives/options

*Summary of Comments*

Comments in this section voiced opposition or concerns for various Alternatives/ options. Some comments were in opposition to the action as a whole as the commenters did not feel that any of the Alternatives would achieve the desired result of accurately linking halibut PSC to abundance or helping to meaningfully rebuild the halibut stock. Other comments stated that the analysis did not include enough information on various aspects and as such, the analysis is not sufficient to accurately describe the potential impacts of this action on the resource, user groups, or the environment. One comment voiced opposition for the action because the commenter felt that further reductions in the A80 PSC limit were not practicable.

*Comment 2.b-1:*

We do not support option 2 which would minimize the ability to link halibut PSC to abundance on an annual basis.

*Comment 2.b-2:*

The ABM alternatives will not promote conservation of the halibut resource. The MSA and National Standard 4 require management measures with allocative effects to be “reasonably calculated to promote conservation.” 16 U.S.C. § 1851(a)(4)(B). Protection of halibut spawning stock biomass, even at lower levels of abundance, will not be achieved by any of the alternatives under consideration.

*Comment 2.b-3:*

The existing PSC limit (Alternative 1) and Alternatives 2 and 3 fail to provide a sufficient buffer for directed fisheries at the lowest levels of abundance. The DEIS measures the impacts of the alternatives almost exclusively in terms of how A80 companies' bycatch of halibut over 26 inches in length affects Bering Sea halibut harvest opportunities and ex-vessel values and conversely, how bycatch reductions may reduce A80 companies' wholesale revenues. The DEIS discounts social justice, ignores cultural extinction, and fails to place into context the contribution to socioeconomic health of a dollar circulating in St Paul or Metlakatla vs Seattle and the A80 corporations.

*Comment 2.b-4:*

The current structure and management of the fishery and Alternative 1 (No Action) Alternative 2 and Alternative 3 are not compatible with Environmental Justice EO 12898 which defines Environmental

Justice as the “fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income.” Environmental Justice must be considered if the proposed undertaking will have an adversely high and potentially adverse human health or environmental on a minority population and low-income population.

*Comment 2.b-5:*

The current structure and management of the fishery and Alternative 1 (No Action), Alternative 2 and Alternative 3 are not compatible with EO 13985 "Advancing Racial Equity and Support for Underserved Communities Through the Federal Government" Affirmatively advancing equity, civil rights, racial justice, and equal opportunity is the responsibility of the whole of our Government. Because advancing equity requires a systematic approach to embedding fairness in decision-making processes, executive departments and agencies (agencies) must recognize and work to redress inequities in their policies and programs that serve as barriers to equal opportunity.

*Comment 2.b-6:*

The current structure and management of the fishery and Alternative 1 (No Action), Alternative 2 and Alternative 3 are not compatible with EO 14008 states that "climate considerations shall be an essential element of United States foreign policy and national security. The United States will work with other countries and partners, both bilaterally and multilaterally, to put the world on a sustainable climate pathway. The United States will also move quickly to build resilience, both at home and abroad, against the impacts of climate change that are already manifest and will continue to intensify according to current trajectories."

*Comment 2.b-7:*

We need to protect the recruitment potential of the Pacific halibut stock across its range in low abundance. We encourage the Council to choose an Alternative that caps A80 to recent past performance or better, which neither Alternative 1 nor 2 accomplish.

*Comment 2.b-8:*

The ABM alternatives will not promote conservation of the halibut resource.

*Comment 2.b-9:*

We urge the Council to consider performance standards that allow for variability in performance across years to provide incentives for maintaining halibut avoidance efforts regardless of conditions, as opposed to caps that might be overly constraining in some years and not constraining at all in others. In response the Council added Option 3 which fails to achieve several objectives of the purpose and need statement and the National Standards. The performance standard under Option 3 would have no impact on the sector's efforts to achieve bycatch reductions. If the sector projects that its halibut usage will be clearly below or above the annual limit, the limit will have no impact on the halibut avoidance.

*Comment 2.b-10:*

Alternatives 2, 3, and 4 are not practicable. The proposed and final rule for Amendment 111 concluded that “larger reductions [greater than 25% for the A80 sector] are not practicable and would reduce the net benefits to the Nation because the socioeconomic benefits from the potential increase in harvest opportunities would be less than the negative socioeconomic impacts from foregone BSAI groundfish harvests.” Projected forgone harvest and likely economic losses from the Alternatives 2-4 are clearly of the magnitude that were rejected by NOAA when analyzing Amendment 111. The sector does not have any new tools to help it further reduce halibut PSC. Without any new tools, the only way to further



reduce halibut PSC would be to reduce harvest of groundfish. The most likely outcomes from this action are reduced groundfish harvest which will result in reduced food production, reduce wages for A80 crew members, and place individual A80 companies on the brink of failure without any substantive benefit to the halibut spawning stock biomass or the Area 4 directed halibut fishery.

*Comment 2.b-11:*

We are concerned with all alternatives in the DEIS, as they do not consider the disproportionately high and adverse impacts on direct halibut users.

## 2.c. Additional alternative suggestions

### *Summary of Comments*

Comments in this section provide a variety of alternative suggestions on items to consider in the analysis. These included comments on further lowering PSC limits to zero, prohibiting trawl fishing in the BSAI, and installing stricter enforcement mechanisms for vessels that exceed their PSC quotas. Comments also provided suggestions on how the A80 sector could reduce their PSC limits while not constraining their ability to harvest groundfish. These suggestions included: the required use of halibut excluders throughout the sector and to fully implement any and all avoidance measures that are available to the sector. Comments also included suggestions for alternative indices to be considered when assessing halibut abundance.

*Comment 2.c-1:*

In spite of overwhelming evidence, and a great precedent in SE Alaska, we have not prohibited the completely unacceptable practice of ground-fish trawling in most of Alaska. It is a monumental failure of our fishery management systems from the NPFMC to the BOF. The issue is not how to manage the trawl fishery to reduce by-catch. The problem is groundfish trawling is an unacceptable method of harvesting fish. It is destroying halibut, salmon, shellfish populations, and benthic habitat wherever it is conducted. The challenge is how to prohibit groundfish trawling in the rest of Alaska waters as we have already done in SE Alaska.

*Comment 2.c-2:*

We recommend that the A80 trawl fleet be required to reduce all bycatch below current limits.

*Comment 2.c-3:*

We recommend that the A80 trawl fleet be required to reduce bycatch to a zero bycatch limit.

*Comment 2.c-4:*

Establish enforcement of quotas for the A80 fleet so that the fishery is immediately closed when the quotas are met or exceeded. The council should consider revising the bycatch limits to a lower number given declining stocks for numerous salt water species commonly caught by the A80 fleet as bycatch and the destructive practice of bottom trawling to ocean habitat on the sea floor including sponges, coral, etc.

*Comment 2.c-5:*

Objective studies by NMFS researchers in other U.S. West Coast groundfish fisheries have found excluders to be highly effective. When used in conjunction with existing levels of deck sorting, these studies suggest that complete deployment of excluders (which the DEIS acknowledges has not occurred) would reduce overall bycatch mortality by more than 85%. Indeed, if excluders are even half as effective as NMFS research shows, their full deployment would allow A80 to easily meet the maximum potential reduction in halibut PSC mortality that could be required under Alternative 4.

*Comment 2.c-6:*

The DEIS states that information sharing among A80 vessels “is central to the effectiveness of halibut bycatch minimization,” but acknowledges that this tool is not being fully used due to competition among firms within the A80 cooperative. Given that a small group of firms has profited enormously from creation of a sector predicated on cooperation in furtherance of PSC reductions, it is not unreasonable to require them to fully implement the measures available to limit halibut PSC.

*Comment 2.c-7:*

Quota share trades for constraining bycatch species within the cooperative would reduce the impacts of PSC limits for the A80 sector. They would allow firms with low PSC use and/or portfolios with larger low-PSC species allocations to make that PSC available to other cooperative members (potentially at a profit). This would allow cooperative members requiring additional PSC quota to continue operations even under more stringent PSC limits, thus reducing potential constraints from lower PSC limits and economic impacts on the A80 sector. However, the DEIS reports that “that intra-cooperative in-season transfers of quota for constraining species – i.e., halibut PSC or Pacific cod – occur very rarely, if ever.” This option to meet reduced limits thus remains fully available and entirely unused.

*Comment 2.c-8:*

A80 can reinstate avoidance measures that were abandoned when they proved unnecessary to meet the current limits after halibut deck sorting was implemented. The DEIS shows that A80 halibut catch and mortality increased dramatically in recent years after deck sorting was fully implemented, because, as the DEIS recognizes, A80 realized it could “mitigate the negative consequences of halibut encounter” through deck sorting, and thus, “prioritize” groundfish catch over “minimizing the number of halibut in a haul.” This response by A80 increased overall bycatch, and increased halibut mortality by 300 mt from 2017 to 2019. Simply reinstating these avoidance measures and returning to the mortality levels previously achieved would essentially supply the 20% reduction in mortality and substantially exceed the average reductions that would have been required under Alternatives 2 and 3. This step alone would also provide more than 70% of the average reduction required under Alternative 4 and almost half (42%) of the 40% reduction, which is the maximum back-calculated reduction that would have occurred under that alternative. And, even accepting the DEIS analysis, it would avoid more than \$50 million of revenue impacts.

*Comment 2.c-9:*

We request that the Council consider use of an index which used the catch limit for the Area 4CDE, directed fishery but that was not incorporated. Since the indices relied upon to determine the Alternatives do not correlate with the A80 sector’s bycatch and cannot reasonably be expected to result in a conservation benefit or provide meaningful additional harvest opportunities for the directed halibut fisheries or communities in Area 4, we believe that NOAA must extensively revise the DEIS to highlight the impracticability of the proposed ABM action.

*Comment 2.c-10:*

The action should consider other means to accommodate the uncertainties of bycatch. Examples include: applying an annual limit that considers performance over a series of years, and looking at whether cooperative or vessel-level incentives would provide additional or different benefits.

*Comment 2.c-11:*

The analysis needs to be modified to include additional analysis of the current performance standard provision and to include additional options or alternatives that allow for the unpredictable variability in halibut encounters that are evident in the A80 fisheries.

### Topic 3: Comments on Analysis Methods and Content

#### 3.a. Economic, social, and cultural considerations

##### 3.a.i Amendment 80 trawl fleet

###### *Summary of Comments*

This section include comments highlighting deficiencies in accurate information on the adverse impacts of the ABM alternatives on the A80 sector, the lack of tools for the A80 fleet to further avoid halibut and reduce bycatch, and lack of correlation between halibut abundance indices and A80 halibut encounter rates. Comments also included concerns that the economic analysis overstates the economic impacts to the A80 fleet and does not adequately analyze economic multiplier effects. Additional comments noted that the DEIS should more fully consider the value of conserving juvenile fish, uncertainty about the true numbers of halibut killed by the A80 companies (due to observer intimidation and appropriate application of the halibut mortality rates to bycatch), and the extent to which fixed PSC limits caused a shift in the historical share of the resource from the Area4CDE directed fisheries to the trawl fisheries.

###### *Comment 3.a.i-1:*

The DEIS contains crucial internal inconsistencies that compel correction: accurate information about the adverse impacts of the ABM alternatives on the A80 sector is ignored in the analysis of consistency with the National Standards of the Magnuson-Stevens Act.

###### *Comment 3.a.i-2:*

The ABM concept rests on the assumption that the A80 sector's ability to avoid halibut correlates with abundance as measured in the surveys. Analyses performed by stakeholders and NMFS/Council staff have repeatedly shown that survey abundance (i.e., from the indices currently under consideration) does not reflect halibut encounter rates in the A80 fisheries. ABM alternatives based on the indices under consideration do not reflect the real-world conditions encountered by the sector and do not provide a mechanism to account for the variability in the sector's ability to avoid halibut. Yet the DEIS improperly proceeds as if none of this information exists. Instead, the DEIS glosses over this fundamental deficiency by looking at average impacts over several years, ignoring the extremely negative impacts on the sector created in 2019 and other individual years. This masks the negative impacts on the sector from years with warm conditions when target species are either more spread out or more of their distribution is within the northern Bering Sea where the sector is not allowed to operate. These conditions increase encounter rates by requiring more hours of fishing or because halibut overlap spatially with target species, as well as related increase in costs and decrease in revenues. The DEIS provides no understanding of the magnitude of these effects. These effects are likely to be compounded by challenges of restarting a vessel, if a company is forced to shutdown a vessel early in a year. In the end, some operations might not be able to withstand such losses.

###### *Comment 3.a.i-3:*

There is limited empirical support that the trawl survey biomass index and the IPCH setline survey index reflect what halibut encounter rates will be in the groundfish trawl fishery. Rather, the realized halibut encounter rates, and the associated likelihood of PSC-dependent fisheries foregoing considerable groundfish catch, are highly variable year-to-year. The DEIS does not provide explanation for why the

halibut stock assessments, the most typical tool for measuring abundance for management purposes, are ignored in this proposal for gauging the general condition of the halibut stock. Consequently, it is impossible for the reader to understand whether the goals and objectives of the proposed action can be achieved through ABM, or whether those goals could be attained through other alternatives not employing ABM, perhaps through performance standards. The choice to use ABM as a basis for further reductions in A80 PSC limits must be clearly explained and rationally supported.

