

MAC Enterprises, Inc.

JIMMER McDONALD
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Chairman Hull and Council Members
NPFMC
605 W 4th Ave #306
Anchorage, AK 99501

May 21, 2015

RE: C-2 BSAI PSC Halibut bycatch reductions Amendment 80 Fleet, Freezer Longline fleet

Chairman Hull:

My name is Alyssa McDonald, representing Mac Enterprises Inc, located in Unalaska, AK. Mac Enterprises has been in the business of vessel husbandry to the fishing fleet since July of 1982. Having survived all of the consolidations of the various fishing activities, from Crab Rationalization to Amendment 80, and their impacts on our fishing fleets and local community, we would like to present this letter as a testament requesting a reasonable and manageable change to the current existing halibut bycatch cap to under 10%.

As survivors of the rationalization of the crab fleet in 2004, we can tell you first hand the impact of going from 269 customers in the crab fleet to less than 90, overnight! Had we not taken drastic measures and had ample time to prepare for this cut in the number of customers, we certainly would not be in business today. Any drastic changes that impact a community, like our coastal fishing community of Unalaska, should not be made without ample financial impact statements and a clear idea of how decisions in changes to allocations will impact local businesses.

We would like to request the following:

1. Strongly encourage this fleet to continue with the research and development of new and improved gear that reduces bi-catch and mortality.
2. Develop a deck sorting program that allows halibut to be removed and not wasted in the holding tanks.
3. Limit the reduction of the Halibut bicatch cap to less than 10%, in order to allow industry and support industry to prepare for this impact and its effect on reduced cash flow.

We support a vibrant and thriving small boat fleet as well. In fact, we have actively participated in various small boat fisheries over the past 35 years, in both the Baridi Crab fishery and halibut fishery from here to Kodiak. However, the meat and potatoes of survivability in Dutch Harbor still lays within the nets of the large fleets that require support services like ours. Any changes greater than 10% will have a dramatic effect, not only our small, native owned business, but the support industry which includes, stevedoring, freight, grocery, mechanical and technical repair companies, and the tax base for the City of Unalaska.

Thank you for your consideration on this matter

Sincerely

Alyssa McDonald
Vice President/Mac Enterprises Inc

Hydra Pro Dutch Harbor, Inc.
2315 Airport Beach rd.
Dutch Harbor, AK. 99692
May 15, 2015

Mr. Dean Hull
Chairman
North Pacific Fishery Management Council
605 West 4th ,Suite 306
Anchorage, Alaska 99501-2252
Npfmc.comments@noaa.gov

Subject: BSAI Halibut PSI Limit Reductions

Dear Mr. Dean Hull:

My Name is Tim Tilleman and I own Hydra-Pro Dutch Harbor, Inc. We provide Hydraulic equipment repair services and safety supplies to the fishing vessels in the North Pacific. Our business relies almost solely on these fisherman and their vessels so it is critical to us that they keep fishing.

I understand that the Council is considering cutting the halibut prohibited cap for Amendment 80 vessels and reallocate that halibut to another fleet .

The amendment 80 fleet accounts for 12.4% of our business or \$436,000 a year where as the halibut fleet accounts for less than 0.5% or approximately \$17,000.

The Amendment 80 fleet fishes almost all year and some of the vessels choose to stay in Dutch Harbor for their winter refits which is very good for our business and the city of Unalaska. The halibut fleet fishes only a few short months and winter elsewhere.

I feel that reducing their cap will mean a huge loss to all of the support industries as well as the Fishermen themselves and the trade off will not support the loss income that the Amendment 80 vessels generate.

I hope an equitable solution can be arrived at will keep these Amendment 80 vessels fishing thanks again for your help.

Sincerely, Tim Tilleman

A handwritten signature in black ink that reads "Tim Tilleman". The signature is written in a cursive style with a long, sweeping underline.

Hydra Pro Dutch Harbor, Inc.

