



# Central Bering Sea Fishermen's Association

P.O. Box 288 | Saint Paul Island, Alaska 99660 | Phone: 907.546.2597 | Fax: 907.546.2450 | cbsfa.com

January 29, 2021

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

Dear Chairman Kinneen,

The Central Bering Sea Fishermen's Association (CBSFA) is the management organization for Saint Paul Island, Alaska, under the Western Alaska Community Development Quota (CDQ) Program. Since the program was created in 1992, the federal government has been awarding various species of fish (CDQ allocations) from the Bering Sea and Aleutian Islands (BSAI) commercial fisheries to CBSFA. In turn, CBSFA manages these allocations, including halibut, to promote social and economic development at Saint Paul Island.

CBSFA is requesting the support of the North Pacific Fishery Management Council for an Emergency Action, pursuant to Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). **CBSFA asks that the Council recommend that the Secretary of Commerce take emergency action to waive for 2021 the Vessel Cap regulations under 50 CFR Section 679.42(h)(1) for halibut in IPHC Regulatory Areas 4A, 4B, 4C, 4D and 4E.**

## I. **Background:**

The vessel IFQ cap (also referred to as "vessel cap") restricts the amount of IFQ of each IFQ species that can be harvested on one vessel during a season. The vessel IFQ cap is specified as a percent of the annual TAC, so the number of pounds changes annually. From 2000 to 2010, when halibut abundance was high, the vessel cap for halibut ranged from 201,000 to 295,000 pounds. The vessel cap in 2020 was 80,396 pounds (.5% of all Alaska halibut IFQ TAC).

CBSFA members would normally be harvesting 313,751 pounds of CDQ halibut out of St. Paul. In addition, CBSFA members hold a total of 122,000 pounds of 4C halibut IFQ in 2021. The St. Paul local small boat fleet consists of 14 vessels and employs up to 20% of its residents. Commercial halibut fishing is the lifeblood of St. Paul and is the main economic engine in a community that has few small boat fishing opportunities. In 2019, CBSFA's member fishermen earned \$1.89 million in gross fishing proceeds, short of the long-term average of \$2.5 million.

The problems CBSFA members face in 2021, which all result from the unforeseen COVID-19 pandemic, are multifold, and are the same as those faced in 2020:

- A critical consideration is Saint Paul’s inability to handle an outbreak of COVID-19 cases locally. About 75% of Saint Paul’s population of almost 400 suffers underlying conditions, and about 1 in 4 residents is over 55, making Saint Paul particularly vulnerable to the deadly COVID-19 virus. With only two ICU beds and no resident medical doctors, the St. Paul Health Clinic does not have the medical equipment or personnel necessary to treat individuals with COVID who may require hospitalization. Although the first responders, elders and others at St. Paul have begun receiving COVID vaccinations we do not know for certain when all or most community members will be fully vaccinated and fully protected from the new COVID variants.
- The costs of factoring in COVID-19 measures, including quarantine times for incoming crewmembers and processing workers; and chartering planes for bringing in processing workers to keep them separate from community members on regular flights for safety.

All of these factors make the costs of operating in a “business as usual”/status quo mode, one where the local fleet harvests halibut CDQ and IFQ for delivery and custom processing at the local Trident plant, financially unsustainable. Based on current costs and market conditions, CBSFA has estimated the projected losses for a status quo fishery at close to \$1 million.

Given the potential health, financial and demographic costs to Saint Paul Island, CBSFA’s fishermen in 2020 developed a plan for pursuing the halibut fishery last summer. This plan involved using the CBSFA 58’ F/Vs Saint Peter and Saint Paul and other large vessels to harvest CBSFA’s halibut CDQ as well as its members’ halibut IFQ for delivery to plants elsewhere in Alaska. The local halibut fishermen did not operate in 2020.

The 2020 plan, made possible by the Council’s agreement to waive BOTH the owner on board requirements and vessel caps, resulted in 99% of the CDQ and 99% of the IFQ being harvested in 4CDE. We support both waivers again in 2021.