*Comment 3.a.i-4:*

The DEIS methods skew the analysis and drastically overstate the potential economic impacts to the A80 sector from lower PSC limits. The DEIS:

1. uses economic models that incorrectly project future impacts based on outdated A80 haul data from periods when PSC limits were substantially higher and before A80 had taken any steps to mitigate the effects of its PSC mortality. This increases the likelihood that the model will find lower PSC limits constraining and inflates the projected revenue impacts. In fact, the DEIS acknowledges that using this data “has the largest impact of any other variations between the scenarios.”
2. fails to account for behaviors that A80 will implement to mitigate any potential revenue impacts from lower PSC limits, many of which the DEIS directly identifies. The DEIS does not evaluate how revenues might actually be affected if A80 implemented the measures it identifies. Instead, the economic impact analysis assumes that A80 limits will act in an economically irrational way and allow the A80 sector to be shut down.
3. fails to account for real-world experience with reduced PSC limits and A80 behavior. Prior analyses projected that PSC reductions would be constraining and that A80 would suffer substantial revenue reductions. But none of that occurred and A80 revenues have increased since the PSC limits were reduced. Yet, the economic analysis ignores this history and repeats the same mistake, resulting in grossly overstated revenue impacts yet again.
4. distorts A80 revenue impacts by presenting scenarios that could result in large PSC reductions without any analysis of their likelihood. For example, the possible 45% reduction under Alternative 4 would not have been imposed during the current low abundance period; the actual PSC reduction that would have been imposed under Alternative 4 would have been 20% in the vast majority of years and average 24% overall, consistent with the 25% blanket reduction the Council imposed on the cod trawl catcher vessel sector. In contrast, the constraints that would have been imposed under Alternatives 2 and 3 would have been trivial to non-existent, providing limited to no benefits to the directed fishery.
5. acknowledges that its projected revenue effects “represent a lower bound of possible revenue estimates” and “an upper bound of revenue impacts,” because “changes in fleet behavior to adapt to changing PSC limits are likely.” Yet, the DEIS leaves it to the Council, NMFS, and the public to guess what the actual impacts of the action might be. This is neither reasonable nor helpful to the Council and it cannot provide the Council and NMFS with the information needed to evaluate the action under the National Standards.

*Comment 3.a.i-5:*

The DEIS lacks clarity for estimating A80 revenue impacts. The analysis provides a lot of information but often does not provide guidance on the appropriateness of the information. For example, under the Average Estimated Revenue A80 Revenue Impact, the analysis provides 16 different data sets for the reader to look at to gauge the estimated impacts to A80 revenue. Different impacts would result depending on the data used. The analysis should be more explicit in describing the data sets and the levels of appropriateness for use in estimating impacts. The use of the 2010-2019 data set is the most

logical, as the longer time span better accounts for changes in halibut PSC encounters over the years (change brought on by changes in conditions on the fishing grounds, climate change, etc.).

*Comment 3.a.i-6:*

Applicability for EO 12866. The DEIS should have more explicitly noted that all of the action Alternatives proposed under this action would likely result in an effect on the economy which will exceed \$100M. As such, this action will require review by the Office of Management and Budget as laid out under EO 12866.

*Comment 3.a.i-7:*

The A80 sector has reduced halibut bycatch as much as it can. This action provides no new tools for the sector to help achieve the proposed PSC reductions described in the alternatives. If adopted, Alternatives 2-4 will result in widespread and significant negative economic and social impacts to the A80 sector and overall economy at large.

*Comment 3.a.i-8:*

The DEIS omits what it describes as “generally understood but poorly quantified economic multipliers” and asserts that the “broad, downstream impacts of commercial fishing can be understood” without considering these metrics. A discussion of multiplier effects is critical to understanding the relative socio-economic contributions of the statewide halibut fishery and the A80 companies. The discussion would also help to counterbalance the bias created by analyzing the impacts of the alternatives based on A80 companies’ gross wholesale revenues and the diminishing ex-vessel values generated by Alaska fishermen in the Bering Sea – diminishing values caused in large part by allowing the A80 companies to externalize the costs of bycatch.

*Comment 3.a.i-9:*

The Council should immediately expand the halibut stock assessment analysis focused on halibut sex ratios to include those of the halibut caught by the A80 fleet.

*Comment 3.a.i-10:*

Regarding population effects, the DEIS needs to more fully consider the value of conserving juvenile fish and allowing them to reach maturity. Reductions in juvenile halibut mortality seem essential to the health and potential for recovery of the stock from the current low level of exploitable biomass. There has long been a concern with bycatch of juvenile fish and the “problem of foregoing the potential growth of these fish.” It is impossible to substantiate a number of the findings, including those detailed under National Standard 1 findings, in the absence of more detailed analysis of the effects of juvenile fish bycatch on an optimum halibut population size.

*Comment 3.a.i-11:*

The agency should also consider, and the DEIS should discuss in more detail, the considerable uncertainty about the true numbers of halibut killed by the A80 companies. The Office of Law Enforcement has noted “increased reports of harassment, intimidation, hostile work environment and other efforts to bias observer samples.” Complaints include “intimidating or coercive attempts to influence sample collection with intent to lower PSC estimates” or remove halibut from observer samples. A80 companies have one of the highest rates of enforcement concerns.

*Comment 3.a.i-12:*

There is some uncertainty about the “effective mortality rate” or ratio of halibut killed to the number of halibut “encountered” by the trawl. The number of halibut “encountered” has

increased in recent years, but the reported ratio of fish killed to caught has declined significantly largely due to the recent and increased use of deck sorting. The reduced effective mortality rates rely on recent efforts by observers to provide viability estimates and observer conclusions that roughly half the halibut are in “excellent” condition prior to release back into the sea. Mortality sampling is random and often at the discretion of the observer. The DEIS needs to disclose that halibut mortalities are estimates and assess factors that may reduce the precision and accuracy of those estimates such as number of samples versus total catch or the number of complaints related to viability sampling. A fuller discussion of the effective mortality rate is essential to understanding the impacts of the alternatives – in particular which alternative limits will be most effective at constraining halibut bycatch at lower abundance levels. Halibut encounters have exceeded the 1,745 limit each of the past five years, including 3,067 mt in 2019 – the highest number of encounters over the past decade. The new effective mortality rates have reached nearly 50% each of the last three years, meaning rates are now a driving factor for effective enforcement of bycatch limits. The DEIS notes year-to-year variability in deck sorting, which raises the concern that using a previous year’s mortality rate – or extrapolating observer samples too broadly - may result in the A80 companies exceeding the limit in reality, but not on paper. Available data suggests uptake in halibut encounters may be fleet choices or may be attributable to environmental conditions (species co-mingling).

*Comment 3.a.i-13:*

The analysis should include historical halibut harvest to bycatch ratio much further back in time with a narrower spatial focus on Area 4CDE to inform the public about the extent to which fixed PSC limits caused a shift in the historical share of the resource from the Area 4CDE directed fisheries to the trawl fisheries. Area 4 quotas overall declined by two-thirds during the decade prior to Amendment 111’s establishment of the current limit in 2015, while bycatch remained the same or increased year to year. The A80 fleet disproportionately kills halibut in Area 4CDE, which accounted for between 83 percent and 90 percent of the companies’ halibut mortality since 2015. The National Standard 4 guidelines indicate that NMFS needs to reverse this trend. The guidelines specify that preserving an “economic status quo cannot be achieved by excluding a group of long-time participants in the fishery.” Relevant FMP objectives that justify restoring the directed fisheries with their historical share of the resource include providing sustainable opportunities for recreational, subsistence and commercial fishing participants and avoiding significant disruption of existing socio-economic structures in Bering Sea communities. Measures must reflect consideration of other factors: economic and social effects, consumer interest and dependence on the fishery by present participants and coastal communities, importance of fishery resources to fishing communities in order to provide for their sustained participation and minimize adverse economic impacts to them.

### 3.a.ii Directed halibut fisheries

*Summary of Comments*

This section includes comments that voice concerns about how the DEIS addresses impacts on the directed halibut fisheries. Concerns include discounted benefits to directed fishery for reducing A80 halibut bycatch, lack of clarity on estimation of directed fishery impacts, the need to fully describe the statewide value of the halibut fisheries, lack of analysis of smaller halibut (U26), and a need to consider external costs in addition to revenue to assess the true costs or benefits of the A80 products. Comments also include concerns that the directed halibut fishery participants lose access to available halibut biomass due to static halibut PSC for the A80 fleet becoming a larger proportion of the total halibut

removals when halibut resource decrease. Other comments noted that significant cuts in halibut bycatch are necessary to ensure the continued viability of the directed halibut fishery in Area 4CDE and protect halibut-dependent communities in Alaska and the Bering Sea. Other comments stated that the DEIS fails to consider the cumulative effects of impacts to the directed fishery in light of catch reductions and closures in other critical fisheries.

*Comment 3.a.ii-1:*

The outcome of status quo bycatch management has resulted in a fisheries management system glaring with inequities. One sector, bycatch users in the A-80 fleet, flourishes and builds new boats while another sector, the directed halibut users, slowly erodes. The A-80 sector claims they will go out of business if they are not allowed to continue to utilize a significant amount of the halibut resource as bycatch in the Bering Sea. A similar claim was made in 2015 when the Council acted to reduce bycatch in the sector but none of the stated outcomes in the fleet occurred, including the inability to finish building a multimillion-dollar new boat that was under construction. The current pressure to conserve the halibut resource is borne by the directed halibut fisheries having lower catch limits at lower levels of halibut abundance. Requiring lower bycatch limits at lower levels of halibut abundance will help share the conservation mandate, and sustain economies of halibut-dependent communities.

*Comment 3.a.ii-2:*

The projected positive impacts to the directed halibut fishery are overstated and unsupported by the substantive and technical analyses in the DEIS.

*Comment 3.a.ii-3:*

The DEIS fails to analyze whether the alternatives are significant regulatory actions requiring OMB review. The DEIS improperly skirts the requirements of Executive Order 12866, which requires “agencies to quantify costs and benefits if an action may have an effect on the economy of \$100 million or more in a single year.” Executive Order No. 12866, 58 Fed. Reg. 51,735 (Sept. 30, 1993). Executive Order 12866 defines explicitly the specific monetary threshold amount of \$100 million for OMB review of proposed regulations.

*Comment 3.a.ii-4:*

Juvenile halibut migrate extensively across the North Pacific, so that most of the juvenile halibut bycatch in the Bering Sea affects all other downstream areas – including Areas 2C and 3A in the Gulf of Alaska where most Southeast Alaska fishermen harvest halibut. Juvenile halibut taken as bycatch would otherwise grow over a period of years and recruit to the resource and fishery, supporting resource productivity and future fishery yield for Alaska fishing communities

*Comment 3.a.ii-5:*

The analysis improperly omits half the halibut from the analysis, resulting in the exclusion of “downstream” impacts from the analysis. This causes highly misleading economic information regarding the benefits of bycatch reduction. On one hand the agency says lower bycatch limits will only help Bering Sea fishermen to the extent that the A80 companies kill larger fish, and on the other hand, the DEIS says juvenile mortality is irrelevant to the decision. Indeed, bycatch reductions result in greater directed halibut fishery catches at more than a 1:1 ratio according to a new IPHC analysis. The 2021 assessment of the effect of the bycatch fisheries on the coastwide directed fisheries explains that “potential yield to the directed fishery was generally larger than a simple reallocation from non-directed discards (115% on average), [and] that the rate of exchange is variable over time (range of 86-139%).” The DEIS arbitrarily dismisses this conclusion as a coastwide impact and not applicable to an action

addressing Bering Sea bycatch of halibut longer than 26 inches in length. But on average, more than half the halibut killed by the A80 companies each year over the past decade are juvenile fish less than 26 inches in length.

*Comment 3.a.ii-6:*

The DEIS needs to more fully describe directed halibut fishery socio-economic contributions and external costs imposed on Alaska by the A80 companies. The DEIS references qualitative discussions and context but ultimately relies on revenue impact to make findings under the Magnuson-Stevens Act National Standards. Flaws in the DEIS include: (1) NMFS measured bycatch fishery values in wholesale revenue and halibut fishery revenues in ex-vessel value; (2) NMFS relies on gross revenues without considering costs and (3) the DEIS did not explicitly consider other economic contributions each sector made in Alaska and the U.S. The SSC concluded that “in its current form, reporting revenue estimates for each fleet will invite readers to make inaccurate comparisons across fleets, and suggests analysts consider whether it may be better to provide no estimate than a misleading one.” The DEIS attempts to address the concern about comparing economic apples and oranges by explaining that reported revenue estimates “do not represent the full scope of the economic impacts.” Nevertheless, there is a significant disparity between the gross wholesale value generated by the A80 companies relative to the gross ex-vessel halibut fishery revenue in the Bering Sea alone disclosed in the DEIS. The analysts rely on this disparity to draw conclusions about community impacts. To correct this implicit bias, the analysis needs to explore the socio-economic value of the Alaska commercial and sport halibut fisheries more fully.

*Comment 3.a.ii-7:*

The Pacific Halibut Multiregional Economic Impact Assessment estimates the Pacific halibut commercial fishing’s total impact in 2018 is five times the 2018 fishery output value and includes direct, indirect, and induced effects from changes to the Pacific halibut fishing sector, as well as indirect and induced effects associated with forward-linked industries (Pacific halibut processing sector). The Assessment concludes that “[t]he results suggest that the revenue generated by Pacific halibut at the harvest stage accounts for only a fraction of the economic activity that would be forgone if the resource was not available to fishers in the Pacific Northwest. The DEIS also needs to consider economic activity that would be forgone if the resource was not available to fishers. Without considering external costs, an economic concept that refers to uncompensated social or environmental effects imposed by the A80 companies on society through bycatch of halibut and other species, habitat harm caused by bottom trawling and climate pollution, it is impossible to meaningfully assess the true costs or benefits of their products or services to society.

