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April 1, 2021

Submitted via Council comment portal

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Chair
North Pacific Fishery Management Council
1007 West Third, Suite 400
Anchorage, Alaska 99501-2252

Re: Agenda Item C2 - Halibut Abundance Based Management of PSC Limits

Dear Chair Kinneen:

This letter conveys comments on behalf of The Groundfish Forum (“GFF”) on the alternatives under consideration by the Council for management of the PSC limits for the Amendment 80 sector and the analyses contained in the Initial Review Draft Environmental Impact Statement for BSAI Halibut Abundance-based Management (ABM) Amendment 80 of PSC Limits (March 2021) (“IRDEIS”). As GFF has previously testified before the Council, GFF has substantial concerns that abundance based management (“ABM”) of halibut PSC for the Amendment 80 sector is fundamentally flawed and will be ineffective at reaching the Council’s goals. As discussed below, while the concept was worth initial study and analysis, at this point the ABM approach has been shown to be unreasonable and infeasible. The analyses presented in the IRDEIS as well as industry experience since 2015, indicate that an ABM approach is inconsistent with the National Standards in the Magnuson-Stevens Act (“MSA”) and does not have a rational basis. Moreover the analyses to date do not adequately evaluate the impacts of the ABM approach on the sustainability of the Amendment 80 sector, but instead imbed an unwarranted assumption that it is practicable for the sector to meet the reduced PSC levels. In addition, the IRDEIS requires revision in order to adequately disclose and consider the effects of climate change on all affected stakeholders and the resource.¹

¹ For this action, the agency has chosen to proceed under the 1978 NEPA regulations. IRDEIS at 20. This letter accordingly will cite to the 1978 regulations and cases interpreting them.

a. The IRDEIS must be revised with forward-looking analyses of the practicability of proposed halibut restrictions in the context of the most likely scenarios for climate change.

The IRDEIS does not adequately evaluate the impacts that may result from warming ocean conditions and must be revised to do so. The IRDEIS states that its “cumulative effects analysis includes climate change” but there is no subsection in Section 5 that addresses climate change. IRDEIS at 218. The IRDEIS does briefly acknowledge the substantial effects of the warmest bottom temperatures on record in the Eastern Bering Sea in 2019, but treats these conditions as “anomalous environmental conditions” instead of modeling and disclosing future climate scenarios. See, e.g., IRDEIS at 73-4. The IRDEIS briefly recognizes that the presence or absence of the Bering Sea “cold pool” may impact the movement of fish species, stating 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.” IRDEIS at 98-9. But the IRDEIS relies on historical data exclusively, and does not evaluate the impacts of the proposed action in a reasonably foreseeable future where warming temperatures may be the norm, not an anomaly. See 40 C.F.R. §1502.22(a) (if incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include it in an EIS). Information is readily available to examine how climate change can be expected to affect the Amendment 80 sector’s ability to operate under these changing climate conditions (e.g., comments from Alaska Seafood Cooperative on ABM). This and other information pertaining to the resiliency of the Amendment 80 sector in light of these changes can and should be incorporated into the analysis.

This is key information that is required to evaluate the likely impacts of the proposed alternatives---and to assess whether there are other alternatives that would better accomplish the purpose and need for the action. The Amendment 80 sector is already experiencing the effects of an unpredictable cold pool. As discussed further below, the analyses to date have not established any index that effectively parallels the sector’s year-by-year bycatch needs: when indices go up, the sector’s halibut interactions have at times gone down. Similarly, when indices have gone down, bycatch has gone up. These changes are not explained by fishing behavior, but are likely a function of inter-annual variability of environmental conditions outside of the control of the Amendment 80 sector. In cold years, the ice in the Bering Sea comes south, causing target species to school up. In these conditions, it is likely that less fishing effort is required since the targets are schooled. Crucially for management purposes, the impacts of these diminishing cold years are not well understood but demonstrably do not parallel any measure of halibut abundance.

The IRDEIS must do more to analyze and disclose the likely effects of climate change in order to give the Council and the public an accurate picture of the impacts of the proposed action, and so that they can assess the practicability of the alternatives. 40 C.F.R. §§ 1502.2(d); 1502.16. This information is also necessary for the Council to have the ability to assess an alternative’s

consistency with National Standard 6, which requires management measures to take into account and allow for contingencies such as “unexpected resource surges or failures” and “climate conditions.” 50 C.F.R. § 600.335(d). Finally, the Biden Administration’s policy is for all federal agencies and organizations to “drive assessment, disclosure, and mitigation of . . . climate-related risks” and to take actions that “increase[] resilience to the impacts of climate change.” Section 201, Executive Order 14008 (January 27, 2021); see *also* Executive Order 13990 (January 20, 2021). The IRDEIS must be substantially revised, followed by an opportunity for public comment, in order to meet all of these mandates before any final action is taken on ABM of PSC for the Amendment 80 sector.

b. The ABM alternatives under consideration are fundamentally flawed and will not achieve the Council’s purposes.