May 26, 2015

Mr. Dan Hull
North Pacific Fishery Management Council
605 West 4th, Suite 306
Anchorage, AK 99501-2252

Via Email
npfmc.comments@noaa.gov

RE: Halibut Bycatch – Agenda Item C-2
June Sitka 223rd Plenary Meeting

Dear Chairman Hull:

My name is Sergei Roraback and I represent Waterfront Welding in Dutch Harbor, Alaska. I am writing to you regarding the up coming council meeting and appreciate the opportunity to weigh in on this important issue.

Our company provides a variety of welding/refrigeration products for fishing vessels and others operating out of Unalaska. The Amendment 80 fleet is very important to my business as they provide year around business for me.

They also are a group of hardworking and dedicated individuals who:

- Innovate to reduce bycatch
- Provide family wage jobs
- Work cooperatively to maximize retained catch and minimize bycatch
- Have observers aboard ALL their vessels, providing accurate data

Amendment 80 fishing boats are an integral part of Waterfront Welding's business. Please do not reduce the halibut bycatch to this fleet as they provide stability to my business.

Thank you for your consideration.

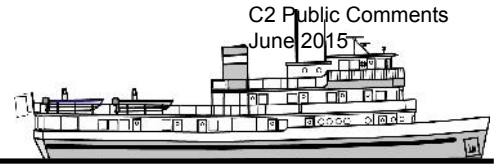
Sincerely,

Sergei N. Roraback, VP Operations

Sergei Roraback
Waterfront Welding
2607 Airport Beach Road
Dutch Harbor, AK 99692

T
H
E
BOAT COMPANY

Alaska Conservation and Vessel Support
417 Arrowhead Street, Sitka, AK 99835 Tel/Fax: (907) 747-9834 Cell: (907) 738-1033



Wilderness Adventure Tours

Paul Olson, Attorney-at-Law
606 Merrell St.
Sitka, AK 99835
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May 26, 2015

Dan Hull, Chairman
North Pacific Fishery Management Council
605 W. 4th Avenue, Suite 306
Anchorage, AK 99501-2252
Fax: (907) 271-2817

Re: Agenda Item C-2 Bering Sea Aleutian Islands (BSAI) Halibut PSC Limit Public Review Draft

Dear Mr. Hull:

Thank you for the opportunity to comment on the Public Review Draft EA/RIR/IRFA to revise BSAI Halibut PSC limits. I submit the following comments on behalf of The Boat Company (TBC), a tax exempt, charitable, education and conservation foundation with a long history of operating in southeast Alaska where it conducts multi-day tours aboard its two larger vessels, the 145' M/V Liseron and the 157' M/V Mist Cove. Clients participate in a variety of activities that include kayaking, hiking, beachcombing and sport fishing from smaller vessels. Many of these clients relish the opportunity to fish for halibut. Additionally, TBC's tours operate in communities that depend on access to the halibut resource for commercial and guided sport fishing, unguided sport fishing and subsistence.

The total coastwide commercial and sport halibut harvest in 2014 was 30 million pounds – the ninth lowest harvest in the past 100 years. The only time period with lower harvests was during the 1970s (1974-1981) and followed a decade of intensive foreign groundfish fishing with high levels of juvenile halibut mortality in the Bering Sea (1964-1974). Although the halibut resource has declined to the point of near historically low sport and commercial landings, the BSAI trawl fishery halibut PSC alone last year exceeded five million pounds, or over a million mostly juvenile halibut. As explained in the following comments, this waste, and its impact on other fisheries, is unacceptable under the Magnuson-Stevens Act (MSA) National Standards.

Alternative 2 includes options that would reduce the PSC limits in order to: (1) minimize bycatch to the extent practicable; (2) ensure long-term conservation and abundance of halibut

and (3) provide additional harvest opportunities in the directed fishery. [EA at 18 – 19]. TBC requests that the Council select the maximum PSC limit reduction options to achieve these goals, particularly the 50% cut for the Amendment 80 (A 80) trawl sector and 60% cut for the trawl limited access sector. These two sectors have taken more than 4.5 million net pounds of halibut PSC mortality per year over the past six years in the BSAI, or roughly 80% of the total PSC mortality in the area. [See EA at 73]. Given the current stock condition, and uncertainties about the long-term impacts of juvenile halibut PSC in Area 4, TBC submits that there is ample justification for such a reduction under the National Standards and guidelines, as well as the goals and objectives set forth in the BSAI Groundfish FMP.