*Comment 3.a.ii-8:*

As the directed halibut fishermen and halibut fishery have adapted to reductions in catch limits and allocations to support conservation efforts and management that is based on abundance, the PSC halibut bycatch limits continue to remain static and in turn become a larger proportion of the total halibut removals. Subsequently, the fishermen that have invested in the directed halibut fishery, many of whom live and work in small coastal fishing communities in Alaska, have been losing access to the available biomass.

*Comment 3.a.ii-9:*

Halibut bycatch removals have exceeded the directed halibut fishery removals since 2011. Pressure to conserve the halibut resource is solely carried by the directed halibut fishery having lower catch limits



based on lower levels of halibut abundance. A management plan requiring lower bycatch limits at lower levels of halibut abundance will help distribute the conservation mandate, and sustain economies of halibut-dependent communities and all regional fishing sectors.

*Comment 3.a.ii-10:*

The A80 sector is responsible for the majority of the halibut bycatch mortality in the BSAI and is concentrated to a shocking degree in Area 4CDE, with about 90% of the halibut bycatch mortality occurring in the area's waters where CBSFA members live and fish. Significant additional cuts in halibut bycatch are necessary to ensure the continued viability of the directed halibut fishery in Area 4CDE and to protect halibut-dependent communities in Alaska and the Bering Sea.

*Comment 3.a.ii-11:*

The economic impacts analysis in the DEIS is wholly inadequate. The analysis significantly understates the directed fishery benefits from PSC reductions. The DEIS addresses only A80 PSC limits in the BSAI, artificially dilutes directed fishery benefits from PSC reductions, and skews the results of each analysis in favor of the regulated sectors. This makes it impossible to fairly evaluate and balance the benefits that PSC reductions would provide. The analysis fails to analyze actual gains in directed fishery yield that would result from reductions in bycatch mortality. It understates the long-term conservation benefits that significant reductions in halibut PSC mortality would provide to the halibut stock, both from the reduction in juvenile bycatch mortality and the strong conservation incentives discussed above. Directed fishery benefits are discounted in the analysis and increased yields are deemed speculative, because the IPHC may not "pass-through" reductions in bycatch mortality. This contradicts the official IPHC management procedure, ongoing IPHC concern over low directed fishery yields, its longstanding recognition of inequities that result from current PSC limits, and repeated efforts to increase directed fishery yields in Area 4CDE to help the directed fishery survive.

*Comment 3.a.ii-12:*

The DEIS fails to consider the cumulative effects of impacts to the directed fishery in light of the devastating catch reductions and closures that have been imposed in other critical fisheries, which both increase the importance of the halibut directed fishery and jeopardize revenue streams that have been essential to supporting and maintaining the directed fishery at current levels.

*Comment 3.a.ii-13:*

The analysis does not provide clarity for estimating Area 4 directed fishery impacts. The analysis tasks the reader to develop their own choices of impacts when looking at the effects on the halibut sector. The analysis provides possible impacts assuming that bycatch of halibut could all be U26 or all O26. In reality, the evidence suggests that bycatch ranges from 40 to 65% U26. Analyzing anything outside of this range is misleading and inappropriate. And then, the analysis once again invites the reader to substitute any revenue amount they want to estimate impacts on the halibut sector revenue. This allows the reader to use an extreme price to base their argument around. Instead, the analysis should have used an average over years to account for variability.

### 3.a.iii Dependent communities

*Summary of Comments*

This section includes comment summaries on halibut-dependent communities. Several comments express concerns that current levels of halibut PSC cause disproportionately burdens halibut-dependent communities across Alaska. Comments note Bering Sea communities throughout Alaska as have lost direct access to the halibut fishery and others are in jeopardy. Other comments note that Bering Sea

and downstream Gulf of Alaska communities rely on harvestable and younger, migrating halibut for socio-economic well-being. The DEIS recognizes that halibut bycatch and potential bycatch reductions will have downstream impacts, but considers impacts only to Bering Sea fishing communities, vessels and crew and improperly excludes impacts to other Alaska communities.

*Comment 3.a.iii-1:*

The DEIS omits benefits of bycatch reductions to halibut fishermen and communities in the Gulf of Alaska – including Areas 2C and 3A in the Gulf of Alaska where most Southeast Alaska fishermen harvest halibut when identifying trade-offs between trawl bycatch and the directed fisheries. Because of this fundamental flaw and other misleading economic assumptions, the DEIS underestimates both the impacts of bycatch and the benefits of bycatch reduction to communities. The DEIS minimizes the beneficial impacts of trawl bycatch reduction to Bering Sea fishermen by relying on the coastwide aspect of the halibut stock. The analysis also omits half the halibut taken as bycatch (U26). The juvenile halibut killed in the Bering Sea as bycatch has significant adverse effects on downstream fishermen throughout Alaska. Reduced halibut PSC limits would yield significant benefits to downstream fishermen.

*Comment 3.a.iii-2:*

The DEIS should consider halibut killed by the A80 companies as a significant external cost with massive impacts on Alaska community fishery outputs. The DEIS recognizes that halibut bycatch and potential bycatch reductions will have downstream impacts, but considers impacts only to Bering Sea fishing communities, vessels and crew and improperly excludes impacts to other Alaska communities. The economic analysis must fully describe the statewide value of the halibut fisheries and consider impacts to all Alaska fishermen and coastal communities. The analysis violates the Administrative Procedure Act (APA) by failing to “examine the relevant data.” The conclusion that the A80 sector’s prospective revenue reductions resulted in a loss of national net benefits ignores downstream fisheries, community impacts and the agency’s own National Standard Guidelines thus violating the APA and the Magnuson-Stevens Act. Given National Standard 8’s concern for community fishing economies, and broad explanation of net national benefits laid out in the National Standard 9 Guidelines, the DEIS needed to do a much better job of analyzing and disclosing the directed halibut fishery’s influence on community socio-economic well-being throughout Alaska. The DEIS discusses downstream impacts broadly, but then relies on erroneous assumptions that minimize the regional impacts of the fishery.

*Comment 3.a.iii-3*

We request more detailed analysis of the potential loss of tax revenue and respective contributions of the statewide halibut fishery and A80 companies to Alaska communities. The DEIS identifies two main sources of fishery taxes: shared taxes administered by the state, which are the Fishery Resource Landing Tax and the Seafood Marketing Assessment, and municipal taxes levied on raw fish landings - which the A80 companies do not pay. Most of the Fishery Resource Landing Tax paid by trawlers derives from pollock fisheries. The amount of taxes paid appears to be small compared to fishery taxes paid per dollar in ex-vessel value in Southeast Alaska communities. This means that halibut bycatch may impose another external cost in terms of reducing community tax revenues from halibut that would otherwise be harvested in Alaska.

*Comment 3.a.iii-4:*

The DEIS wrongly claims that the resource “currently appears to be at a stable level” and that sustained participation of halibut communities is “more challenging” but not at risk. Because of abundance declines and the “incidental reallocation” of the resource to the A80 companies, overall Bering Sea fishery ex-vessel values have dropped in recent years. The DEIS’s assumptions of stability are implausible

in light of the statistics showing changes in the Bering Sea directed halibut fishery and a downward trend in fleet size throughout Bering Sea communities. The Bering Sea halibut fleet – overwhelmingly owned by residents of Alaska fishing communities - declined in a number of communities. Some of these smaller community fisheries generated up to half a million dollars in revenue, now lost to A80 company bycatch. In sum, multiple Bering Sea communities and halibut fishermen from throughout Alaska have lost direct access to the halibut fishery and others are continually in jeopardy. Bering Sea and downstream Gulf of Alaska communities rely on harvestable and younger, migrating halibut for socio-economic well-being.

*Comment 3.a.iii-5:*

Our seafood business that is based in Sitka, Alaska is built around the ability to support small-boat fishermen harvesting halibut in the directed fishery. Although we support responsible fisheries practices, such as conservative management actions, the continued ability to support our community-based fishermen is impacted by the reduction to the available catch limits for Southeast Alaska's coastal communities. Although the SIA did not directly address the impact to communities outside the BSAI region, it is well known and stated in the previous environmental impact statement on this subject that halibut migrate and recruit into the directed halibut fishery in other regions, including Southeast Alaska. The DEIS fails to properly evaluate the social impact to these fishery-dependent communities outside of the BSAI stating too many uncertainties

*Comment 3.a.iii-6:*

The current utilization of an arbitrary static cap for halibut PSC is inequitable, unscientific and irresponsible fisheries management. The current static PSC catch limit has resulted in an inequitable fisheries management system that disproportionately benefits the Seattle-based A-80 fleet. The directed halibut fishery that is managed based on halibut abundance is marginalized and reduced, based on PSC removals by the A-80 fleet to a point where rural coastal communities, that are majority Alaska Native, adjacent to the resource can no longer participate in a fishery that has been carried out in the region for over 6000 years.

*Comment 3.a.iii-7:*

At St. Paul Island AK the only *local* commercial fishery fleet is 100% dependent on the halibut resource at this time. Our community is heavily dependent on the subsistence halibut fishery, and we are dependent on a healthy Bering Sea halibut resource to support us for generations to come. A traditional part of the island diet and culture, the halibut subsistence fishery was the basis for the successful development of the commercial halibut fishery that is now the mainstay of St. Paul's economy. The Council has a mandated responsibility to reduce halibut bycatch and to provide fair access to Alaska fishery dependent communities to the halibut resource.

*Comment 3.a.iii-8:*

Our local halibut fishery is a major source of employment and income for our tribal and community members. Each year, 70 to 100 people in our community participate in the halibut fishery, from the skippers, boat crews and young onshore baiters to support services for the fleet. In 2019, 15 vessels participated in the fishery and employed 75 people. In addition to providing harvesting opportunities for the local fleet through its CDQ halibut allocation, CBSFA also provides support services for the fishermen through its Local Fleet Support Program.

*Comment 3.a.iii-9:*

The final analysis should include information describing what was done to inform affected communities about the proposal and the potential impacts the action will have on their communities, what input was received from the communities, and how that input was utilized in the decision making process.

*Comment 3.a.iii-10:*

The DEIS notes that less bycatch “might benefit” fishing communities that depend on halibut harvests, but then minimizes those potential benefits as “likely attenuated by the several biological and policy steps that separate bycatch mortality savings from directed harvest opportunities” and notes communities engaged in the groundfish fisheries could be adversely impacted on a more direct basis. The analysis then implies that decision-makers should select an action alternative that does the least harm to communities that participate in the bycatch fisheries. The SIA shows that the main affected “community” (Seattle) is not that much of a fishing community, but a physical residence for the A80 companies. In contrast, other communities such as St. Paul, Adak, and Atka have either complete or mostly complete community dependency on halibut revenues. Despite the significant differences between Seattle and Alaska’s many remote coastal fishing communities, NMFS’ National Standard 8 findings rely on “simple” financial conclusions. The DEIS ignores the difference between the loss of a half million dollars in annual halibut fishing revenue from several smaller Bering Sea fishing communities and an equivalent or even much larger decline in corporate profit margins.

*Comment 3.a.iii-11:*

A “fishing community” is “substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic needs” and a “social or economic group whose members reside in a specific location and share a common dependency.” Lower bycatch limits will have significantly different socio-economic impacts on significantly different types of fishing communities. The status quo threatens further loss of BeringSea communities while lower bycatch limits may prevent the A80 companies from harvesting their entire quotas in some years. Unlike many Alaska halibut fishermen, these companies at least have some capacity to adapt and prioritize their highest value target fisheries.

### 3.a.iv Subsistence fisheries

*Summary of Comments*

This section contains comments that express concerns that the DEIS does not adequately analyzed the importance of and potential impacts to the subsistence fisheries from this action.

*Comment 3.a.iv-1:*

Analysis of the time depth of regional halibut fishing practices is not present in the SIA (SIA) rendering it methodologically flawed. The true impact of loss of access and opportunity can only be examined in relation to understanding the depth of halibut utilization of the uninterrupted BSAI directed halibut fisheries dating to 6170-6525 Years Before Present. Generations of BSAI area residents, whose descendants continue to live and fish in the region today successfully, managed halibut and ground fish fisheries for thousands of years prior to the development of the directed halibut fishery and the post-MSA American owned groundfish trawl fisheries. The success of pre-colonial BSAI regional management adaptations were grounded in adaptive technologies and fishing methods that limited encounters with non-targeted species and provide a model of long-term sustainable ABM fisheries management in the Bering Sea.

*Comment 3.a.iv-2:*

Responsible management of these resources are of paramount importance to our community, and communities across Southeast Alaska. These stocks are tremendously important for community

resilience and food security, as we have been reminded over the past two years of the Covid-19 pandemic. Sitka is a rural community. Many of us practice subsistence harvesting to feed our families, and we enjoy this way of life. The word subsistence does not truly describe what it is to live this way, as it does not capture how our communities thrive directly because of that connection to these lands and waters. Halibut and salmon are especially culturally important- the indigenous people of this region have relied on these foods and have managed this resource successfully since time immemorial. We favor reducing (trawl) halibut by-catch as much as possible as soon as possible.