The information presented in the IRDEIS, while incomplete, is sufficient to demonstrate that the underlying concept behind ABM does not work. None of the proposed alternatives will achieve the Council’s stated purposes for the proposed action and therefore are not reasonable alternatives under NEPA.

The Council’s Statement of Purpose and Need for the proposed action, as amended in October 2020, states in relevant part:

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 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.

An assumption inherent in the purpose and need statement is that ABM will provide better management of the resource than fixed PSC limits. However, assumptions are not data. An agency “must examine the relevant **data** and articulate a satisfactory explanation for its actions including a rational connection between the **facts** found and the choice made.” *Motor Vehicle Mfrs. Ass’n*, 463 U.S. at 43 (quotations omitted; emphasis added); *Del. Dep’t of Natural Res. & Env’tl. Control v. Env’tl. Prot. Agency*, 785 F.3d 1, 11 (D.C. Cir. 2015).² No rational relationship can be established between the facts and selection of any of the ABM alternatives under consideration. This is because the science before the Council shows that the ABM concept is fundamentally flawed for a number of reasons.

² NEPA also mandates data-driven decisions. “To take the required ‘hard look’ at a proposed project’s effects, an agency may not rely on incorrect assumptions or data in an EIS.” *Conservation Northwest v. Rey*, 674 F.Supp.2d 1232, 1249 (W. D. Wa. 2009)(citing 40 C.F.R. §1502.24).

i. Use of indices; impacts on practicability for Amendment 80 sector.

The premise underlying the entire ABM program is that halibut PSC limits should be linked to halibut abundance. This construct is irrational for several reasons.

First, the ABM concept before the Council is necessarily based on the assumption that the Amendment 80 sector's ability to avoid halibut correlates with abundance as measured in the surveys. Analyses performed by stakeholders and staff have repeatedly shown that survey abundance (i.e., from the indices currently under consideration) does not reflect halibut encounter rates in the fishery. See, e.g., *Amendment 80 Halibut PSC Limit Discussion Paper*, October 2020 ("Discussion Paper")³. The Discussion Paper even shows that annual amounts of halibut catch in the Amendment 80 sector are in fact negatively correlated with the NMFS trawl and IPHC setline survey, the halibut abundance indices selected for this action. This is unambiguously illustrated by Figure 2-6 in the Discussion Paper. Negative correlation suggests the indices will actually tend to increase the cap in years where halibut catch would be expected to be lower and decrease the cap when catch would be expected to be higher. This flies in the face of the MSA's requirement to set PSC limits that minimize bycatch by the Amendment 80 sector to the extent practicable. At any rate, available data show that the proposed indices are not effective in predicting their PSC encounters in past years. This lack of correlation with indices may be even greater going forward in a changing environment.

While lack of correlation with the halibut abundance indices is not fully understood, in large part it may be due to the differences between where the flatfish fisheries find commercially viable areas to operate and the nature of surveys which are aimed at tracking the overall abundance of a resource. For example, even if the overall abundance of the resource is trending down it could be relatively more abundant in areas where flatfish are sufficiently schooled up for flatfish fishing to be economically viable. Likewise, overall abundance could be relatively high as measured by the survey at times when halibut could be relatively less abundant where fishermen find commercially productive flatfish fishing. The sector fishes where flatfish are schooled up, and the relative abundance of halibut in those areas does not move in step with changes in total abundance. Because the sector's fishing choices are based on presence of target species as well as deliberately attempting to avoid halibut, GFF members often find that the quantity of halibut mixed with their targets are very different from the quantity that would be suggested by the trends in surveys. Total abundance is therefore not relevant to sector encounter rates.

