

Petition for Emergency Action

Submitted to the North Pacific Fishery Management Council for Recommendation to the
Secretary of Commerce by

The City of Adak, et al.

March 31, 2019

Dear Chairman Kineen,

The City of Adak, the Adak Community Development Corporation, Golden Harvest Alaska Seafood and B&N Fisheries Company are requesting the support of the North Pacific Fishery Management Council for an Emergency Action Management Measure, pursuant to Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). We ask that the Council recommend that the Secretary of Commerce take emergency action to implement a Bering Sea Trawl Catcher Vessel A Season Limitation of 5,000 MT, to be harvested in the Aleutian Islands subarea; as outlined in the Part 3.2 of the Aleutian Islands Pacific Cod Set-Aside Discussion Paper (May 20, 2019). If the requested emergency relief is not granted, there is a high probability that there will not be an Aleutian Islands Trawl Catcher Vessel A Season; and that Pacific halibut PSC use will spike in the Bering Sea subarea.

National Marine Fisheries Service (NMFS) policy guidance provides that the use of an Emergency Rule “should be limited to extremely urgent, special circumstances where substantial harm to or disruption of the resource, fishery, or community would be caused in the time it would take to follow standard rulemaking procedures.”

In 2019 the Bering Sea CV Trawl Pacific Cod A Season was dramatically compressed and threatened to preclude the Aleutian Islands CV Trawl Pacific Cod A Season despite the Amendment 113 Set Aside because of the dramatic increase in the use of Pacific halibut PSC in the BS subarea. In the absence of the Bering Sea Limitation requested through this petition, there is every likelihood that the Aleutian Islands CV Trawl A season will be closed/preempted by a BSAI CV Trawl sector closure in early February, either on TAC or PSC.¹

This petition seeks emergency relief from this “unforeseen event” to safeguard the subject fishery; providing some relief to the harvesters and other entities dependent of the AI subarea fishery.

The Petitioners are seeking relief from January through March, 2020. Understanding that it may take a few months for the Secretary to process this petition and the Council’s recommendation, and recognizing that the period covered by the Emergency Rule lasts for six months, the stakeholders are presenting this petition now in anticipation of action by the Secretary in the last trimester of 2019 and the subsequent notification and implementation period of the Emergency Rule by the NMFS. This would provide the NMFS with the time necessary to take the required steps to implement the Rule and would notify stakeholders and

¹ Although the Bering Sea and the Aleutian Islands are considered two distinct subareas for management purposes, the Pacific cod CV Trawl allocation and Pacific halibut PSC allocation is sector wide. Therefore, Pacific cod and Pacific halibut harvested in the earlier Bering Sea subarea counts against the Aleutian Islands fishery.

participants of the intended Secretarial action in the Aleutian Islands subarea CV Trawl Pacific Cod fishery.

Background

The North Pacific Fishery Management Council has consistently worked to develop an amendment that would provide some level of protection to Aleutian Islands communities from the risks associated with excess offshore harvesting and processing capacity created by previously rationalized programs² that have been deployed in the BSAI Pacific cod fisheries. At the same time, the Council was often forced to delay action on AI community protections, in order to analyze the effects of several dynamic factors in the AI Pacific cod fishery, not the least of which were the BSAI total allowable catch (TAC) split and Steller sea lion protection measures. After several years of delays, Amendment 113 was the result.

As several Council analyses have documented, Aleutian Islands subarea Pacific cod is the foundation of the Aleutian Islands' fisheries-based economy. The implementation of Amendment 113 triggered the desired shorebased private-sector investment.

In the absence of Amendment 113, offshore harvesting, tendering and processing activities continue to threaten the long-term stability of shorebased processors, their communities and the fleets that harvest Pacific cod and a variety of other species³ in the Aleutian Islands region. **There is also an immediate threat not anticipated in any previous Council analysis - the complete preemption/closure of the Aleutian Islands Trawl Catcher Vessel A Season.**

As discussed below, we have concluded that this is an "unforeseen" event that can only be addressed through the proposed Emergency Rule. Absent quick emergency regulatory relief, we have concluded that it is likely that the entire Aleutian Islands Trawl Catcher Vessel A Season will be closed/preempted by the Bering Sea subarea fishery in 2020.