*Comment 3.a.iv-3:*

Halibut are a key traditional part of our Unanga (Aleut) culture and diet, a critical commercial and subsistence resource for our community, and are shared widely by local fishermen across the island and far beyond. For generations, Unangan fishermen of St. Paul have fished for halibut from small boats in the waters of the Bering Sea surrounding the Pribilof Islands. The commercial halibut fishery on St. Paul started long before the A80 fisheries started trawling in the Bering Sea. Prior to the formation of our Western Alaska Community Development Quota (CDQ) Program group - Central Bering Sea Fishermen's Association (CBSFA), individual tribal members from St. Paul established the halibut fishery with support from the Tribal Government. This subsistence fishery experience was the basis for the successful development of our commercial halibut fishery today. The DEIS does not adequately represent the situation in Alaska with halibut, the true impacts of trawl bycatch to all other users and the real benefits for the nation. The subsistence fishery has also taken major hits for conservation.

The following comment was submitted by the Department of Interior and contains suggestions for improving the analysis with regard to subsistence fisheries (*Comment 3.a.iv-4*):

*Comment 3.a.iv-4:*

The SIA discusses data that would have been useful but were not available, including current information on subsistence harvest, the use of halibut and local and traditional knowledge. The SIA states that the subsistence use of halibut (and Pacific cod) has deep roots and remains an important part of the social, cultural, and economic fabric of life in the communities of the Bering Sea Aleutian Islands region, and that now commercial and subsistence fisheries are intertwined. This section also states that data on the amounts of halibut harvested for subsistence relative to the amounts of all fish harvested for subsistence are outdated, with some more than 30 years old. The SIA also notes that baseline information on the retention of subsistence halibut from commercial fisheries harvest in some of the key commercial fishing communities is unavailable. The Section concludes by stating that the lack of data limits the ability to fully analyze potential interactive commercial and subsistence fishery impacts of the proposed DEIS alternatives. Because of the lack of Tribal consultation on the issues identified above, we are concerned that potential impacts to Tribes and their members, whether engaged in commercial or subsistence activities, have not been fully analyzed and incorporated into the DEIS alternatives analysis. Foreexample, given the lack of subsistence data, it is not clear how the SIA concluded in Section 4.5.5 that there are no anticipated direct impacts to halibut subsistence from the proposed alternatives, particularly in the context of the continuous decline of the halibut fishery. We believe that tribal consultation could provide the missing and incomplete data.

### 3.a.v Alaska Natives / Tribes

*Summary of Comments*

Comments in this section focus on concerns about the lack of outreach and government-to-government consultation between NMFS and Alaska Native Tribes to inform the DEIS, inaccessibility of tribal

members to halibut resources due to effects of halibut bycatch, and the number of Alaska Native communities that no longer participate in the directed halibut fisheries due to dwindling resources. One comment expressed appreciation for DEIS's approach regarding the impacts of this action on tribal governments and its members. One comment expressed concern with the focus of CDQs in the DEIS, noting that their objectives do not always coincide with those of the tribal governments in their regions and their status with respect to the federal government is entirely different. Recommendations are included to describe how tribal consultation took place and how the Tribal Governments' input was utilized, and a reference to the NOAA Policy on Government-to-Government Consultation with Federally Recognized Indian Tribes and Alaska Native Corporations and the NOAA Tribal Consultation Handbook.

*Comment 3.a.v-1:*

The current utilization of an arbitrary static cap for halibut PSC is inequitable, unscientific, and blatantly irresponsible fisheries management. Under the current management regime, a static PSC catch limit has resulted in an inequitable fisheries management system that disproportionately benefits the Seattle based A-80 fleet, while the directed halibut fishery that is managed based on halibut abundance is marginalized and reduced based on PSC removals by the A-80 fleet to a point where rural coastal communities, that are majority Alaska Native adjacent to the resource, can no longer participate in a fishery that has been carried out in the region for over 6000 years.

*Comment 3.a.v-2:*

Status quo bycatch has consumed a larger and larger proportion of total halibut removals in the Bering Sea producing large amounts of waste, which dramatically impacts indigenous and underserved communities in Alaska, and squandered this critical resource.

*Comment 3.a.v-3:*

The SIA states that "subsistence harvest of halibut would not be directly affected by the proposed action alternatives (SIA page 251)." However, as the SIA also notes, many tribal members harvest subsistence halibut while commercial fishing. Information and documentation regarding the nine Alaska Native communities, represented by respective tribal governments, that have experienced a complete cessation of local vessel participation in the BSAI halibut fishery since 2013-14 and the associated impacts to subsistence activities of tribal members in those communities is noticeably limited or absent. This lack of information is of particular concern, as we have spoken about it in written and oral testimony to the NPFMC throughout this process, and points to the need for better and additional information collated prior to taking federal actions that potentially affect tribal governments. It appears as though the analysts did not make contact with the tribal governments of those nine villages that were forced out of the BSAI halibut fishery.

*Comment 3.a.v-4:*

We commend the SIA's approach regarding the impacts of this action on tribal governments and its members as an example of how federal actions and policymaking should be presented. First, we commend the SIA analysts for identifying the federally recognized Tribes representing the communities that are identified as substantially engaged in the BSAI commercial halibut harvesting and processing, as well as those substantially engaged in the BSAI Groundfish A80 Sector. This approach substantially facilitates the review of the extensive analysis by the tribal stakeholders and the broader public, regarding the impacts of this action on tribal governments and members. This is an example of how analyses of the impacts of federal actions and policymaking should be presented, and how such information can help guide the federal government and its agencies in decision-making that affects Native Americans and Alaska Natives in a manner that is consistent with constitutionally recognized

protections, and the rights and obligations established in the relationship between the federal government and tribal governments. We also appreciate the clear legal framework for this action that was laid out by the analysts, including statutory authorities, agency guidance, and recent executive orders that are relevant to evaluating and balancing both tribal rights vis-à-vis this federal action, but also the various Magnuson-Stevens Act National Standards at play in this action. We also commend the analysis for its extensive documentation of the importance of halibut to tribal members of the Aleut Community of St. Paul Island Tribal Government in particular.

*Comment 3.a.v-5:*

The analysis lacks documentation outreach to 12 tribal entities affected by this action. Our tribal government was not contacted to engage in tribal consultation, and we question whether any tribal governments were part of this analysis, as we have not been able to locate any reference to or notice of tribal consultation by the agency. We identified twelve quotes in the DEIS attributed to St. Paul tribal fishermen. We appreciate the efforts paid to our community, but such documentation appears to be severely or totally lacking for twelve of the other tribal governments affected by this action. One tool for government-to-government timely and consistent communication on actions that may potentially impact Tribes is the formal tribal consultation process.

*Comment 3.a.v-6:*

The current management scenario is inequitable regarding the treatment of directed halibut users, particularly at low to very low levels of halibut abundance. This inequity is noted throughout the DEIS and SIA. For example, we (St. Paul) are one of seventeen Alaska Native communities identified as a “halibut dependent community” in the SIA. Indeed, as noted in the SIA, St. Paul is one of three communities with “virtually complete community fleet dependency on BSAI halibut ex-vessel gross revenues (pg. xxiv)”, along with St. George and Savoonga. The DEIS and associated documents indicate that the Regulatory Context (pg. 3-4) assessment of the proposed action is guided largely by National Standard 8, the National Environmental Policy Act (NEPA), and Executive Order (EO) 12898 regarding Environmental Justice in Minority and Low-Income Populations. The DEIS and associated documents do not speak to the importance of National Standard 4 – Equity in Allocations, and more specifically the National Marine Fisheries Service 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.” 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.

*Comment 3.a.v-7:*

The Council on Environmental Quality (CEQ) environmental justice guidance under NEPA specifically calls for consideration of potential disproportionately high and adverse impacts to Indian Tribes beyond a more general consideration of potential disproportionately high and adverse impacts to minority populations (Council on Environmental Quality 1997).

*Comment 3.a.v-8:*

Of the seventeen halibut-dependent communities in the Bering Sea, more than half are no longer participating in this fishery as a result of being forced out due to dwindling access to the very resources that our ancestors stewarded for past millennia. We cannot stress enough the importance of our tribal rights that are critical to the survival of Indigenous Peoples which are currently being ignored in this process in favor of large scale industrial fishing interests that have only been a reality in our waters since

2008. The trajectory of this process contradicts both existing federal laws regarding Native Americans, Magnuson-Stevens Act and the National Standards, and the recent Presidential Executive Orders to advance racial equity and support for underserved communities through the federal government and reaffirm the federal government's commitment to tribal sovereignty and strengthening nation-to-nation relationships.

*Comment 3.a.v-9:*

The SIA on tribal and community impacts is well organized, yet viewed through the lens of the CDQs. While the CDQs play a critical role in Western Alaska, their objectives do not always coincide with those of the tribal governments in their regions, and their status with respect to the federal government is entirely different. CDQs are U.S. corporate entities and citizens subject to the laws of the United States. As sovereign nations, tribal governments are in an entirely different category. With a few exceptions, it appears that the analysts did not engage with the tribal governments for a direct understanding and thorough evaluation of how the loss of halibut through this and previous federal actions has impacted those Tribes, and how federal commitments to those tribes may have been already violated or may potentially be violated by the various alternatives in this action. Thus, the SIA obscures the dependence of individual Tribes on the halibut resource, as well as the commitment required of the federal government through constitutional and judicial principles to provide for the well-being of individual tribes and tribal members impacted by this action. For some Tribes within the various CDQ regions, halibut is essential to their sense of being and tribal identity and cannot be replaced with revenues that originate from the endeavors of their CDQ affiliations. The loss of halibut threatens their survival and may result in their extinction as a unique Peoples with a unique and irreplaceable culture.

*Comment 3.a.v-10:*

We remain actively engaged to plead for equitable decision-making and ensure our continued participation in the directed halibut fishery. Indeed, our participation in directed halibut fishing is guaranteed as part of our federally protected fishing rights in the Bering Sea, as explained in the attached letter from the Department of the Interior to the National Oceanic and Atmospheric Administration (26 May 2015, attached). This letter highlights the vital importance of each agency's role in protecting our tribal fishing rights. This letter calls for NOAA to ensure "access to the fishery resource at a level sufficient to sustain the local fishing economy and subsistence needs of the Tribe (pg. 2)."

The following comments were submitted by the Department of Interior and contain suggestions for improving the analysis with regard to Tribal Consultation (*Comment 3.a.v-11 through Comment 3.a.v-13*):

*Comment 3.a.v-11:*

We appreciate that the DEIS recognizes the vital importance of halibut to the cultural identity and way of life of many Alaska Native Tribes. We are concerned however, that Alaska Native Tribes have not been formally consulted on a government-to-government basis during preparation of the DEIS despite consultation with other groups, such as the Alaska Fisheries Information network. Consultation with Tribal nations must be "regular, meaningful, and robust" to facilitate true government-to-government engagement between Tribal governments and the Federal Government. See Presidential Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships; see also Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Executive Order 13175 specifies that each Federal agency must have an accountable process to ensure meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications. For this DEIS, the National Marine Fisheries Service



(NMFS) is the agency responsible for carrying out Tribal Consultations. See SIA Section 3.5. Here, we recommend that NMFS immediately begin consultation with affected Tribal governments and that the information received from consultation be fully analyzed and addressed in the final EIS and Record Decision.

*Comment 3.a.v-12:*

We are concerned that statements in SIA appear to leave open the possibility that consultation may not occur prior to final action by the Council. For example, Section 3.0 states, "assuming their availability prior to final action," results of Tribal consultation and collaboration processes will be incorporated into the final version of this SIA. On February 8, 2021, the Council adopted a motion that recommended, among other actions, that the Council work with NMFS to "receive and understand results of Tribal consultation meetings as early in the process as possible, preferably prior to Council final action."

*Comment 3.a.v-13:*

Because of the lack of Tribal consultation on the issues, we are concerned that potential impacts to Tribes and their members, whether engaged in commercial or subsistence activities, have not been fully analyzed and incorporated into the DEIS alternatives analysis. To be meaningful, Tribal consultation must be conducted and its results analyzed and provided to decision makers before a final decision has been made. This is consistent with the purposes of NEPA, which requires that Federal agencies assess the environmental effects of their proposed actions prior to making decisions. Failure to account for Tribal interests in decision-making conflicts with Section 5(b)(2)(A) of Executive Order 13175 which directs that "no agency shall promulgate any regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute, unless the agency, prior to the formal promulgation of the regulation consulted with tribal officials early in the process of developing the proposed regulation." We believe that Tribal consultation with Alaska Native Tribes would provide data that should be incorporated into a final decision implementing Bering Sea and Aleutian Islands halibut abundance-based management. We recommend that NMFS immediately engage in "regular, meaningful, and robust" government-to-government consultation with the Tribal governments to meaningfully assess potential impacts to Alaska Native Tribes who have relied on the halibut fishery to support the overall health and welfare of their communities for generations.

The following comments were submitted by the Environmental Protection Agency and contain suggestions for improving the analysis with regard to Tribal Consultation (*Comment 3.a.v-14 and Comment 3.a.v-15*):

*Comment 3.a.v-14:*

The DEIS refers to *Executive Order 13715 of November 6, 2000, Consultation and Coordination with Indian Tribal Governments* and the *Presidential Memorandum of January 26, 2021, Tribal Consultation and Strengthening Nation-to-Nation Relationships in relation to Tribal Consultation*. The DEIS did not, however, include documentation of the Tribal Consultation that took place during the NEPA process. We recommend that the analysis describe how and when tribal consultation took place and include a discussion of the results of the meetings and how the Tribal Governments' input was utilized.