This crucial information is substantially downplayed in the IRDEIS, in stark contrast to the extensive information about the simulation model presented in Chapter 5 of the Initial Review Draft Environmental Impact Statement for BSAI Halibut Abundance-based Management of PSC Limits (September 2020) ("September IRDEIS") and updated by staff in the Discussion Paper. Instead, the IRDEIS states that "much of the impact analysis on the affected fishing sector and the policy

³ The Discussion Paper should be added to Table 1-2, as it contains information not included in previous drafts of the DEIS or the IRDEIS itself.

tradeoffs do not rely on the closed-loop modeling outputs.” IRDEIS at 14. While the Council is of course obligated to balance the MSA National Standards, that process must be informed by sound science. The SSC has repeatedly advised the Council in recent years on the lack of correlation between these indices and halibut encounter rates in the Amendment 80 sector.

In October 2019 the SSC reviewed the operating model and noted that “the analysis shows that *the relationship between halibut PSC per-unit groundfish in the trawl fishery and the trawl survey halibut biomass ranges from moderate to nonexistent and is highly variable . . .* This finding was also supported by public testimony to the SSC. Therefore, there is limited empirical support that the trawl survey biomass index reflects 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 SSC emphasizes that a result of the analysis is that the *groundfish fleet’s ability to avoid halibut is poorly related to indices of abundance.*” SSC October 2019 Minutes at 3 (emphasis added)

Further, the SSC found “the average ratio of PSC limits to ‘trawl selected biomass’ over 20 years [t]o be problematic. If PSC reflects abundance, the ratio will tend to be highest at the lowest levels of abundance in the presence of a floor, and it will decrease as abundance increases in the presence of a fixed PSC limit or ceiling. Given the high variability in PSC usage, it is not clear if a higher value for the ratio implies higher ‘flexibility’ for the fleet at high abundances”. *Id.* at 6.

In October 2020, the SSC again specifically noted the lack of correlation between the indices and halibut encounters by the Amendment 80 sector. “This policy action relies on the premise that A80 PSC is lower when halibut abundance is lower so a greater share of lower TCEYs can be allocated to the highly-dependent directed fleet. The approach of drawing from historical observations of percentage PSC utilization (Figure 5-2) assumes this key premise to be true. This assumption is reasonable only if the fleet has high levels of control over how much of the PSC they catch at all levels of abundance, but there was considerable discussion at the October 2019 SSC meeting that PSC catch is independent of abundance (see the October 2019 SSC Report). This was reiterated in public testimony provided by the ASC at this meeting”. SSC October 2020 Minutes at 40.

Despite this, the IRDEIS unreasonably assumes that an intent to tie PSC limits to halibut abundance renders the approach appropriate and practicable. The IRDEIS contends that National Standard 9 will be met despite all of the evidence to the contrary, asserting that “[i]n general, the intention of indexing the A80 PSC limits to fluctuations in halibut biomass should more closely link PSC limits with encounters on the fishing grounds especially at extremely low levels of biomass (and resulting PSC limits.)” IRDEIS at 243. This inference does not meet NEPA’s standards for objective review of the potential impacts from a proposal. See 40 C.F.R. § 1500.1(b) (“High quality” information and “accurate scientific analysis” must be “available to public officials and citizens before decisions are made and before actions taken.”)

Second, the use of historical survey values and encounter rates fails to consider expected conditions under commonly accepted climate change scenarios. The last five to ten years indicate that “normal” conditions in the North Pacific may be changing rapidly. Conditions in 2016 through 2019 (relatively warm years) are reasonably likely to reappear for the foreseeable future. In 2019 the fleet had relatively high halibut encounters despite relatively low levels for both proposed indices. Annual environmental conditions are the likely driver of variability but are ignored by the proposed index driven structure. It is irrational to ignore the potentially increasing impacts of climate change to the North Pacific, and to base management decisions on the assumption that cooler historical conditions will persist indefinitely.

In summary, all of the alternatives under consideration are unreasonable because the science shows that indexing PSC limits to halibut abundance does not have a rational basis. Moreover, ABM will not provide flexibility and stability for the Amendment 80 sector for the same reasons. ABM alternatives based on the indices under consideration do not reflect the real-world conditions encountered by the sector and do not acknowledge what may be the “new normal” of warming temperatures in the North Pacific.

ii. Protection of spawning biomass.

The body of science before the Council shows that the ABM alternatives cannot be reasonably expected to promote conservation. The simulation model presented in Chapter 5 of the September IRDEIS as updated by staff in October 2020 and briefly summarized in Sections 5.2 and 5.3 of the IRDEIS demonstrates that an objective of protecting halibut spawning stock biomass, especially at lower levels of abundance, will not be achieved by any of the alternatives currently before the Council. Results show that changes to the SSB across the range of alternatives under consideration are negligible.