Standard for Emergency Relief

Section 305(c) of the MSA allows the Secretary of Commerce to promulgate emergency regulations when the Secretary finds that an emergency exists involving any fishery. National Marine Fisheries Service (NMFS) policy guidance provides that such use **"should be limited to extremely urgent, special circumstances where substantial harm to or disruption of the resource, fishery, or community would be caused in the time it would take to follow standard rulemaking procedures."** The phrase "an emergency exists involving any fishery" has been defined in NMFS policy guidance as a situation that results from "recent, unforeseen events or recently discovered circumstances" that present "serious conservation or

² The American Fisheries Act (AFA), the BSAI Crab Rationalization program and the BSAI Groundfish Amendment 80 program (Executive Summary, RIR/EA for Amendment 113, September 2016).

³ The volume and value of Pacific cod provides an economic foundation for the trawl, longline, jig and pot fleets that harvest and deliver crab, sablefish and halibut; as well the continuing development of underutilized species.

management problems in the fishery” and can be addressed through emergency regulations for which “the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process.” See NMFS Instruction 01-101-07, Policy Guidelines for the Use of Emergency Rules, March 31, 2008.

An Emergency Exists

The Petitioners believe that an emergency exists. In the absence of this Emergency Rule, the entire Aleutian Islands CV Trawl A Season is likely to be closed/precluded by the earlier, more capital intensive race for fish in the Bering Sea subarea. The economic repercussions will be significant at the shoreplant, community and fleet level; and we would expect a significant increase in the use of Pacific halibut PSC in the BS subarea where Pacific halibut bycatch rates are significantly higher than in the Aleutian Islands fishery.

The Petitioners are seeking relief from January through March, 2020. Understanding that it may take a few months for the Secretary to process this petition and the Council’s recommendation, and recognizing that the period covered by the Emergency Rule lasts for six months, the stakeholders are presenting this petition now in anticipation of action by the Secretary in the last trimester of 2019 and the subsequent notification and implementation period of the Emergency Rule by the NMFS. This would provide the NMFS with the time necessary to take the required steps to implement the Rule and would notify stakeholders and participants of the intended Secretarial action in the Aleutian Islands subarea CV Trawl Pacific Cod fishery.

The Criteria for Emergency Action Have Been Met

We submit that each of the three criteria for emergency action are met.

(1) The situation results from recent, unforeseen events or recently discovered circumstances.

The present situation meets the “recent, unforeseen events or recently discovered circumstances” requirement. Historically, the Bering Sea Catcher Vessel Trawl A Season has extended up to 65 days, and averaged 48 days over the previous 15 years. However, the 2019 Bering Sea Catcher Vessel Trawl A Season was just 12 days, and it is expected to be similar (perhaps even shorter) in 2020. Because the BS subarea fishery traditionally starts several weeks ahead of the AI subarea fishery, and because the CV Trawl allocation can be harvested in either subarea, in the absence of Amendment 113 it is likely that there will be no AI subarea CV Trawl fishery without the BS Limitation requested in this petition. See Table 1.

TABLE 1

Table 2-5 Closure and opening dates (days) for the BSAI Pacific cod trawl catcher vessel sector, 2003 through 2019 A-season

Year	A-Season: 20 Jan - Apr 1		B-Season: 1 Apr - 10 Jun				C-Season: 10 Jun - Nov 1
2003							CI 25-Sep (107), HAL
2004	CI 23-Mar (62)		CI 4-Apr (3)	Op 10-Apr	CI 13-Apr (3)		
2005	CI 13-Mar (52)	Op 29-Mar (3)					CI 18-Aug, HAL (69)
2006	CI 8-Mar (47)		CI 6-Apr (5)	CI 8-Jun, HAL			Op 19-Jul, HAL CI 31-Aug
2007	CI 12-Mar (51)		CI 9-Apr (8)				CI 29-Sep (111), HAL
2008	CI 6-Mar (45)		CI 4-Apr (3)				
2009	CI 21-Mar (60)		CI 5-Apr (4)				
2010	CI 12-Mar (51)		CI 1-Apr (0)				
2011	CI 26-Mar (65)		CI 4-Apr (3)	Op 9-Apr	CI 12-Apr (3)	Op 15-Apr (15)	
2012	CI 29-Feb (39)	Op 29-Mar (3)	CI 15-Apr (14)				
2013	CI 11-Mar (50)						
2014	CI 16-Mar (55)						
2015	CI 27-Feb (38)						
2016	CI 9-Mar (48)		CI 4-Apr (3)	Op 11-Apr	CI 4-May (23)		
2017	CI 23-Feb (34)		CI Apr 3 (2)				
2018	CL 11-Feb (22 -BS), CL 4-Mar (43-BSAI)		CI Apr 3 (2)				
2019	CI 1-Feb (12-BS)						

(2) The situation presents serious conservation or management problems in the fishery.