*Comment 3.a.v-15:*

We recommend that the analysis include reference to the NOAA Policy on Government-to-Government Consultation with Federally Recognized Indian Tribes and Alaska Native Corporations and the NOAA Tribal Consultation Handbook. We also recommend that the FEIS reference NOAA's 2019 NOAA Fisheries and National Ocean Service Guidance and Best Practices for Engaging and Incorporating Traditional Ecological Knowledge in Decision-Making.

### 3.a.vi Environmental Justice and other cultural and social interests

#### *Summary of Comments*

This section includes comments on the DEIS's deficiency in addressing environmental justice and the potential socio-cultural impacts of the proposed alternatives. Concerns include the lack of direct engagement with Bering Sea communities and halibut fishermen throughout Alaska to collect Local and Traditional Knowledge (LTK), especially in comparison to effects to gain LK from the affected A80 fleet. Additional comments include suggestions to not compare Seattle as a community to disadvantaged, minority communities, but rather consider re-evaluating increased operation expenses as impacts to an industry sector. The DEIS should consider the definition of "disadvantaged community" as referenced in EO 14008 and further described in the Interim Implementation Guidance for the Justice 40 initiative.

#### *Comment 3.a.vi-1:*

Many Bering Sea communities and halibut fishermen throughout Alaska have lost direct access to the halibut fishery and many stand on the brink. We need healthy adult stocks and young fish that migrate from the Bering Sea downstream to the Gulf of Alaska for our coastal and culture economies. The report does not highlight these social equity issues. Thousands of Alaska Natives depend on halibut for food and culture from St. Paul to Southeast Alaska, over 2,000 halibut fishermen and their crews and families, and processors and other support businesses along the entire coast of Alaska. The small boat longline fishery has been sustainable for over 100 years. We are marginalized in the DEIS for five Seattle trawl companies. These issues must be addressed in the final DEIS.

#### *Comment 3.a.vi-2:*

The current SIA in Appendix 1 of this report inadequately analyzes the potential socio-cultural impacts of the proposed alternatives. This is a result of lack of meaningful community engagement to describe local values and knowledge and obtain relevant ethnographic qualitative data essential for conducting a SIA. The DEIS lacks analysis of the historic and cultural utilization of halibut by BSAI communities including traditional fishing techniques, technologies and cultural understandings of residents' relationship to and with halibut. Local and traditional knowledge is absent that would provide meaningful insights. The DEIS contains near exclusive reliance on quantitative methods, which is not adequate for evaluating the impacts of the proposed management plans. This range of issues results in a biased analysis because it fails to describe the subsistence, nutritional, social, and spiritual importance of halibut to BSAI area Alaska Native people and directed halibut fishermen. The DEIS is not adequate to evaluate the potential socio-cultural impacts of the proposed options.

#### *Comment 3.a.vi-3:*

Environmental justice is "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income." EJ must be considered if a proposed undertaking will have an adversely high and potentially adverse human health or environmental on a minority population and low-income population. Ascertaining the socio-cultural impact to BSAI communities of continued high levels of halibut PSC requires documentation of LTK based on partnership with directed halibut fishermen and dependent communities. The appropriate source of information to assess such impacts is area residents and harvesters who have lived and fished in the region for generations and

who have a direct dependency on halibut for nutrition, scaled economic benefit, and socio-cultural identity. There was not an effort to engage regional communities to address LTK as part of this SIA. The purpose of an SIA is to create space for the voices of under-represented and marginalized communities to evaluate the potential impact of a proposed action. This cannot be accomplished without direct engagement with affected BSAI communities and other directed halibut fishermen or through use of existing quantitative data and a handful of phone calls to regional entities. Such work necessitates a study in partnership with the affected communities, with clear objectives and methodology. The SIA is inadequate and does not address the potential socio-cultural impacts on area residents and regional halibut fishermen, because they were not asked.

*Comment 3.a.vi-4:*

The directed halibut fishery is a way of life for the people of halibut-dependent communities in Area 4. The halibut fishery provides critically needed income and economic opportunity to communities that face extraordinary challenges and obstacles to prosperity due to their remote locations, limited opportunities for economic development, and the effects of historical discrimination against predominantly Alaska Native residents. Unfortunately, these same communities have been forced to bear unfair and disproportionate burdens from A80's bycatch under the current PSC limits. Under conditions of low abundance, the current static bycatch limits allow A80 to waste the majority of halibut available in Area 4CDE, directly reducing the amount of halibut available to the directed fishery. This has reduced available directed fishery catch to levels that are neither fair and equitable nor sustainable and that jeopardizes its continued existence.

*Comment 3.a.vi-5:*

The marginalization of Alaska Native communities' participation in the most long standing and sustainable small scale fishery in the BSAI region clearly violates EO 12898 on environmental justice. This Executive order defines Environmental Justice as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income." Environmental Justice must be considered if the proposed undertaking will have an adversely high and potentially adverse human health or environmental on a minority population and low-income population." Alternative 4 is the only management option that meaningfully addresses equitable access for BSAI communities and the broader directed halibut fishing fleet. Anything less continues to perpetuate and codify colonial marginalization of Alaska Native communities and fisheries for the sole benefit of an industrial scale corporate fleet based over 1500 miles from the Bering Sea.

The following comment was submitted by the Department of Interior and contains suggestions for improving the analysis with regard to Environmental Justice and Alaska Native cultural interests (*Comment 3.a.vi-6*):

*Comment 3.a.vi-6:*

The SIA states that there are no known published sources of LK or TK that would inform the analysis in the DEIS. However, Council staff compiled LK data from the A80 commercial groundfish trawl fleet through interviews, correspondence, and written and oral public testimony. That information provided insight into the range of opportunities and constraints faced by A80 vessel operators over the course of a fishing year. In contrast, Council staff reached out to contacts in Bering Sea Aleutian Islands communities and Alaska Native organizations for additional data sources on LK and TK. In response they received a white paper compiled by staff of the Aleut Community of St. Paul Island Ecosystem Conservation Office that included community voices and perspectives on the cultural significance of halibut. We appreciate that the Council reached out to Tribal communities

to solicit LK and TK information. We believe that formal government-to-government consultation would have been more appropriate and would have generated significantly more accurate and useful data.

The following comments were submitted by the Environmental Protection Agency and contain suggestions for improving the analysis with regard to Environmental Justice (*Comment 3.a.vi-7 through 3.a.vi-10*):

*Comment 3.a.vi-7:*

We disagree with the framing of the Seattle Metropolitan Statistical Area as a community in the document and Social Impact Assessment, especially when used comparatively to disadvantaged, minority communities with notable EJ concerns. We recommend that this consideration be further clarified to emphasize critical context in this discussion.

*Comment 3.a.vi-8:*

We encourage NMFS to show deference in its analysis and decision-making to the needs of the CDQ groups.

*Comment 3.a.vi-9:*

The analysis states that the majority of the vessel owners do not meet any of the criteria for a disadvantaged EJ community. We recommend that the analysis re-evaluate if these increase operation expenses would more appropriately be characterized as impact to an industry sector (e.g. not an impact to EJ community).

*Comment 3.a.vi-10:*

We recommend the DEIS consider the definition of “disadvantaged community” as referenced in EO 14008 and further described in the Interim Implementation Guidance for the Justice 40 initiative, which direct agencies to consider a range of specific demographic and environmental variables when assessing a community.

### 3.b. MSA National Standards and Net Benefit to the Nation

The MSA National Standards address a number of topics that are the focus of other sections in this Comment Summary Report. To minimize repetition, we set forth only comments that specifically cite consistency with the MSA National Standards in this section.

#### General Comments

*Summary of Comments*

Comments in this section address the need to balance the National Standards, concerns that the analysis does not present enough information to determine consistency with the National Standards and does not support the conclusions in the summary, and the consistency of Alternative 4 with the National Standards.

*Comment 3.b-1*

It is important to reiterate the need to balance the National Standards in relation to this action and recognize that no one standard supersedes the importance of the others. The National Standards are

principles that must be followed in any fishery management plan to ensure sustainability and responsible fishery management. Collectively, the National Standards require conservation and management measures to prevent overfishing, rebuild depleted stocks, and ensure the long-term health and sustainability of fisheries. This is mandated by the Magnuson-Stevens Act and a cornerstone of the premier marine fisheries law guiding sustainable fisheries management.

*Comment 3.b-2*

In October 2020, the Council directed staff to “shift the analytical process from a management strategy evaluation (MSE) approach” to “a more traditional impacts analysis on the affected fishing sectors and other affected resource components” so that the Council could assess “policy level tradeoffs” related to “balancing the different considerations in the National Standards, with a particular focus in balancing aspects of National Standards 1, 4, and 9.” The DEIS does not present a complete, objective analysis with which to determine consistency with the National Standards. In general, the DEIS downplays the impacts to the A80 sector and the impracticability of further reductions in A80 PSC limits, while overstating the potential benefits to the directed halibut fishery.

*Comment 3.b-3*

While the DEIS frames the purpose of this action as seeking to balance the reduction of bycatch under National Standard 9 with maintaining optimum yield (OY) under National Standard 1, any plan or plan amendment issued under the MSA must balance and comply with all ten National Standards. And here, Alternative 4 is the most consistent—by far—with the National Standards.

*Comment 3.b-4*

Conclusions found in the National Standards summary are not supported by the analysis and demonstrates that the DEIS fails to analyze whether Alternatives 2 – 3 are significant regulatory actions based on EO 12866.

## National Standard 1.

*Summary of Comments*

Comments in this section address whether the action is consistent with National Standard 1 and whether the analysis supports such conclusions. Comments include points with respect to achievement of OY is not meant to be at the expense of other fisheries or the integrity of the Bering Sea ecosystem, National Standard 1 does not limit its directive to those fisheries that happen to be managed directly by the Council under the MSA

*Comment 3.b-5*

OY is not meant to be achieved at the expense of other fisheries and the sustained participation of fishing communities. The National Standard guidelines describe the determination of OY as a “decisional mechanism” for, among other things, “balancing the various interests that comprise the greatest overall benefits to the Nation.” The DEIS states unequivocally that “constraining halibut PSC limits set for species harvested by the A80 sector that result in reduce [sic] catch and marketing of those species are likely to result in negative impacts to net benefits to the Nation.” This is despite the fact that the DEIS authors admit that the potential benefits to directed users of halibut is overstated. The DEIS demonstrates that even large reductions in PSC limits show very little economic benefit to the directed halibut fisheries and extremely small benefit to BS fishing communities. Further, subsistence users would not directly benefit from potential reallocations of A80 PSC. The IPHC accounts for incidental halibut removals in the groundfish fisheries and recreational and subsistence catches before setting commercial halibut catches each year. Yet the DEIS’ unambiguous conclusion of negative net benefits is

largely ignored and/or explained away in the discussion of National Standard 1 in section 7.1. In addition, Section 7.1 speculates further that with the use of indexing, halibut encounter rates by the sector “may also be low” – despite earlier sections that acknowledge that the proposed indices for this action do not correlate with sector halibut encounter rates. This statement is completely unsupported, thereby misleading the reader.

*Comment 3.b-6*

OY is not a carte-blanc invitation to harvest a high yield of a species by one fishing sector/gear type at the expense of other fisheries and the sustained participation of small boat fishing communities. Nor is it meant to be achieved at the expense of ecosystem integrity as a result of high PSC encounter rates with the potential to result in a trophic cascade, the consequence of which would be collapse of multiple fisheries. Rather the guidelines to National Standard 1 note that OY is a decisional mechanism for resolving MSA conservation and management objectives and balancing the various objectives that comprise the greatest net benefits to the nation. Alternative 4 is therefore the best mechanism for PSC reduction to sustain viable BSAI halibut abundance and the integrity of the Bering Sea ecosystem as ecosystem integrity is the fundamental requirement sustained appropriately scaled fisheries, which does provide the greatest long term net benefit to the nation.

*Comment 3.b-7*

National Standard 1 directs the Council to achieve “the OY from each fishery for the United States fishing industry.” As the DEIS makes clear, the PSC reductions in Alternative 4 have no effect on OY in the groundfish fishery, because OY would still be achieved even if the A80 sector landed no fish at all. At the same time, the PSC reductions in Alternative 4 would result in OYs for the directed halibut fishery. While NMFS has stated its belief that OY in the halibut fishery is not a factor for consideration because halibut happen to be managed under a bilateral treaty and thus are not directly managed under the MSA, the plain text of National Standard 1 does not limit its directive to those fisheries that happen to be managed directly by the Council under the MSA. Nor does it exclude fisheries that, by virtue of fishes’ unique biology and their extraordinary cultural and economic importance to multiple countries, require management under treaties with other nations. Instead, the plain text of National Standard 1 directs the Council and NMFS to achieve the OY from every fishery “for the United States fishing industry.” The directed halibut fishery—which is prosecuted by U.S. fishermen and the people of halibut-dependent communities across Alaska—falls squarely within this mandate.

## National Standard 2.

*Comment 3.b-8*

National Standard 2 of the MSA requires fishery management to be diligently researched and based on “the best scientific information available.” 16 U.S.C. §1851(a)(2). The agency is not required to collect new data to meet this standard but it is required to consider and use all reliable data available at the time it is making a decision. If superior or contrary data are ignored, National Standard 2 is violated. National Standard 2 does not allow the agency to omit known information in order to skew the results of an analysis. Similarly, NEPA requires agencies to “insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements” and to “identify any methodologies used” and the “scientific and other sources relied upon for conclusions.” NEPA “envisions that program formulation will be directed by research rather than that research programs will be designed to substantiate programs already decided upon.” NEPA requires “a diligent research effort, undertaken in good faith, which utilizes effective methods and reflects the current state of the art of relevant scientific discipline.”