A History of Halibut bycatch in the trawl fisheries

The historical context of trawl halibut bycatch in the BSAI is important to consider as the Council weighs the most important factors under the National Standards. Trawl halibut PSC became a significant concern during the 1960s and 1970s because of a substantial increase in coastwide bycatch from 1964 – 1974 (ranging from 15 million to 20 million pounds annually). [Stewart 2015 at 72-73, Table 4].¹ By 1973, commercial landings fell below 40 million pounds for the first time since 1918 and remained at those historically low levels through 1983. [*Id.*]. The IPHC responded by establishing the Bering Sea Closed Area during this time period - in 1967 - to “aid in the protection of the large population of small, immature halibut” by excluding foreign groundfish fleets.² Then, in 1976, Congress enacted the Magnuson-Stevens Act to conserve U.S. fishery resources and particularly to protect them from the foreign fleets. [16 U.S.C. § 1801].

For a five-year period during the 1980s, the curtailment of foreign fisheries resulted in considerable reductions in halibut PSC, with a coastwide annual average of roughly 10 million pounds a year from 1982 - 1987. [Stewart 2015 at 72, Table 4]. By 1984, commercial halibut landings had begun to recover, increasing to 45 million pounds, and commercial and sport landings subsequently averaged over 67 million pounds annually for the next decade. [*Id.* at Table 4]. The IPHC Closed Area “provided significant protection for juvenile halibut, reducing bycatch mortality in the BSAI to 4.2 million pounds by 1985. [IPHC. 2014 Agenda D1 Report at 5]. Halibut abundance then “improved dramatically.” [*Id.* at 4-5].

¹ Stewart, I.J. 2015. Overview of data sources for the Pacific halibut stock assessment and related analyses.

² Trumble, R.J. Evaluation of Maintaining the IPHC Closed Area in the Bering Sea. In: IPHC Report of Assessment and Research Activities 1998 at 243-248.

The Area 4 directed halibut fisheries developed during this same time period, with commercial landings averaging slightly over 5 million pounds annually from 1983 - 1992. [Stewart 2015 at 66, Table 2]. This development coincided with the Americanization of the trawl fisheries and reopening of the closed area to the emerging domestic trawl industry. [IPHC. 2014 Agenda D1 Report at 4-5]. The IPHC's 1998 review of the closed area explained that "[t]he intent of the IPHC for the Bering Sea closed area, to protect small, immature halibut, was violated when the area opened to U.S. groundfish fisheries, which catch large numbers of these small halibut as bycatch." [Trumble 1998 at 244]. After the Closed Area reopened, halibut PSC mortality in Area 4 again increased substantially, to 10.7 million pounds in 1992. Overall coastwide halibut PSC also increased as the American trawl fleets expanded, averaging 16 million pounds a year from 1988 through 1997. [Stewart 2015 at 72-73].

These increases renewed concerns about BSAI trawl fisheries during the 1990s. The IPHC established a Halibut Bycatch Working Group (HBWG), which pressed for coastwide reductions in PSC limits, and emphasized the BSAI fishery because of the vulnerability of juvenile halibut to trawling.³ The initial goal was a coastwide reduction of 50% using the 18 million pounds taken in 1990 as a baseline. The goal was to return to bycatch levels from the mid-1980s (7 – 9 million pounds), and then achieve additional annual reductions. [*Id.* at 28-29]. Other IPHC regulatory areas responded with reductions of 50% in Area 2A and 85% in Area 2B relative to historical levels of bycatch mortality.⁴