This situation represents significant management and conservation problems. The Pacific halibut PSC rate in the Bering Sea subarea is approximately **8.7 times** the rate in the corresponding Aleutian Islands fishery. Due to the capital intensive race for fish taking place in the Bering Sea subarea, the 2019 Pacific halibut PSC rate spiked to more than 330 metric tons; threatening to close that fishery as well as the corresponding Aleutian Islands subarea fishery.

Amendment 113, which included both a Bering Sea Limitation and a landing requirement, gave the Aleutian Islands shoreplant and fleet the flexibility to stand-down for almost two weeks to allow AI Pacific cod to continue to aggregate to avoid compounding the Pacific halibut PSC problem. That management tool is no longer available. The proposed Emergency Rule will require some harvest to take place in the Aleutian Islands, reducing a significant amount of discarding of the Pacific halibut resource. See Table 2.

TABLE 2

Halibut Saving Attributable to Amendment 113 in 2019 A season

Ratio BS rates to AI rates = 8.7:1	Halibut Savings by shifting 5,000 tons of cod from BS to AI	Halibut Mortality Savings by shifting 5,000 tons of cod from BS to AI	Halibut Savings by shifting 6,721 tons of cod from BS to AI	Halibut Mortality Savings by shifting 6,721 tons of cod from BS to AI
Difference	133.3	84.0	179.1	112.9
AI	17.3	10.9	23.3	14.7
BS	150.6	94.9	202.4	127.5
ratio	8.7	8.7	8.7	8.7

(3) The situation can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts to the same extent as would be expected under the normal rulemaking process.

This situation could be addressed through an Emergency Rule that would restore the Bering Sea Catcher Vessel A Season Limitation; as described in the Council's current Discussion Paper⁴ under Section 3.2. As that paper points out:

"Since this option would not have an AI shoreplant delivery requirement for harvested AI Pacific cod, the complications surrounding National Standard 8 are avoided. Of course, not having a delivery requirement for harvested AI Pacific cod for the trawl CV sector runs counter to the intent of Amendment 113 which was to provide stability to AI shoreplant operations, AI harvesters, and AI fishing communities dependent on AI Pacific cod fishery. Nevertheless, it is likely some portion of the AI Pacific cod harvested by the trawl CV sector would be delivered to AI shoreplants if their market is competitive with offshore and non-AI shoreplant markets."⁵

In order to provide a regulatory remedy through the normal Council process of notice-and-comment rule making, the following would need to occur to implement the Bering Sea CV Trawl A Season Limitation:

- (a) The Council would have to produce an analysis with a range of alternatives and take action. Given the timing of Council meetings and the opening date for the 2020 CV Trawl Pacific Cod A Season, this action would have to have already occurred.
- (b) Even if the Council had somehow addressed this unforeseen event, NMFS would need to issue a proposed rule, provide a public comment period, assess those comments, and publish a final rule. NMFS typically requires at least a year to complete a final rule after the Council has taken final action.

We believe there is simply not enough time for the normal process to be followed without incurring the fishery closure and increased use of Pacific halibut PSC described above.

We also note that emergency action is limited in duration, and unless this situation is resolved before emergency regulatory relief expires, we expect that the normal notice and comment process and deliberative consideration of the potential impacts would take place in connection with any further action. We therefore believe that the immediate benefits of emergency action outweigh the value of that process and deliberation at this time.

⁴ NPFMC, Aleutian Islands Pacific Cod Set-Aside, May 20, 2019.

⁵ NPFMC, Aleutian Islands Pacific Cod Set-Aside, May 20, 2019, Pages 7-8.

Emergency Relief is Justified

NMFS Policy finds that emergency action can be justified under one or more of the following situations: (1) ecological (to prevent serious damage to the fishery resource); (2) economic (to prevent significant direct economic loss or preserve a significant economic opportunity that otherwise might be foregone); (3) social (prevent significant community impacts or conflicts); or (4) public health. We believe that there are ecological, economic and social justifications for emergency action.