## National Standard 4.

### *Summary of Comments*

Comments in this section address whether the action is consistent with National Standard 4 and whether the analysis supports such conclusions. Comments include points with respect to A-80 fleet being prioritized over directed halibut fisheries and A80's PSC limits grant it an "excessive share" of the halibut resource.

### *Comment 3.b-9*

National Standard 4 addresses fair and equitable allocations to fishermen, derived from reasonable calculations to promote fishery conservation in a manner that no entity acquires an excessive and disproportionate share of such privileges. Under the current management structure halibut bycatch by the A-80 fleet is being prioritized over directed halibut fisheries. This directly violates National Standard 4 "that no particular individual, corporation, or other entity acquires an excessive share of such privilege." Under the existing management structure and Alternative 1 no action this standard is not equal footing with National Standard 1. In the guidance for making allocations, section 3 states: "[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." Alternative 4 is the only alternative that meaningfully addresses these guidelines. BSAI communities that have fished for halibut and managed halibut stocks for thousands of years are in many cases no longer able to participate in the halibut fishery. Alternative 4 is the only management option that meaningfully addresses equitable access for BSAI communities and the broader directed halibut fishing fleet.

### *Comment 3.b-10*

Congress clearly recognized in the MSA that unchecked, larger fishing interests with more economic power could easily capture a disproportionate and inequitable share of fishery resources. To prevent this, National Standard 4 requires that equitable considerations—not just economics, political connections, and powerful lobbies—guide the Council's and NMFS's decision-making. To that end, National Standard 4 and the Halibut Act both require that any allocation of fishing privileges be "fair and equitable" to United States fishermen; "reasonably calculated to promote conservation"; and "carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges." National Standard 4 guidance also requires that such allocations consider judicial guidance and government policy concerning the rights of treaty Indians and aboriginal Americans, which are clearly at stake in this action. Only Alternative 4 satisfies these requirements. Allowing excessive levels of bycatch to continue is not reasonably calculated to promote conservation. It is not fair and equitable to allow excessive PSC mortality to continue during periods of low abundance without regard to the state of the resource, especially when this choice would exclude other long-time participants in a fishery and destroy their way of life in the process. A80's PSC limits grant it an "excessive share" of the halibut resource. A80 is authorized to take an overwhelming share of the available halibut, especially in Area 4CDE. Only requiring significant reductions in PSC mortality when abundance is low can remedy this imbalance.

## National Standards 4. and 8.

### *Summary of Comments*

Comments in this section address whether the action is consistent with National Standards 4 and 8 and whether the analysis supports such conclusions. Comments include points with respect to National Standards 4 and 8 being treated on par with National Standard 1; the action is not reallocating halibut from A80 to the directed halibut fishery but reduces the *de facto* reallocation

that has occurred under static PSC limits; social equity issues involved between halibut fishermen, rural coastal communities, indigenous dependence and a small-scale fishing industry versus Seattle trawl companies with industrial fishing factories.

*Comment 3.b-11*

National Standard 4 addresses fair and equitable allocations to fishermen under reasonable calculations to promote conservation and carried out in a manner that no entity acquires an excessive share of such privileges. Under the current halibut bycatch management system and the prioritization of bycatch over directed fisheries, as with National Standard 8, this standard does not appear to have equal footing with National Standard 1. As noted in the guidance for making allocations, section 3 states: “[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.” The Bering Sea communities which no longer participate in the halibut fishery and those hanging on by a bent hook are primarily Alaska Natives and the injustice must be corrected.

*Comment 3.b-12*

The DEIS provides misleading analysis on community impacts and “incidental reallocations.” There are significant and interrelated problems with the DEIS’s analysis and findings under National Standards 4 and 8. The analysis underestimates potential benefits to halibut dependent communities. Conclusions rewrite the history of the fisheries by ignoring ongoing and uncompensated “reallocation” of halibut quota from Bering Sea Alaska fishermen to the bycatch fisheries. National Standards 4 and 8 both reflect the conservation goals of the Magnuson-Stevens Act. There is no conflict between the MSA’s commitments to both conservation and mitigating adverse economic impacts – decision makers “must give priority to conservation measures.” National Standard 4 requires that allocations of fishing privileges be fair and equitable and reasonably calculated to promote conservation. Bycatch limits “promote conservation of the halibut resource.” Conservation is “a careful preservation and protection of something, especially planned management of a natural resource to prevent exploitation, destruction or neglect” or to “prevent [natural resources] from being loss or wasted.” While NMFS relies on the IPHC to maintain the spawning biomass, it admits that reducing the numbers of halibut killed by the A80 fleet would promote the conservation of the halibut stock itself. The DEIS recognizes that an action to reduce bycatch is neither a direct allocation nor an assignment of fishing privileges, but then identifies National Standard 4 “considerations” that pertain to the A80 companies. The analysis refers to “incidental reallocation effects” and asserts that action alternatives “could effectively (if indirectly) be a reallocation of access to halibut between the A80 companies and Bering Sea halibut fishermen. Halibut are a prohibited species, so, the A80 companies must avoid halibut, or, if “encountered,” safely return them to the sea. The action before the Council is not one of reallocating halibut from A80 to the directed halibut fishery; it is reducing the *de facto* reallocation that has been allowed to occur under static PSC limits set when halibut were far more abundant. The analysis fails to adequately inform decision-making regarding either National Standard 8 or National Standard 4 to the extent it is relevant. The DEIS does show the proportionality problem to some extent by disclosing bycatch and halibut harvest data from the past decade. Those data show that the volume of halibut killed in Area 4CDE as bycatch, mostly by the A80 companies, often is twice as much as the directed fishery harvests or more.

*Comment 3.b-13*

The A80 companies disproportionately kill halibut in Area 4CDE, accounting for 83 percent to 90 percent of the companies’ halibut mortality since 2015. The National Standard 4 guidelines indicate that NMFS needs to reverse this trend. The guidelines specify that preserving an “economic status quo cannot be



achieved by excluding a group of long-time participants in the fishery.” Relevant FMP objectives that justify restoring the directed fisheries with their historical share of the resource include providing sustainable opportunities for recreational, subsistence and commercial fishing participants and avoiding significant disruption of existing socio-economic structures in Bering Sea communities. Per National Standard 8, measures must reflect consideration of other factors: economic and social effects, consumer interest and dependence on the fishery by present participants and coastal communities, importance of fishery resources to fishing communities in order to provide for their sustained participation and minimize adverse economic impacts to them. A “fishing community” is “substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic needs” and a “social or economic group whose members reside in a specific location and share a common dependency.” Lower bycatch limits will have significantly different socio-economic impacts on significantly different types of fishing communities. The status quo threatens further loss of Bering Sea communities while lower bycatch limits may prevent the A80 companies from harvesting their entire quotas in some years. Unlike many Alaska halibut fishermen, these companies at least have some capacity to adapt and prioritize their highest value target fisheries.

*Comment 3.b-14*

The analysts’ conclusions of consistency with National Standards 4 and 8 fail to inform the public and decision makers regarding the glaring social equity issues involved – on one side, over 2,000 halibut fishermen, rural coastal communities, indigenous dependence and a small-scale fishing industry that is one of the few long-term success stories in fisheries management versus five Seattle trawl companies and their 18 – 20 industrial fishing factories. Thousands of families, businesses, and fishing communities from Ketchikan to St. Paul depend on the health of the halibut resource.

**National Standard 8.**

*Summary of Comments*

Comments in this section address whether the action is consistent with National Standard 8 and whether the analysis supports such conclusions. Comments include points with respect to Bering Sea fishing communities dropping out of the fishery under the current use of halibut bycatch; failure of the analysis to demonstrate the relationship between bycatch fisheries and socio-economic harms to Alaska fishermen; and the larger, thriving, broad-based economies of Seattle compared to the halibut dependent Bering Sea communities.

*Comment 3.b-15*

National Standard 8 requires management and conservation actions to consider effects on fishing communities; consider how to ensure sustained participation of fishing communities; and to the extent practicable, minimize adverse economic impacts on such communities. Under the current use of halibut bycatch, fishing communities in the Bering Sea are dropping out of the fishery with 9 out of 17 Bering Sea communities no longer participating in the fishery. The Social Impact Analysis (SIA) reports many Alaska Native and Alaska coastal communities have been negatively impacted and are facing closures to their halibut fisheries and adverse economic and social impact to minority populations. It is impossible to quantify the magnitude of loss to a community when access to the halibut resource is lost. The importance of cultural heritage and community well-being is captured in the wisdom of National Standard 8, and policies must recognize the equal importance of this standard.

*Comment 3.b-16*

The DEIS’s findings under National Standard 8 suffer from a failure to grasp the relationship between the bycatch fisheries and socio-economic harms to Alaska fishermen. National Standard 8 requires that

conservation and management measures consider the importance of fishery resources to fishing communities in order to provide for their sustained participation and minimize adverse economic impacts to them. A “fishing community” is “substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic needs” and a “social or economic group whose members reside in a specific location and share a common dependency.” Lower bycatch limits will have significantly different socio-economic impacts on significantly different types of fishing communities. The status quo threatens further loss of Bering Sea communities while lower bycatch limits may prevent the A80 companies from harvesting their entire quotas in some years. Unlike many Alaska halibut fishermen, these companies at least have some capacity to adapt and prioritize their highest value target fisheries.

*Comment 3.b-17*

Alternative 4 is the only Alternative that requires the consideration of the fishery resource to fishing communities. While the current SIA included in this DEIS is inadequate in describing the importance of halibut and Bering Sea ecosystem integrity for BSAI communities and the broader directed halibut fleet that relies on the health and reproductive viability of Bering Sea halibut, National Standard 8 does highlight these factors as important considerations in management decisions.

*Comment 3.b-18*

National Standard 8 requires these management and conservation actions to consider effects on fishing communities; consider how to ensure sustained participation of fishing communities (section 1); and, to the extent practicable, minimize adverse economic impacts on such communities (section 2). This failure to properly manage the groundfish fisheries responsible for halibut bycatch to the detriment of our communities, as exemplified by the more than half of the identified seventeen communities no longer participating, may have already violated federal trust responsibilities and treaty rights towards Alaska Natives. Further, the identification of such an effect should heighten agency attention to Alternatives, mitigation strategies, monitoring needs, and preferences expressed by the affected communities or populations, but does not seem to be fully or appropriately considered here.

*Comment 3.b-19*

National Standard 8 requires the adoption management measures that account for the importance of fishery resources to local fishing communities and that ensure their continued participation in fisheries. In short, the halibut fishery is of extraordinary importance to St. Paul and other halibut-dependent communities across Area 4. They have invested heavily in the halibut resource and have few other alternatives. Their continued participation in the fishery is threatened, however, by the inequities that existing PSC limits and low abundance create—inequities that can only be remedied by the meaningful reductions in PSC mortality that Alternative 4 includes. This dependence on halibut, and the degree to which this action will affect the very future of their communities, stands in stark contrast to Seattle, Washington, where all of the A80 fleet is based. Simply put, Seattle has thriving, broad-based economies that are many orders of magnitude larger than the halibut dependent communities in the Bering Sea. Any effects of reduced PSC limits on that community would be virtually imperceptible.

## **National Standard 9.**

*Summary of Comments*

Comments in this section address whether the action is consistent with National Standard 9 and whether the analysis supports such conclusions. Comments include points with respect to different interpretations of the term “to the extent practicable”; whether the A80 fleet can make further substantial

reductions without impacting the sector's ability to catch its targets; how the analysis addresses uncertainty and precautionary principle with regard to bycatch; consideration of how restrictive bycatch management during times of low halibut abundance supports conservation of the resource and recognizes the needs of directed halibut users and halibut-dependent communities negatively impacted by status quo bycatch management; the practicability requirement under National Standard 9 does not prohibit expensive measures to avoid bycatch and minimize mortality; and cost-effective measures are readily available.

*Comment 3.b-20*

National Standard 9 emphasizes that conservation and management measures shall, to the extent practicable, minimize bycatch and to the extent bycatch cannot be avoided, minimize the mortality of such bycatch. There have been positive strides forward to reduce mortality with deck sorting in the A-80 fleet, and we appreciate ongoing efforts to reduce mortality. Subjective understanding of "to the extent practicable" is the most problematic language with different interpretations by various user groups. From our perspective, "to the extent practicable" does not mean limiting bycatch reductions only to a level which does not constrain the target fishery. It means balancing all the National Standards equally and in the context of all the standards determining what is practicable. The bycatch users clearly have a different understanding of this National Standard, and policy makers must balance this stakeholder input in the context of the whole.

*Comment 3.b-21*

The analysis conclusively demonstrates that it is not practicable for the A80 sector to make further reductions in PSC usage without impacting the sector's ability to catch its targets. There is ample support in the DEIS to conclude that the A80 sector has already minimized PSC usage to the extent practicable using all of the tools available to it (e.g. excluders and deck sorting in fisheries where conditions allow this to be practicable). It is unreasonable to assume that the sector can make further substantial reductions without impacting the sector's ability to catch its targets. Yet the discussion of National Standard 9 fundamentally ignores the findings in the DEIS as to practicability, veering off into a vague discussion of a purported "choice" between National Standards 1, 8, and 9. This subsection must be re-written to accurately reflect the results of the analyses and information in the DEIS.