The rising amounts of bycatch that corresponded with the emergence of the domestic trawl fisheries also caught the attention of Congress. In 1996, Congress amended the Magnuson-Stevens Act in order to require that councils reduce the amount of bycatch in every fishery. [142 Cong. Rec. S10810 (Sept. 18, 1996)]. Although Congress anticipated that Americanizing the fisheries would contribute to conserving our fishery resources, instead, U.S. vessels had become "capitalized now far beyond what [Congress] ever envisioned in the seventies, and the fisheries waste continues to get worse in many areas." [*Id.*]. Thus, the bycatch minimization requirements set forth National Standard 9 explicitly targeted the Bering Sea trawl fisheries:

³ Salvesson, S. et al. 1992. Report of the Halibut Bycatch Work Group at 19, 25. IPHC Tech. Rpt. No. 25.

⁴ Karim, T. et al. 2012. Report of the 2010 Halibut Bycatch Work Group. Int. Pac. Halibut Comm. Technical Report No. 57 at 10 – 11, 33. While TBC does not address National Standard 3 in these comments, it is important to point out that the failure to reduce halibut bycatch mortality to the same extent as other jurisdictions cuts against the comments made in the O'Hara Group's comment letter, which erroneously asserts that "area-specific goals are not appropriate" under NS-3.

The bycatch problem is of great concern in my State of Alaska, where over half of the Nation's fish are harvested each year off our shores.

In 1995, 60 factory trawlers discarded nearly as much fish in the Bering Sea as was kept in the New England lobster fishery, the Atlantic mackerel fishery, the Gulf of Mexico shrimp fishery, the Pacific sablefish fishery, and the North Pacific halibut fishery combined. The waste in that area was as great as the total catch of all the major fisheries off our shores. These 60 factory trawlers threw overboard – dead and unused – about one out of every four fish they caught.

I have a chart here to call to the attention of the Senate., Last year, the Bering Sea trawl vessels – this all the trawl vessels and not just factory trawlers that are committing waste – threw 17 percent of their catch overboard, dead and not used. That total catch, as you can see by the chart, exceeds by almost 500 million pounds the total catch of all five of the major fisheries of the United States.

...

I hope this bill will bring a stop to this inexcusable amount of waste. [142 Cong. Rec. S10810 (Sept. 18, 1996) (Sen. Ted Stevens speaking)].

NMFS then implemented NS-9 by requiring Councils to “re-examine ... FMPs for ways to reduce bycatch below current levels.” [63 Fed. Reg. at 24224]. At the time, the BSAI limit, established in 1993 by Amendment 21, was 3,775 mt, or roughly 6.2 million net pounds.⁵ In 2000, Amendment 57 reduced the trawl PSC limit by 100 mt – to 3,675 mt, or 6 million pounds - roughly a 3% reduction. [*Id.* at 10]. Amendment 80 subsequently added a staggered 200 mt cut, or an 8% overall reduction from the limit established in the early 1990s. [*Id.* at 11]. Overall, the BSAI trawl fisheries alone have taken over a hundred million pounds of halibut as PSC since the 1996 enactment of the Sustainable Fisheries Act.⁶

National Standard 9 requires maximum PSC limit reductions

In light of the above history, TBC finds it puzzling that a comment letter from the A 80 sector, through the O’Hara Corporation’s counsel, insists that National Standard 9 does not

⁵ Northern Economics, Inc. 2012. Halibut Prohibited Species in the BSAI Groundfish FMP and Regulations. Prepared for the North Pacific Fishery Management Council. May 2012 at 9.

⁶ Williams, G.H. Incidental Catch and Mortality of Pacific Halibut 1962-2014, Table 7. In: Int. Pac. Halibut Comm. Report of Assessment and Research Activities 2014 pp. 313-336.

justify an action to reduce PSC limits. The letter implies that it does not matter whether all of the halibut are killed as juveniles in the trawl fishery or harvested directly, so long as the resource “is not overfished – or even declining” even though the biomass is at a near historically low level. This perspective ignores the reasons that caused Congress to amend the MSA with a mandate to minimize bycatch. Neither the NS-9 guidelines nor the BSAI Groundfish FMP presents such a narrow threshold. [See *e.g.* BSAI FMP § 3.6.2; 50 C.F.R. § 600.350].