This requested action is linked to NPFMC consideration of an emergency request to waive owner on board requirements in the halibut and sablefish Individual Fishing Quota (IFQ) fisheries under 50 CFR Section 679.41 for the 2021 season. Since there are over 2000 quota holders, but only around 1000 halibut boats, this request, if granted, would allow IFQ holders to transfer allocations to a hired master, thereby minimizing the risk of spreading COVID-19 to crews, quota holders, and communities.

However, the current vessel cap of approximately 80,000 pounds will clearly be insufficient to respond to the needs of the fishery this coming season, on top of the effects of waiving the owner on board provisions, hence this emergency request to lift the vessel cap in the Bering Sea Aleutian Island halibut regulatory areas 4A, 4B, 4C, 4D, and 4E. Absent timely emergency regulatory relief, CBSFA members and other halibut IFQ holders in the Bering Sea will essentially be prohibited from harvesting the full amount of halibut available to them in 2021.

After reviewing the similar situation in 2020, the Council recommended “emergency action” to remove vessel use caps for the halibut IFQ fishery in Areas 4B, 4C, and 4D. NMFS implemented

the Council's recommendation with a final rule, waiving some of the normal process because of the need for swift action. Although the emergency action in 2020 was not ultimately taken under the MSA, the MSA standards for emergency relief are still applicable.

## **II. 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 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.”<sup>1</sup>

## **III. An Emergency Exists:**

CBSFA, all other CDQ groups, and various IFQ holders believe that an emergency exists. For the reasons described above, under the existing vessel caps IFQ holders will be unable to harvest much of the halibut IFQ in the Bering Sea. As a result, a substantial percentage of the halibut IFQ in areas 4A, 4B and 4CDE may be stranded. The halibut fishery opens in March; there is insufficient time to pursue regulatory relief through standard rulemaking procedures.

If 50% of the halibut in the Bering Sea is stranded, at an ex-vessel value of approximately \$3.25 a pound (based on current pricing), this is a substantial amount of revenue for the halibut fleet and dependent communities at a time when these revenues are critically needed. CBSFA has considered options that would not require emergency action, but does not believe there is a viable alternative that minimizes health risks to the community and mitigates the financial loss to CBSFA and other Bering Sea halibut fishermen.

## **IV. The Criteria for Emergency Action Have Been Met:**

CBSFA submits 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. Neither the coronavirus pandemic nor its impacts on the fisheries and global economy were anticipated. In response to the pandemic and the need to limit the spread of contagion, the fishing industry has proposed a number of temporary measures to allow for pursuit of the various commercial fisheries while minimizing the risks to crew, plant workers, quota holders, and communities.

---

<sup>1</sup> See: NMFS Instruction 01-101-07, Policy Guidelines for the Use of Emergency Rules, March 31, 2008.

Vessel cap regulations at § 679.42(h)(1) restrict the amount of IFQ of each IFQ species that can be harvested on one vessel during a season. The vessel IFQ cap is specified as a percent of the annual TAC, so the number of pounds changes annually. The reduction in harvesting capacity resulting from responses to the pandemic, including the request to waive owner on board provisions, combined with the existing vessel caps will prevent CBSFA and other halibut fishermen in the Bering from fully harvesting their CDQ and IFQ halibut.

This situation is “recent, unforeseen, or recently discovered.”

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

While the public health emergency does not present a clear conservation problem in the fishery, the current situation is a serious management problem. To address the problem, the St. Paul residents and fishermen considered three options. The normal operation of the local fishery, with some participants traveling to St. Paul to fish on family boats, could introduce the coronavirus to the island and expose all fishermen to contracting and spreading COVID-19. The nature of the small-boat, day fishery increases the potential for spread of COVID-19 on the boat and also in the community. Most boats have crew that live in different households and come together on the boat, where social distancing is practically impossible. One infected crewmember could spread it to the whole crew, who would then take it home with them. There is a very strong sentiment in the community to keep St. Paul Island coronavirus free. The sense of security and peace would certainly change with an influx of fishermen and processing workers.