*Comment 3.b-22*

The DEIS needs to discuss how the alternatives respond to the precautionary principle. The National Standard 9 guidelines require decision makers to adhere to the precautionary approach when faced with uncertainty regarding, among other things, population effects for the bycatch species, changes in the economic, social, or cultural value of fishing activities, and social effects. There are significant uncertainties regarding "population effects" for the halibut stock and future changes in biomass and stock condition, warranting a precautionary approach aimed at limiting bycatch well below a threshold at which there is a risk of contributing to further decline. The precautionary approach provides that "[t]he absence of scientific information should not be used as a reason for postponing or failing to take measures to conserve ... non-target species and their environment." The rationale reflects the understanding that scientific certainty often arrives too late to design effective policy responses to environmental concerns. The Bering Sea FMP policy also incorporates a precautionary approach. There are numerous uncertainties about population effects and other biological factors that warrant discussion of how the precautionary approach related to this action.

*Comment 3.b-23*

National Standard 9 emphasizes that conservation and management measures shall, to the extent practicable, minimize bycatch and to the extent bycatch cannot be avoided, minimize the mortality of such bycatch. Under the current cap the A80 fleet is allowed to harvest and waste exorbitant quantity of sexually immature halibut that negatively impacts the coast wide halibut biomass. National Standard 9 requires equal consideration of all the National Standards, and in the context of all the standards developing limitations that support ecosystem integrity, and to not remove non-target species to such a degree that long standing sustainable directed fisheries cannot be conducted, to the detriment of regional coastal communities. The A-80 user group clearly has a different understanding of National Standard 9, and policy makers must balance stakeholder input in the context of the directed fisheries, ecosystem integrity and equitable access and opportunity for the BSAI Alaska Native fishing communities, who are most directly and immediately impacted by excessive halibut by catch and have been living and fishing in the effected waters the longest. Alternative 4 is the only available option that meaningfully addresses these issues, and allows the A80 fleet fishing opportunity based an abundance based management structure congruent with long standing directed halibut fishery abundance based management practices. Restrictive bycatch management during times of low halibut abundance supports conservation of the resource and recognizes the needs of directed halibut users and halibut-dependent communities which have been negatively impacted by status quo bycatch management. Alternative 4 is the only equitable option for conservation of the halibut resource with the lowest possible PSC limits (45% below current) at lowest levels of halibut abundance. This will preserve more adult and juvenile halibut to contribute to the coastwide biomass. Reduction of halibut bycatch will benefit thousands of fishing families, businesses and communities that depend on the health of the halibut resource that live in and fish throughout the Bering Sea and Gulf Alaska.

#### *Comment 3.b-24*

National Standard 9 requires the adoption of practicable measures to minimize bycatch and, where bycatch cannot be avoided, to minimize the resulting mortality. The “priority” under this standard “is first to avoid catching bycatchspecies where practicable.” The practicability requirement under National Standard 9 does not prohibit expensive measures to avoid bycatch and minimize mortality, and even highly burdensome and extremely costly area closures have been upheld as reasonable exercises of agency authority. The costs here are likely to be small, because demonstrated and practicable, cost-effective technologies and behaviors that would allow A80 to meet the Alternative 4 limits are readily available today. National Standard 9 requires their adoption.

### **Net Benefits to the Nation**

#### *Summary of Comments*

Comments in this section address the Net Benefits to the Nation and whether the analysis supports conclusions in the DEIS. Comments include opinions that the DEIS contains a flawed economic analysis that excludes half the halibut (U26), economic losses to the bycatch fisheries do not alone drive the practicability standard and the determination of whether a measure “minimizes bycatch or bycatch mortality to the extent practicable, consistent with other national standards and maximization of net benefits to the Nation” involves consideration of multiple factors.

#### *Comment 3.b-25*

The misleading analysis in the DEIS results in a flawed finding of Net Benefits to the Nation. The DEIS states that the range of alternative limits aim to provide a choice in balancing “competing” requirements of the National Standards - particularly standards 1, 8 and 9. It proposes a national net benefits conclusion based on a broad-based consideration of producer and consumer surplus in the U.S.

economy that included all direct and indirect participants in the fishery. The DEIS's conclusion anticipates revenue declines to the A80 companies that are disproportionate to any benefits conferred upon Bering Sea halibut fishermen and fishing communities. The analysis identified increased operating costs, reduced revenue in some years, negative effects on some suppliers, and some potential impacts on A80 seafood consumers. NMFS believes that any economic surpluses for fishermen, consumers and fishery suppliers generated by the Bering Sea halibut fisheries will not offset negative impacts to the bycatch fisheries. The DEIS concludes that "[o]verall, net benefits to the Nation are expected to be negative" and alternatives that save the most halibut for Bering Sea fishermen, communities and consumers will cause the net benefits to be even "more negative." This conclusion reflects a flawed economic analysis that excludes half the halibut (U26), among other concerns. Additionally, economic losses to the bycatch fisheries do not alone drive the National Standard 9 practicability standard; they are just "one of the factors that determine the extent to which it is practicable to reduce bycatch ... in a particular fishery." The National Standard 9 guidelines indicate that net benefits to the Nation are much broader than potential revenue losses to the A80 companies. The determination of whether a measure "minimizes bycatch or bycatch mortality to the extent practicable, consistent with other national standards and maximization of net benefits to the Nation" involves consideration of multiple factors – population effects for the bycatch species, changes in the economic, social or cultural value of fishing activities, non-consumptive uses, and social effects.

*Comment 3.b-26*

Asserted economic impacts and the DEIS's suggestion that the action will result in negative net benefits to the nation are no bar to adopting Alternative 4. The determination of net benefits to the nation is unsupported under the current analysis and lacks a basis in the data. Regardless, National Standard 9 does not require that a measure result in net benefits. The guidelines make clear that net benefits is just one of many factors that must be balanced in determining whether a measure is practicable, including the economic, social, or cultural value of fishing and other social effects that will result. Where those other factors unambiguously weigh in favor of stringent PSC reductions and the meaningful relief to the directed fishery, a measure is practicable regardless of the net benefits calculation.

### 3.c. Climate change / Greenhouse gas emissions

*Summary of Comments*

Comments in this section focus on climate change and greenhouse gas emissions. Concerns include an inadequate analysis of the impacts of climate change and the practicability of the proposed action in a reasonably foreseeable future where warming temperatures in the BSAI are the norm. Suggestions for the FEIS include additional consideration of climatic change uncertainties in impact analyses, different climate change scenarios in the alternatives, climate change and rising average temperature impacts to ecosystem dynamics that encompass the A80 fishery, direct and indirect impacts of the proposed actions and alternatives' greenhouse gas emissions, prioritize climate adaptation and resilience by requiring the A80 vessels to incorporate measures that support climate resiliency goals.

*Comment 3.c-1:*

The DEIS does not adequately address climate change or evaluate the practicability of the proposed action in a reasonably foreseeable future where warming temperatures in the BSAI are the norm. For example, the DEIS acknowledges that the presence or absence of the Bering Sea "cold pool" has important implications for the A80 sector, but inconclusively states that "[t]o the extent that fishery participants must reckon with this change, historical fishery data on catch, location, bycatch encounter

rates, and CPUE might become less representative of the future state of the fishery.” The analysis should at a minimum evaluate the impacts of a future in which 2019 conditions are the norm. Climate impacts are real and increasing, and their cumulative impacts on fisheries should be analyzed. NEPA requires the analysis to disclose the likely effects of climate change to give the Council and the public an accurate picture of the impacts and practicability of the proposed action. The cumulative impact analysis in the DEIS needs to be substantially revised to include the impacts of this and other reasonably foreseeable future actions, including changes in location and availability of target species (such as yellowfin sole) and non-target species (including cod) in response to climate change. The agency must do more to analyze the impacts of climate change in the BSAI as it relates to the practicability of further halibut PSC reductions and cumulative impacts.

*Comment 3.c-2:*

Uncertainties related to climate merit further consideration, whether the uncertain timing of Pacific Decadal Oscillation (PDO) events or serious climate changes that significantly reduce the ability to predict species distribution shifts or other biological behaviors of Bering Sea fish stocks. The DEIS suggests that warmer conditions may worsen halibut bycatch by dispersing yellowfin sole, causing the A80 companies to kill more halibut in pursuit of their target species or because warmer bottom temperatures themselves increase halibut bycatch. A major concern of the SSC was that the analysis may have missed the potential for even lower future stock sizes, heightening the need for caution about future bycatch volumes.

*Comment 3.c-3:*

Ecosystem cascade effect and a collapse of the viability of the Bering Sea ecosystem, which is already under-going rapid ecological change from the impacts of climate change. This would be disastrous to all of our fisheries, and especially for BSAI coastal communities that have engaged in sustained subsistence and commercial fisheries (via regional traditional and customary exchange networks) for thousands of years.

The following comments were submitted by the Environmental Protection Agency and contain suggestions for improving the analysis with regard to climate change and greenhouse gas emissions (*Comment 3.c-4 through 3.c-11*):

*Comment 3.c-4:*

We believe EO 13990 (Protecting Health and the Environment and Restoring Science to Tackle the Climate Crisis) and EO 13754 (Northern Bering Sea Climate Resilience) should be incorporated into the analysis. Inclusion of directives of these EOs into the analysis will support both the Council’s and IPHC’s decision-making by more robustly and holistically analyzing the A80 sector’s impacts.

*Comment 3.c-5:*

We recommend NMFS clarify how the economic and fisheries models incorporate climatic change uncertainties into the impact chain.

*Comment 3.c-6:*

We recommend that NMFS consider how the alternatives incorporate and reflect different climate change scenarios. We suggest NMFS explain how catch, thermal habitat availability, trade, pricing, and consumption will vary under different climate change scenarios. Because of the changing increase in thermal habitats that directly impact the stocks within the Bering Sea, we recommend more robust

summary of analyses discussing habitats and ecosystems that may be impacted by the alternatives in the FEIS. We encourage NMFS to consider mitigation measures to avoid, mitigate, or alleviate these impacts.

*Comment 3.c-7:*

As directed by EO 13754, we recommend NMFS discuss how the changing climate and rising average temperatures are reducing the occurrence of sea ice; thereby changing the ecosystem dynamics that encompass the A80 groundfish fishery. We encourage NMFS to consider adaptive management practices that allow for the preservation of a healthy and resilient Bering Sea ecosystem. We believe this should include its migratory pathways, habitat, and breeding grounds, which are essential for the survival of marine mammals, fish, seabirds, other wildlife, and the subsistence communities that depend on them.

*Comment 3.c-8:*

We recommend that the FEIS include a detailed discussion of the proposed actions and alternatives' greenhouse gas emissions in the context of national and international greenhouse gas emissions reduction goals, including the U.S. 2030 Paris GHG reduction target and a 2050 net-zero pathway. We recommend that discussion address the increasing conflict over time between continued GHG emissions and GHG emissions reduction goals. This would provide decision makers and the public essential context regarding the A80's GHG emissions and how to correlate that information with essential emissions reduction policies. This would also assist NMFS in its determination of the significance of the potential impacts, whether alternative options should be selected. We encourage NMFS to clearly disclose any assumptions made in the analysis.

*Comment 3.c-9:*

Life cycle analyses may incorporate discussion of impacts of the proposed action and alternatives (i.e., which alternatives allow for the most vessel transits), production technology (e.g., capture fishing via trawling), product form (e.g., fresh gutted or frozen fillet), market destination, and transport mode to wholesaler (i.e., truck, air, ship). We recommend that the FEIS analysis focus on the main drivers of production-related emissions including:

- Activities at sea: vessel transits between the port to fishing ground(s); and fishing operations
- Activities on land: transportation of fish from port to a fish processing plant; and transportation from the fish processing port to market destination.

We recognize that post-harvest analyses are often not included in lifecycle analyses for these fisheries but find that this is inappropriate in this case. This is because the post-harvest emissions will likely not be negligible due to emission intensive transport modes required to return to port from the A80 groundfish fishery since it is a geographically remote area. It may be helpful to clarify these emissions by calculating the fuel use intensity in the A80 fishery per year per fleet segment. We find it would be useful to the public to compare the fuel use intensity to total production/catch.

*Comment 3.c-10:*

We recommend that NMFS use estimates of the social cost of greenhouse gases to disclose and consider the climate damages from net changes in direct and indirect greenhouse gas emissions resulting from the A80 Sector.

*Comment 3.c-11:*

We suggest NMFS make climate adaptation and resilience a priority consideration when preparing the final analysis and to consider climate resilience by requiring the A80 vessels to incorporate measures that support climate resiliency goals.

## Topic 4: Consistency with NEPA Requirements

### *Summary of Comments*

This section includes comments on points that render the DEIS inconsistent with NEPA. These points include a focus that is too narrow and does not fully evaluate direct and indirect effects of the action to the directed halibut fisheries, including fisheries outside the BSAI and effects of bycatch juvenile halibut. The DEIS does include a full suite of the best available information, information is not presented in a way that allows evaluation of consistency with the goals of the MSA and its National Standards, or whether the alternatives fulfill the purpose and need of the action. The DEIS is not objective or impartial and does not adequately consider the socio-economic contributions by all halibut harvesters in Alaska. The DEIS does not meet the NEPA requirement to take a "hard look" at the potential environment consequences criteria of the action.

### *Comment 4-1:*

Neither the economic nor biological analyses in the DEIS objectively incorporate all of the available reliable data and information necessary to make an informed choice among the alternatives under consideration.