Economics alone do not drive the NS-9 practicability standard. NMFS was explicit in explaining that economic impacts are just “one of the factors that determine the extent to which it is practicable to reduce bycatch ... in a particular fishery.” [63 Fed. Reg. at 24226].⁷ For that reason, subsection (d) of the guidelines specifically defines net benefits to the Nation to include, among others: negative impacts on affected stocks, economic values to commercial, recreational and subsistence fisheries, existence values, and recreational values. [*Id.*; 50 C.F.R. § 600.350(d)]. 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 and nonconsumptive uses of fishery resources, and social effects. [50 C.F.R. § 600.350(d)(3)].

A 80 sector comment letters identify uncertainty about impacts of bycatch on the halibut stock as a justification for reducing PSC by only a token amount, or, as implied by the O’Hara Corporation’s counsel, not at all. The O’Hara Corporation asserts that nothing should happen “before this uncertainty is characterized, analyzed, and hopefully, resolved.”⁸ This approach conflicts directly with the BSAI FMP’s precautionary approach and NS-9 guidelines, which require Councils 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. [BSAI FMP at 4-5;⁹ 60 C.F.R. § 600.350(d)((3)(i), (ii)]. The precautionary approach provides that “[t]he absence of

⁷ Magnuson-Stevens Act Provisions, National Standard Guidelines, Final Rule. 63 Fed. Reg. 24,212 (May 1, 1998).

⁸ See March 31, 2015 letter from the O’Hara Corporation (identifying uncertainties about juvenile halibut dispersion patterns, location of nursery areas, and natural mortality of juveniles) and February 20, 2015 letter from Fisherman’s Finest.

⁹ NPFMC 2014. Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area at 4-5. Anchorage, AK. April 2014 (explaining that the Council’s precautionary approach provides for measures such as bycatch constraints to meet conservation and management goals and to provide “socially and economically viable fisheries for the well-being of fishing communities”).

scientific information should not be used as a reason for postponing or failing to take measures to conserve ... non-target species and their environment.” [63 Fed. Reg. at 24227]. The rationale for this approach reflects the understanding that scientific certainty often arrives too late to design effective policy responses to environmental concerns.

Further, the NS-9 guidelines and BSAI FMP do not require the Council to find that the BSAI halibut stock is “overfished” prior to taking action. The relevant biological criteria include “population effects” under the NS-9 guidelines, and consideration of changes in halibut biomass and stock condition and potential impacts on halibut stocks and fisheries under the FMP. In terms of population effects, the NS-9 guidelines explicitly reflected a particular concern about bycatch of juvenile fish and “the problem of foregoing the potential growth of these fish,” requiring Councils to consider alternatives that avoid bycatch of juvenile fish in the first place. [62 Fed. Reg. at 41011].¹⁰ Also, it is important for the Council to consider an “optimum level” population threshold for the halibut resource, and limit bycatch well below a threshold at which there is a risk of precipitating or contributing to a decline. [63 Fed. Reg. at 24226].

Thus, some relevant questions for the Council to consider under NS-9 include:

- Is the BSAI halibut population below an optimum level population threshold, in terms of historical records and impacts to directed fisheries?¹¹
- What are the scientific uncertainties and unknown risks?¹²

¹⁰ Magnuson-Stevens Act National Standard Guidelines, Proposed Rule. 62 Fed. Reg. 41907 (August 4, 1997).