For example, model results for Alternative 1 show an initial decline in SSB in both areas followed by more stable SSB thereafter. This result is common across all alternatives. The model compares the SSB across alternatives under a variety of spawning biomass values. Lower PSC limits (even PSC limits of zero) failed to generate increases in spawning biomass. In short, the proposed action has no conservation benefit to SSB, as shown by the simulation model, except that the action could have a slight benefit to U26 halibut, but that effect is dampened by (1) natural mortality and (2) mortality from incidental catch of less than 32 inch halibut by the directed halibut fishery. The most extreme alternatives in terms of bycatch reduction for the sector would effectively shut down the Amendment 80 fisheries while achieving only modest gains in the directed halibut fishery at best.

As discussed below, those incremental gains would come at a huge cost and are inconsistent with National Standards 1 and 9. The Council cannot “blind[] itself to the high likelihood that its actions” will cause a particular result. *Guindon v. Pritzker*, 31 F. Supp. 3d 169, 201 (D.D.C. 2014); *Com. of Mass. by Div. of Marine Fisheries v. Daley*, 10 F. Supp. 2d 74, 77 (D. Mass. 1998), *aff’d sub nom. Massachusetts ex rel. Div. of Marine Fisheries v. Daley*, 170 F.3d 23

(1st Cir. 1999) (holding NMFS violated the National Standards when it “ignored existing data” and “promulgated a regulation that [NMFS] knew, or should have known, would allocate fishing privileges in an inequitable manner.”). The information before the Council shows that the ABM concept does not have a rational basis, results in alternatives that go well beyond what is practicable for the sector, and should not be adopted for management of Amendment 80 halibut PSC limits.

In addition, the alternatives under consideration are not “reasonable” alternatives under NEPA. NEPA regulations state that all of the reasonable alternatives that meet the purpose and need for the action must be identified, in addition to the no-action alternative. 40 C.F.R. §1502.14. Under National Marine Fisheries Service Policy 30-132 (Feb. 19, 2013), for fishery management purposes, reasonable alternatives are those “which satisfy, whole or substantial part, the objectives of the proposed federal action. Alternatives that are impractical or would not achieve stated purposes and needs are not ‘reasonable alternatives’.” The ABM alternatives fail these factors, and are not reasonable.

c. The ABM alternatives under consideration are not consistent with the National Standards.

The ABM alternatives under consideration are not consistent with the National Standards. The MSA requires every fishery management decision to be consistent with the ten National Standards. 16 U.S.C. §1851(a); *Oceana v. Evans*, 2005 WL 555416, *8 (D.D.C. 2005). At its October 2020 meeting, the Council modified its purpose and need statement to focus on National Standards 9 and 1. At a minimum, the proposed alternatives are inconsistent with both of these standards. This comment will focus on those standards, but the ABM alternatives are inconsistent with other standards as well.

The Council and NMFS must ensure that each management action, in and of itself, complies with the National Standards. See, e.g., *Flaherty v. Bryson*, 850 F. Supp. 2d 38, 55 (D.D.C. 2012). The National Standards “are broadly worded statements of the MSA’s objectives for all fishery conservation and management measures” and their purposes “can be in tension with one another.” *Lovgren v. Locke*, 701 F.3d 5, 32 (1st Cir. 2012). “Compliance with the national standards requires balancing” by the Council and NMFS. *Id.* In balancing the National Standards, the Council should recognize that some National Standards are stated as imperatives, and others are qualified.

The objectives of certain National Standards, including National Standard 9, are to be achieved “to the extent practicable.” In contrast, National Standard 1 provides that FMPs “shall” prevent overfishing and achieve optimum yield (“OY”). See *Ocean Conservancy v. Gutierrez*, 394 F.Supp.2d 147, 156 (D.D.C. 2005), *aff’d*, 488 F.3d 1020 (D.C. Cir. 2007) (the ultimate goal of any FMP is to establish conservation and management measures that allow a fishery to produce its optimum yield). National Standard 2 provides that FMPs “shall” be based on the best scientific information available. National Standard 4 provides that FMPs “shall not” be discriminatory.

National Standard 6 requires that FMPs “shall” allow for variation among and contingencies in fisheries. The requirements of these National Standards are not modified by the “to the extent practicable” clause Congress inserted into National Standards 8, 9, and 10. In any event, the alternatives under consideration are not practicable and thus inconsistent with National Standard 9, and will not achieve optimum yield for the groundfish fisheries on a continuing basis.