### *Comment 4-2:*

The DEIS does not allow the reader to evaluate objectively whether or how the alternatives under consideration meet the goals of the MSA. While much useful information is accurately presented in the substantive sections of the DEIS, the DEIS taken as a whole does not objectively and impartially present the information necessary for the Council and the public to evaluate whether an alternative is consistent with the National Standards. The summary sections of the DEIS, particularly the Executive Summary and sections 5.9 and 7.1, appear to be based on several unsubstantiated assumptions at odds with conclusions and information in the technical analyses, ignore readily obtainable information, and consequently are not based on the best available scientific information as required by National Standard 2 as well as NEPA.

### *Comment 4-3:*

The DEIS ignores readily obtainable information, and consequently are not based on the best available scientific information as required by National Standard 2 as well as NEPA.

### *Comment 4-4:*

It is impossible for the reader to understand whether the goals and objectives of the proposed action can be achieved through ABM, or whether those goals could be attained through other alternatives not employing ABM, perhaps through performance standards. To meet NEPA's requirements, the choice to use ABM as a basis for further reductions in A80 PSC limits must be clearly explained and rationally supported.

### *Comment 4-5:*

The DEIS needs to consider impacts to all Alaska fishermen and coastal communities. The DEIS contemplates impacts only to Bering Sea fishing communities, vessels and crew and improperly excludes impacts to other Alaska communities. NEPA requires that federal agencies disclose sufficient information as needed to ensure two functions: "informed decision-making and informed public participation."



“Misleading economic assumptions can defeat the first function of an EIS by impairing the agency’s consideration of the adverse environmental effects” and “can also defeat the second function of an EIS by skewing the public’s evaluation of a project. The DEIS concludes that potential revenue losses to A80 companies outweigh the adverse ecological and socio-economic impacts to Alaska’s marine resources and coastal fishing communities to such a degree that an action reducing the numbers of halibut killed by the A80 fisheries is bad for the United States. The failure of the DEIS to adequately consider the socio-economic contributions by all halibut harvesters in Alaska violates NEPA.

*Comment 4-6:*

When evaluating net benefits to the nation under the National Standards, the DEIS relies in part on the absence of a pound for pound linkage between halibut bycatch and Bering Sea halibut fisheries. The impacts analysis focuses exclusively on the extent to which cutting A80 halibut bycatch would have the short-term potential to affect catch limits for the commercial halibut fisheries in Area 4. As noted by the North Pacific Fishery Management Council’s Science and Statistical Committee, the analysis “narrowly focused on the fisheries and communities directly engaged in the BSAI groundfish and halibut fisheries” even though “potential direct and indirect effects of the alternatives also impact fisheries outside the BSAI.” This narrow focus fails to meet NEPA’s requirements; an EIS needs to describe “the area(s) to be affected ... by the alternatives under consideration” and discuss indirect effects, which mean effects “caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable” and may be ecological, cultural, economic, or social.

*Comment 4-7:*

NEPA requires the agency to discuss “downstream” impacts which, depending on fishery selectivity and other biological processes, may be even larger than impacts to Bering Sea fisheries. The DEIS improperly excludes half the halibut from its impacts analysis (U26). The DEIS acknowledges that reducing the numbers of juvenile halibut killed by the A80 fleet could yield “longer term benefits to the directed halibut fisheries ... throughout the distribution of the halibut stock. The two main reasons why reductions in juvenile halibut bycatch will have impacts “later in time” or “farther removed in distance” are simple and identified in the DEIS: Bering Sea halibut migrate to other areas and killing juvenile halibut can affect the overall productivity of the stock. The 2021 assessment of the effect of the bycatch fisheries on the coastwide directed fisheries explains that “potential yield to the directed fishery was generally larger than a simple reallocation from non-directed discards (115% on average), [and] that the rate of exchange is variable over time (range of 86-139%).” The DEIS arbitrarily dismisses this conclusion as a coastwide impact and not applicable to an action addressing Bering Sea bycatch of halibut longer than 26 inches in length. But on average, more than half the halibut killed by the A80 companies each year over the past decade are juvenile fish less than 26 inches in length.

*Comment 4-8:*

This DEIS does not provide a scientifically sound analysis of biological, economic, or social coastwide impacts and fails to adequately inform balancing these impacts under the Magnuson-Stevens Act National Standards. An EIS must include “a discussion of adverse impacts that does not improperly minimize side effects.” This DEIS has failed in that regard. A foundational premise of NEPA is that the agency’s “hard look” at the environmental consequences is “almost certain to affect the agency’s substantive decision.” We find the DEIS arbitrary in its treatment of impacts to the halibut resource and in its treatment of the socioeconomic impacts to the directed halibut fisheries and fishing communities. We fully expect the inadequacies identified in these comments to be addressed prior to publication of the Final EIS.

*Comment 4-9*

NEPA requires that federal agencies disclose sufficient information as needed to ensure two functions: “informed decision-making and informed public participation.” NEPA also notes that misleading economic assumptions can defeat the first function of an EIS by impairing the consideration of adverse environmental effects and can defeat the second function by skewing the public’s evaluation of a project. This DEIS concludes that potential revenue losses to A80 companies outweigh the adverse ecological and socio-economic impacts to Alaska’s marine resources and coastal fishing communities to such a degree that an action reducing the numbers of halibut killed by the A80 fisheries is bad for the United States. The failure of the DEIS to adequately consider the socio-economic contributions by all halibut harvesters in Alaska violates NEPA.

## Topic 5: Document Format

*Summary of Comments*

The following comments were submitted by the Environmental Protection Agency and contain suggestions for improving the format and presentation of material of the DEIS (*Comment 5-1 through Comment 5-5*).

*Comment 5-1:*

We recommend revising the analysis to be more concise, clear and to the point. The current analysis is difficult for readers to understand and navigate. We recommend adjusting the FEIS format to be consistent with the recommended format in the NEPA Implementing Regulations §1502.10 or justifying the inconsistency with that recommended format.

*Comment 5-2:*

When incorporating material by reference, we recommend providing sufficient background information on the material so that the analysis can serve as a standalone document to support public comprehension.

*Comment 5-3:*

We recommend that the analysis include a clear description of how each alternative was developed and that the alternatives section should be revised to improve public approachability. Specifically, the document should show how the percentages of allowable PSC were determined for each alternative and its associated criteria from the IPHC setline survey index and the Eastern Bering Sea (EBS) trawl survey index. Alternatives should also be presented in a comparative form.

*Comment 5-4:*

We recommend NMFS offer a preferred alternative in the final analysis that allows for the most flexibility, allowing for the Council to utilize adaptive management strategies bolstered by iterative data collection and analyses. We encourage NMFS to be considerate of EPA’s understanding that a central theme common to Executive Order 12866, Regulatory Flexibility Act, and Magnuson–Stevens Fishery Conservation and Management Act is the requirement to analyze the direct and indirect effects of regulations to demonstrate that regulations will result in net benefits to society, and to explain why a chosen regulatory measure is superior to other alternatives. We note that most of the alternatives illustrate means by which to lower the PSC limit, which we find this reasonable.

*Comment 5-5:*

We recommend the final analysis include descriptions of the habitat and benthic environment in the project area and describe any essential fish habitat occurring in or around the project area. We also recommend discussion of ecosystems found in Area 4 and how that interconnect to other parts of the BSAI and ocean in general.

## Topic 6: General Bycatch Concerns

### *Summary of Comments*

Comments in this section express concerns that all trawl bycatch needs to be reduced substantially and such bycatch is a waste.

#### *Comment 6-1:*

Please rein in regulations on trawling. Trawling is not selective enough with the type of fish caught. We can't afford the massive and useless loss in wildlife they cause. We request that the practice of "trawler by catch" be studied and reviewed with the purpose of determining what impact this practice is having on the sustainability of sea life. Information provided by sport fishing guides in Alaska and other concerned individuals indicates this practice may be negatively impacting several species of fish and other sea animals. A proper study needs to be effected and policies enacted based on data gathered.

#### *Comment 6-2:*

The presence of any factory ship towing mid water or especially bottom trawl is messy. Any percent (of bycatch) is too much, but the amount of halibut bycatch could feed America for a year.

#### *Comment 6-3:*

The by-catch numbers are astounding and if people really knew the levels, they would be sickened. I believe that both the allowed harvest and by-catch numbers for these off giant shore trawlers is just way too high. Bycatch by trawl fleet for ALL species, it comes out to close to 100 million pounds per year.

#### *Comment 6-4:*

All trawl bycatch needs to be reduced substantially. We acknowledge that this will be hard for the trawl fleet to deal with but the situation we currently find ourselves in is the result of one fishery putting their own needs over what keeps things sustainable for the state as a whole. The data is astounding; the numbers don't lie, our fish and crab populations are in trouble, and if this is allowed to continue there will be no turning back on this. Drastic action needs to be taken now.

#### *Comment 6-5:*

It is tough to find violations with by-catch because the vast amount of it is legal. If the law isn't being broken, but there are still unacceptably negative results, then the limits needs to be changed because where it is now just isn't working. The halibut charter fleet believes that they are being ripped off by the commercial trawlers. If the trawlers were substantially restricted it would make the subsistence, personal use, and sport fishing halibut communities happy and hopefully more inclined to follow the law. If the trawlers were restricted then the current sport and charter restrictions would not be so bad.

#### *Comment 6-6:*

The amount of allowable bycatch of King Salmon as well as other important species such as Halibut, Sablefish, and Crab is out of control. It should not be up to the small boat fleet to carry the burden of the trawl fleet's inability to catch their target species without collateral damage.

*Comment 6-7:*

The level of wastage in the trawl fishery is simply unacceptable, particularly when compared against the landings in other halibut fisheries that have declined greatly as stocks have dropped.

*Comment 6-8:*

To allow these large industrial scale interests to take such a large amount of fish as bycatch, as waste, impacts us directly in terms of how much of the annual take of these species, (particularly Halibut and King Salmon), is left to spread around amongst the rest of us. In times of low abundance it should not be the people that need this resource the most that should have to pay the price for the industry's wasteful practices. Yet that is what is happening. As a resource becomes more scarce the conflicts over that resource become greater. As representatives of our local AC, we see the impacts of this first hand as we as a community are left to work out these conflicts, and fight over the remaining scraps amongst ourselves. The current practices and degree of waste as bycatch of these species represents an egregious failure of this system and our fisheries management. Allowing these practices to continue damages the reputation of Alaskan seafood, the reputation of this region for fisheries management, and works counter to ensuring the longevity of these species. Trawlers should not be allowed to continue the senseless destruction of fisheries so important to the livelihoods and subsistence lifestyles of the peoples and communities like ours, that rely on this resource across Alaska.

## Topic 7: Out of the Scope of the Purpose and Need for the Action

*Comment 7-1:*

To date there has been no evidence of any ocean bottom recovery in or near Alaskan waters in the North Pacific after being trawled by a bottom trawling vessel, even after decades of research. The Department of Commerce and NOAA must take immediate action to stop the environmental destruction of these areas and the immoral waste of fish/crab that the present system perpetuates. We are witnessing the collapse of the bottom ecosystem and numerous fish/crab stocks in the Gulf of Alaska and the Bering Sea. Destruction of the marine environment by bottom trawls destroys the habitat that many of these fish stocks require for their survival. Multiple types of corals, sponges, anemones, crab, halibut and other marine life and other marine life vital for the survival of bottom dwelling fish and crab are decimated. They will take decades or centuries to recover, if they even are able to. An unconscionable and immoral result of the failure of the NPFMC to effectively manage to minimize this waste. Suggested actions:

1. Trawling in these areas should be stopped until such time that significantly reduced bycatch levels have been established with no exceptions or revisions of bycatch limits.
2. Trawling should not resume until a thorough review and understanding of the impacts to the ecosystem of the ocean floor in any area open to bottom trawling has been completed.
3. 100% observer monitoring must be initiated and maintained on any vessel conducting trawl operations in the western Gulf of Alaska and the Bering Sea. Additionally, the companies responsible for the operation of these trawl vessels must be required to fund all costs of monitoring.
4. Reporting of all non-targeted fish bycatch must be made readily accessible to the general public in a simple format on the NPFMC website. It must also include birds, marine mammals and other incidental catch that occurred during the reported timeframe.
5. Appointment process of NPFMC members by the governors of Alaska, Washington and Oregon must be changed to stop the 'selling of seats' and include a broad public participation process to insure unbiased selection of highly qualified board members.

Additionally, board seats representing indigenous and conservation interests must be added to the board.

The following comment was submitted by the Department of Interior and contains suggestions for improving the analysis with regard to Alaska Native Tribal interests (*Comment 7-2*):

*Comment 7-2:*

Given the increasing decline of the halibut fishery and the importance of this fishery to Tribal subsistence users as well as to the well-being of Alaska Native communities, we believe that Alaska Native Tribes must be part of Council membership. With the inclusion of Tribal representatives on bodies such as the Council, Tribal interests can be fully and thoroughly incorporated into the decision-making process. The result will lead to improved decisions as envisioned by Executive Order 13175 and NEPA. We recommend that Secretary of Commerce Raimondo consider appointing a minimum of two Tribal representatives to the Council. Tribal representation on the Council will also assist the Council in conducting meaningful and productive consultation with Tribes prior to making decisions and recommendations that will impact Tribal communities. We understand that requiring the appointment of two Tribal representatives to the Council would require an amendment to the Magnuson-Stevens Fishery Conservation and Management Act Section 302(a)(1)(G), 16 U.S.C § 1852 (1976), and we hope that the National Oceanic and Atmospheric Administration would support such an amendment to ensure that the perspectives of Tribes are fully heard and considered.

## List of Preparers

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