¹¹ See Stewart, I., S. Martell, B. Leaman, R. Webster & L. Sadorus. 2014. Report to the North Pacific Fishery Management Council on the status of Pacific Halibut in the Bering Sea and Aleutian Islands and Impact of Prohibited Species Catch (reviewing recent Fishery Weight Per Unit Effort (WPUE) setline data that “are consistent with the estimated declines in the coastwide stock,” with catch rates far lower than they have been for over two decades and an overall BSAI decline of 66% since 2000 and trawl survey data showing that total halibut abundance has been “declining steeply since 2006”); see also Stewart, I.J. & S. Martell. 2014. Assessment of the Pacific Halibut Stock at the End of 2013 at 182, Table 3. In: Int. Pac. Halibut Comm. Report of Assessment and Research Activities 2013 pp. 167-196. (explaining that the female spawning biomass was twice as large during the late 1980s and early 1990s, that the overall halibut population was at 38% of the long-term average equilibrium spawning biomass, and projecting a continued decline even with reduced fishery harvests); IPHC Staff. 2011. Item 1. Effect of reducing bycatch limits in the Gulf of Alaska on the halibut exploitable biomass and spawning potential, including downstream effects from halibut migration. March 2011 (explaining that reductions in juvenile halibut mortality are “particularly important to the health and potential for recovery of the stock from the current low level of exploitable biomass”).

¹² See IPHC. 2014. Agenda Item D1 Report. (identifying considerable uncertainty about the 2004-2006 year classes, due to an unexplained reduction in juvenile abundance and distribution, heightening the need to minimize impacts on future year classes).

- What are the social, cultural and economic impacts of halibut PSC with respect to Area 4 halibut fishermen and secondarily by downstream halibut fishermen?
- Would PSC limit reductions result in the conservation of juvenile fish and allow them to reach maturity before harvest?
- Where does halibut rank among FMP fishery resources in terms of recreational and non-consumptive values?
- Have the PSC limit reductions implemented to date fulfilled the expectations of the Sustainable Fisheries Act?

The public record and numerous materials contributed by the IPHC throughout this process answer these questions and provide sufficient information to trigger an adaptive, precautionary management measure in response to declines in the halibut biomass and stock condition and impacts to Bering Sea and downstream halibut resource stakeholders. A 50-60% PSC limit reduction is warranted under NS-9.¹³

National Standards 4 and 8 Justify Maximum PSC Limit Reductions

National Standards 4 and 8 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 – the pending decision before the Council “must give priority to conservation measures.” [*NRDC v. Daley*, 209 F.2d 747, 753 (D.C. Cir. 2000)]. NS 4 requires that allocative measures be “[r]easonably calculated to promote conservation.” [50 C.F.R. § 600.325(a)(2)]. NS 8 requires that Councils consider the importance of fishery resources to fishing communities “within the contexts of the conservation requirements of the Magnuson-Stevens Act” and thus measures “must not compromise the achievement of conservation requirements and goals of the FMP.” [50 C.F.R. § 600.345(b). Conservation means “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.”¹⁴ The MSA defines conservation broadly:

The term “conservation and management” refers to all of the rules, regulations, conditions, methods and other measures which (A) are required to rebuild, restore, or maintain, and which are useful in rebuilding, restoring, or

¹³ IPHC. 2013. Report of Halibut Bycatch Work Group, Version 9 at 5. November 2013. Available online at http://www.iphc.int/documents/bycatch/Halibut_Byc_Work_Group_rept_v9.pdf

¹⁴ www.merriam-webster.com/dictionary/conservation (emphasis added).

maintaining, any fishery resource and the marine environment; and (B) which are designed to assure that—

- (i) A supply of food and other products may be taken, and that recreational benefits may be obtained, on a continuing basis;¹⁵
- (ii) Irreversible or long-term adverse effects on fishery resources and the marine environment are avoided; and
- (iii) There will be a multiplicity of options available with respect to future uses of these resources. [16 U.S.C. § 1802(5)].

NS 4 requires that conservation and management measures do not discriminate between residents of different states, that allocations of fishing privileges be fair and equitable, and be reasonably calculated to promote conservation. [50 C.F.R. § 600.325(a)]. Allocative measures must also reflect consideration of other factors, including economic and social consequences, consumer interest, dependence on the fishery by present participants and coastal communities and enhancing recreational fishing opportunities. [50 C.F.R. § 600.325(c)(3)(iv)].