The IRDEIS recognizes that the Council does not have direct authority to set halibut catch limits, and consequently National Standard 4 considerations for this action apply within and across the Amendment 80 fleet “as directly affected by the proposed action.” IRDEIS at 241. The IRDEIS provides general information in section 3.3.3 as to the expected disparate impacts of the alternatives on different Amendment 80 companies due to the variations in the licenses and endorsements held by each company. The IRDEIS also discusses the factors that preclude companies from shifting to different fisheries with lower halibut encounter rates. However, no analyses are provided as to the number of companies that are likely to fail at the varying levels of decreased PSC in the ABM alternatives. Without this information, the Council cannot determine whether the action is “fair and equitable to all such fishermen” and cannot predict the long-term implications for the makeup of the sector. 50 C.F.R. §600.325(a). In addition, a proposed action with allocative impacts must be reasonably calculated to promote conservation. *Id.* As discussed above, the available information demonstrates that this action will have no impact on the goal of increasing halibut spawning biomass.

d. The ABM alternatives are not consistent with National Standard 9.

National Standard 9 requires actions to minimize bycatch to the extent *practicable*, not to the greatest extent that is *possible*. Otherwise, most if not all of the fisheries in the North Pacific would be closed. The Amendment 80 sector has already taken all practicable measures to reduce bycatch through avoidance, gear modifications, operational changes, and deck sorting measures. It cannot withstand further reductions in PSC limits. As discussed above, the absence of a correlation between halibut encounters by the sector and indices means any index driven changes in PSC limits and performance standards will result in impracticable bycatch limits in some years, particularly if changes in those limits and standards are large. Amendment 80 companies cannot sustain their businesses through periods where the caps are out of step with the conditions on the grounds and early shut downs occur in hopes that the randomness of these indices will provide relief in some years.

Bycatch limits for the Amendment 80 sector, although a small share of total catch, must be substantial because the “groundfish fisheries cannot be prosecuted without some level of halibut bycatch because groundfish and halibut occur in the same areas at the same times and no fishing gear or technique has been developed that can avoid all halibut bycatch.” IRDEIS at 33. National Standard 9 does not support the elimination of an entire gear type in order to eliminate bycatch. See, e.g., *National Coalition for Marine Conservation v. Evans*, 231 F. Supp.2d 119, 137 (D.D.C. 2002). However, that could well be the effect of the most extreme alternatives under consideration.

As a starting point, further reductions in halibut PSC limits for the sector are not practicable. Driving those reductions based on index changes makes such reductions even more unreasonable. Yet the IRDEIS does not model the sustainability of the sector going forward under the various alternatives, but instead is based on a second unsupported assumption that the sector can prosecute its directed fishery regardless of the amount of halibut PSC available to it. The IRDEIS includes data only on current impacts to the sector based on retroactive data, without a serious attempt to understand the likely consequences over time for the Amendment 80 sector under the various ABM alternatives. The information currently available does not allow stakeholders or the Council to make reasonable predictions as to how various participants in the sector will or won't survive going forward under the proposed alternatives. This is because the analyses to date have improperly focused almost exclusively on future effects on catch levels for the directed halibut fishery, which the Council does not manage, instead of the Amendment 80 fishery, which it does.⁴ The IRDEIS does not provide the Council with an objective analysis of a crucial question: how much halibut will the Amendment 80 sector actually use under each of the alternatives?⁵ Instead, the analysis relies on unrealistic assumptions concerning halibut usage to reach a conclusion that a cap of 1,396 mt (a 20% reduction from current PSC limits) will not constrain groundfish harvests, despite the usage by the sector of more halibut than that in 3 of the last 5 years and never fully harvesting its groundfish. Notwithstanding, the analysis goes on to assert that even these estimates are conservative and that the sector can somehow further adjust its operations in order to cope with even lower PSC limits. See, e.g., IRDEIS at 70, 200.

The Amendment 80 sector has *already* reduced PSC usage to the maximum extent practicable using all of the tools available to it. The sector has reduced its halibut PSC usage by 34% since 2014. Discussion Paper, Table 2-2. Over the last five years these savings have translated into substantial additional halibut for the directed halibut fishery. Over 90% of Amendment 80 catch was deck sorted in 2018 and 2019. IRDEIS Figure 3-41. Figure 3-42 in the IRDEIS shows that deck sorting is occurring on virtually all flatfish hauls and on over 75% of roundfish hauls. The sector is currently catching less target fish with more hauls relative to the earlier years in the 2010 through 2019 period. Any further reductions of the magnitude contemplated by the alternatives under consideration will result in the sector forgoing gross harvest revenue, with varying impacts across the sector depending on a company's area endorsements or allocations of flatfish and roundfish.⁶

⁴ The IRDEIS appears to use different years and different catch data for the Amendment 80 sector and the directed halibut fishery. For example, why are the years 1996-2011 missing for Area 4 halibut catches in Figure 4-6? See IRDEIS at 157.