As illustrated above, the Pacific halibut PSC rate is approximately 8.7 times higher in the Bering Sea fishery; causing measurable impacts on the Pacific halibut resource as well as the directed Pacific halibut harvesters who depend on this important resource.

In the absence of an Aleutian Islands CV Trawl Pacific Cod A Season fishery, there will be significant economic losses incurred by harvesters operating in the Aleutian Islands in both the directed fishery as well as other fisheries that depend on the shorebased plant and services supported by the subject fishery.

This action will not restore the regional landing requirement that was a major feature of Amendment 113, but it will provide opportunity to the shorebased plant in Adak. With no action there will certainly be economic harm to Adak including but not limited to a severe loss of direct and indirect jobs, income and opportunities for the community and its residents. No action will also harm the community of Atka in capital planning for its shorebased fish plant, local fishing fleet and opportunities for the community and its residents as well.

Compliance with National Standards

As with any fishery policy or management measure incorporated into a fishery management plan, an emergency action must also comply with the MSA National Standards.

Compliance with each National Standard is addressed below.

National Standard 1: Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the U.S. fishing industry.

The requested emergency action will spread the CV Trawl Pacific Cod A Season fishery both temporally and spatially, improving management's ability to avoid overfishing and achieve optimum yield.

National Standard 2: Conservation and management measures shall be based on the best scientific information available.

Nothing in the request alters or disrupts the current biological assessment of the Pacific cod resource or TAC setting processes.

National Standard 3: To the extent practicable an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

The recommended action complies with National Standard 3 because no change to how cod is managed as a unit is contemplated or recommended.

National Standard 4: Conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various U.S. fishermen, such allocations shall be: (1) fair and equitable to all such fishermen ; (2) reasonably calculated to promote conservation; (3) carried out in such a manner that no individual, corporation, or other entity acquires an excessive share of such privileges.

The recommended action complies with National Standard 4 because no direct allocation of any fishing privileges is being made. The action simply limits where a portion of the CV trawl BSAI sector A season allocation may be harvested. It (1) does not change any fishing privileges and it is therefore as fair and equitable as status quo; (2) does promote conservation by shifting a portion of the cod harvest from a high halibut bycatch subarea (BS) and time period to an subarea (AI) and time with a lower halibut bycatch rate; (3) doesn't allocate an amount any entity can harvest or process.

National Standard 5: Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

The requested emergency action complies with National Standard 5 because it is also projected to reduce halibut bycatch.

National Standard 6: Conservation and management measures shall take into account and allow for variations among and contingencies in fisheries, fishery resources, and catches.

The requested emergency action complies with National Standard 6 in that the action is responsive to a fishery contingency that we did not foresee and could not have reasonably foreseen.

National Standard 7: Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

Failure to grant the relief requested would likely result in unnecessary costs and economic harm.

National Standard 8: Conservation and management measures shall, consistent with the conservation requirements of the Magnuson-Stevens Act (including the prevention of overfishing and rebuilding of overfished stocks) take into account the importance of fisheries resources to fishing communities in order to: (1) provide for the sustained participation of such communities; and (2) to the extent practicable, minimize adverse economic impacts on such communities

The requested action will preserve some opportunity for Aleutian Island communities to access cod. This will dampen the adverse economic impacts on remote fishery dependent communities in the Aleutian Islands management area that would otherwise result from a closure/preemption of the CV Trawl Pacific Cod A season harvest in the Aleutian Islands.

National Standard 9: Conservation and management measures shall, to the extent practicable: (1) minimize bycatch; and (2) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch

As described above, the proposed Emergency Rule will help reduce/minimize Pacific halibut bycatch in the CV Trawl sector by ensuring that some harvest effort takes place in the Aleutian Islands subarea, where by-catch rates are significantly lower.

National Standard 10: Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.

The proposed Emergency Rule will temporally and spatially spread the CV Trawl sector, taking some pressure off of the current race for fish and improving safety margins for crews working at sea.

Specific Request for Emergency Action

For the reasons provided above, we request the support of the North Pacific Fishery Management Council for an Emergency Action Management Measure, pursuant to Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). We ask that the Council recommend that the Secretary of Commerce take emergency action to implement a Bering Sea Trawl Catcher Vessel A Season Limitation of 5,000 MT, to be harvested in the Aleutian Islands subarea; as outlined in the Part 3.2 of the Aleutian Islands Pacific Cod Set-Aside Discussion Paper (May 20, 2019).

Sincerely,



Layton Lockett, City Manager
City of Adak, Alaska