The O'Hara Corporation's comment letter asserts that major PSC limit reductions would violate National Standard 4 by prioritizing the directed fisheries in Alaska. But the 9th Circuit has previously addressed this question. In 1985, the Alaska Factory Trawlers Association (AFTA) sued NMFS, challenging a measure that allocated the majority of the Gulf of Alaska sablefish quota to longliners in response to the increased take of sablefish by the trawl fishery. [*Alaska Factory Trawlers Ass'n v. Baldrige*, 831 F.2d 1456, 1463 (9th Cir. 1987)]. AFTA argued that the measure violated National Standard 4 by discriminating against non-Alaskan fishermen. [*Id.* at 1464]. But the court upheld the rule, finding that the record showed that all longline fishermen, including non-Alaskans, would benefit, and that the measure was designed to promote the conservation of sablefish. [*Id.*]. The court also noted that curtailing trawling would have environmental benefits. [*Id.* at 1465].

¹⁵ TBC notes that the MSA, National Standards and guidelines provide specific guidance with regard to maintaining recreational benefits and values, and that as of May 20, the Council had received well over 100 letters from Alaska charter operators and recreational fishermen from Alaska and throughout the country requesting a PSC limit reduction. Thus, in addition to the impacts on directed fisheries, the Council also needs to heavily weigh the recreational values of Pacific halibut and interests of recreational fishermen in its decision. Those interests and values will be properly addressed with an action that also supports Area 4CDE and downstream commercial halibut fishermen.

As shown in the Community Analysis, longline fishermen outside of Alaska account for over 40% of the revenues from the BSAI halibut fishery, meaning there is no impermissible discrimination against non-Alaskans. [Appx. C at 30]. In contrast, nearly all of the revenues from the trawl fisheries go to Washington state and almost exclusively the city of Seattle. 86.9% of the revenues from trawl catcher vessels and 92.9% of the revenues from trawl catcher processors return to Washington state. [Appx. C at 11, 15]. These sectors now harvest the majority of the Area 4CDE halibut quota as well, raising serious questions about geographic discrimination under the status quo.

Other pertinent questions for the NS-4 analysis are then: (1) is a major PSC limit reduction reasonably calculated to promote conservation and (2) is it fair and equitable? Restoring the historical allocation of the resource between the longline fleet and trawl fishery will maintain or restore Area 4CDE fishery resources and result in savings of juvenile halibut – making a maximum PSC limit cut a conservation measure as defined by the MSA. Indeed, the NS-4 guidelines explicitly reference closures of nursery areas to trawling in order to ensure fish are harvested at their maximum size as a legitimate objective. [50 C.F.R. § 600.325(c)(3)(i)]. The Council would be well within its discretion under NS-4 to prohibit trawling in the Closed Area – even if the measure implicated direct allocative consequences. [See *Nat'l Coalition for Marine Conservation v. Evans*, 231 F.Supp.2d 119, 131-132 (D.D.C. 2002)].

The equitable considerations involved are compelling. Halibut PSC has remained static or even increased in relation to the exploitable biomass, meaning that the fixed PSC limit has caused an ongoing reallocation of the historical share of the resource from the directed fisheries to the trawl fisheries. [EA at 71, Fig. 3-14]. Area 4 quotas overall have declined by two-thirds over the past decade while bycatch has remained the same, or even increased from year to year. [EA at 73, 213]. The problem is most acute in Area 4CDE where the majority of trawl halibut bycatch occurs. Directed fishery quotas have declined from 3.4 million pounds in 2011 (more than half the quota) to 1.2 million pounds in 2014 (less than ¼ of the quota). [Stewart 2015 at 67]. Conversely, trawl bycatch in Area 4CDE has actually increased, from 3 million pounds in 2011 to 4 million pounds in 2014. [EA at 74, Table 3-15].

NS-4 guidelines caution against such a result absent a legitimate FMP objective. Keeping the current trawl PSC limit does not qualify – the guidelines specify that preserving an “economic status quo cannot be achieved by excluding a group of long-time participants in the fishery.” [50 C.F.R. § 600.325(c)(3)(i)]. Rather, the 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. [BSAI FMP at 5].