**(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.**

The situation can be addressed through emergency regulations to waive on a temporary basis the Vessel Cap regulations under 50 CFR Section 679.42(h)(1) for halibut in the BSAI region, specifically IPHC Regulatory Areas 4A, 4B, 4C, 4D and 4E. All other aspects of the management of the halibut fishery would be maintained, and the immediate benefit would be avoidance of the losses identified above.

The normal Council process of notice-and-comment rule making, for its part, would need to occur very quickly:

- (a) the Council would have to produce an analysis with a range of alternatives and take action.
- (b) 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. These regulatory steps certainly could not be completed in the above time frame, even if the Council were able to take action at the June meeting.

CBSFA believes there is simply not enough time for the normal process to be followed without incurring the risks and losses identified above. Moreover, CBSFA notes that the requested emergency action is limited in duration, and is limited by statute. CBSFA submits that the immediate benefits of emergency action outweigh the value of the normal process.

**V. 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 forgone); (3) social (prevent significant community impacts or conflicts); or (4) public health. CBSFA believes that there are economic, social, and public health justifications for the requested emergency action.

The economic loss of stranding a large percentage of the annual halibut harvest is described above. This loss would be suffered by harvesters and their crews, as well as the processors and communities that depend on this fishery. Furthermore, the social and public health impacts of a coronavirus outbreak in remote communities with vulnerable populations and lacking the medical infrastructure to respond, would be devastating, potentially extinction-level, events for these communities, many of which are Native and have unique cultures.

**VI. Compliance with National Standards:**

An emergency action must also comply with the MSA National Standards. This compliance is addressed as follows:

**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 allow as much of the halibut FCEY for areas 4A, 4B and 4CDE as possible to be harvested, processed and marketed to achieve optimum yield at a time when the nation's food supplies are under stress due to the pandemic. If the emergency action is not taken, it is likely that a substantial percentage of the available halibut will be stranded.

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

The abovementioned request respects the IPHC's biological assessment for the halibut season.

**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.**

This action does not alter management of the halibut fishery as a stock.

**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**

No direct allocation of any fishing privileges is being made through this action. On the contrary, this action allows IFQ fishermen to preserve and benefit from their allocations in a manner consistent with the conservation of the resource. It could be argued that the temporary reduction in vessel participation along with the use of fuel and other supplies could have a salutary effect on ecosystem and thus indirectly on the halibut stocks. In addition, while this action contemplates a temporary reduction of crew and vessel participation to avoid stranding halibut and reduce the possible spread of COVID-19, the measures adopted would be lifted within the statutory period under Section 305(c).

**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.**

Waiving the vessel caps, to avoid stranding halibut IFQ promotes the efficient utilization of this resource. This action is not allocative. On the contrary, it allows every IFQ holder to have its allocation harvested under extenuating circumstances.

**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 is responsive to a global and national fishery contingency with widespread impacts on the harvesting, processing, and marketing of the fisheries.

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

The requested action will not impose greater costs on the harvesters or processors. On the contrary, the action will minimize costs and avoid unnecessary duplication in the deployment of harvesters and crews.

**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**

CBSFA is supporting the above action in order to protect CDQ communities from the dangerous spread of COVID-19 thus ensuring the long-term, sustained, participation of these communities

in the halibut fishery and minimizing the adverse impacts of the pandemic on their residents. Moreover, the substantial amount of stranded halibut that would result if this action is not adopted, would clearly be harmful to fishermen and the communities in which they reside. This action complies with National Standard 8.

**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**

Bycatch or bycatch mortality will not be increased beyond the levels currently contemplated. On the contrary, the temporary concentration of harvesting capacity should have positive effects in reducing bycatch and mortality.

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

The requested emergency action, by reducing crew and vessel participation, should help reduce the spread of the coronavirus, thereby promoting the safety of human life on board vessels, as well as in communities.

**VII. Specific Request for Emergency Action:**

For the reasons provided above, CBSFA requests that the Council support an emergency rule to waive on a temporary basis the Vessel Cap regulations under 50 CFR Section 679.42(h)(1) for halibut in the BSAI region, specifically IPHC Regulatory Areas 4A, 4B, 4C, 4D and 4E.

Thank you for your consideration.

Sincerely,



Phillip Lestenkof, President  
Central Bering Sea Fishermen's Association