NS 8 requires that conservation and management measures take into account the sustained participation and adverse economic impacts to fishing communities. 50 C.F.R. § 600.345(a). The guidelines recognize the inevitability of change in fishing communities, including gear types, and do not mandate that the Council maintain any particular level or distribution of participation in fishing activities. [62 Fed. Reg. at 41911]. Rather, the standard “implies the maintenance of continued access to fishery resources in general by the community.” [*Id.*] As previously noted, NS-8 is also strongly tempered by the MSA’s conservation goals. [50 C.F.R. 600.345(b)]. When there are two alternatives that achieve similar conservation goals, the alternative that provides for sustained participation of communities and minimizes adverse economic impacts is preferred. [*Id.*]. Such a scenario is not the present circumstance here, however, because the conservation benefit reflects the level of PSC reduced under each option.

The NS-8 guidelines authorize the Council to prioritize the sustained participation of Area 4CDE communities under NS-8. [[50 C.F.R. § 600.345(c)(4)(“any particular management measure may economically benefit some communities while adversely affecting others”); 50 C.F.R. § 600.345(b)(4)(“sustained participation means continued access to the resource, within the constraints of the condition of the resource”]. Here, the range of PSC limit reductions will have significantly different impacts on different types of fishing communities. The status quo will shut down Area 4CDE fisheries while major PSC limit reductions may prevent the A80 and trawl limited access sectors from harvesting their entire quotas in some years. These sectors at least have the opportunity to adapt, and prioritize participation in the highest value fisheries.

Further, the scope of NS-8 extends well beyond community economics. A “fishing community” is one “that is substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic needs.” [50 C.F.R. § 600.345(b)(3)(emphasis added)]. Seattle is a large municipality with multiple economic sectors. NS-8 requires the Council to “examine the *social* and economic importance of fisheries” to affected communities. [50 C.F.R. § 600.345(c)]. Which communities are most “substantially dependent” on the halibut resource – socially and economically?

The O’Hara Corporation suggests that the Council’s primary justification for this action, NS-8, improperly favors communities geographically adjacent to the fishery with a preferential

allocation and that the “reallocation” of the halibut stock is inconsistent with NS-8. It insists that the Council consider communities throughout Alaska and the Pacific Northwest. On this issue, TBC agrees. Although the most critical socio-economic issue pertains to the Area 4CDE halibut fisheries, it is important that the Council’s decision consider impacts to downstream recreational, commercial and subsistence fisheries. The Bering Sea is a net exporter of halibut of all sizes, with fish distributing to the Aleutian Islands, Gulf of Alaska and Area 2. [EA at 56.] As shown in the appendices of the IPHC’s Halibut Bycatch Working Group’s 2013 report, BSAI halibut PSC reduces fishery yield in all other regulatory areas by millions of pounds.¹⁶ Numerous Alaskans and halibut fishermen from Washington state have written comment letters asking the Council to implement a 50% PSC reduction, and TBC requests that the Council consider the distribution of halibut to downstream fishing communities and fisheries under NS-8.

The maximum PSC limit reductions are the only option that will partially restore the 4CDE directed fisheries should the 2015 catch limit projections continue into the future under the current and reasonably foreseeable FCEY. The status quo and low reduction alternatives require these communities and other Area 4 fishermen to bear the burden of conserving the resource, which is unfair and inequitable and does not provide for the sustained participation of substantially dependent communities in the fishery. It is clear under the National Standard Guidelines that reducing bycatch of juvenile fish is a legitimate conservation purpose. In sum, maximum cuts are warranted under both NS-4 and NS-8.

Conclusion

For the above reasons, TBC requests that the Council cut halibut PSC limits by no less than fifty percent.

Sincerely,

Paul Olson

¹⁶ IPHC. 2013. Report of Halibut Bycatch Work Group, Version 9 at 16, 44-45 (Figure 5).