⁵ Both of the simulation models in the IRDEIS used to examine the quantitative impacts of the ABM alternatives simply make assumptions about the sector's halibut usage, rather than analyzing it.

⁶ The impacts of reduced halibut PSC on the sector cannot be evaluated in a vacuum. Any action regarding halibut PSC must account for the cumulative constraining effects on the sector imposed by both halibut and crab PSC limits and area closures. See, e.g., IRDEIS Table 3-11.

No new tool is sitting in the sector's toolbox that hasn't already been used. And in fact, some existing tools may not be as effective as has been hoped. Based on available data, halibut excluders may not be creating the hoped-for level of selectivity, and the sector is currently performing a systematic analysis to determine whether excluders are making any positive contribution to halibut bycatch reduction. Consequently, it is unreasonable to assume that the sector can make further substantial reductions without impacting the sector's ability to catch its targets. And despite the language in the Purpose and Need Statement regarding incentives for the sector, the ABM alternatives under consideration do not provide any positive incentives to the sector to avoid bycatch. Instead, the ABM alternatives set up a program whereby sector would be further restricted if it fails to meet unrealistic and impracticable PSC levels consistently. This punitive approach flies in the face of the sector's commitment to and recent history of bycatch reduction.

The costs to the sector from the existing measures for PSC reduction are substantial. These direct costs must be taken into account when determining the extent to which it is practicable to reduce bycatch further. See *National Coalition for Marine Conservation v. Evans*, 231 F. Supp.2d at 137 (analyzing MSA objectives of "reducing bycatch while minimizing economic costs to the extent practicable"); 63 Fed. Reg. 24212, 24226 (May 1, 1998) (economic consequences of dealing with bycatch "is one of the factors that determines the extent to which it is practicable to reduce bycatch" in a particular fishery). Under the status quo, the sector incurs direct costs to avoid halibut bycatch and/or reduce mortality rates. For example, halibut excluders reduce target catch per effort and increase fuel consumption. Efficiency is lost when vessels spend time moving away from areas with relatively high halibut encounters. Transit time increases fuel costs, decreases fishing time, and reduces productivity for the vessel, with negative impacts on crew compensation. The same impacts occur with shorter tows that yield fewer targets. The sector estimates that deck sorting eliminates one tow per day. One less tow reduces daily catch by one-fifth, which lengthens the number of fishing days in a season and increases operating costs correspondingly.

The Amendment 80 sector has shown its commitment to reducing halibut bycatch. But the sector has little to no options for further consistent measurable reductions going forward. The sector cannot shift to different species with lower halibut encounter rates, and regulatory changes which have supported earlier bycatch reductions, such as the formation of cooperatives, have already been made. The sector has already substantially changed its operations by implementing the tools that are available, and in the face of volatile environmental conditions driven by climate change. In these circumstances, the sector has reduced bycatch to the extent practicable under National Standard 9, and no further reductions are warranted or reasonable.

e. The ABM alternatives will not achieve Optimum Yield.

National Standard 1 requires conservation and management measures to prevent overfishing "while achieving, on a continuing basis, the optimum yield from each fishery for the U.S. fishing industry". 16 U.S.C. §1851 (a)(1). The determination of OY is a "decisional

mechanism for resolving” the MSA’s conservation and management objectives, achieving an FMP’s objectives, “and balancing the various interests that comprise the greatest overall benefits to the Nation.” 50 C.F.R. § 600.310(b)(2)(ii)-(iii).

The large PSC reductions called for by the alternatives will prevent achievement of OY in the Amendment 80 fishery on a continuing basis, particularly in periods of low halibut abundance. As discussed below, the negative impacts on the sector from ABM are potentially devastating, and should be fully modeled. In contrast, analyses show that the potential benefit to the directed halibut fishery will be extremely limited, regardless of the halibut PSC limit for the Amendment 80 sector. Table ES-4 in the September IRDEIS indicates that alternatives using ABM in place of the current static PSC limits “would likely have little impact on spawning biomass. In contrast, the alternatives impose some large percentage changes in PSC limits relative to status quo limits and relatively smaller, negatively correlated changes in directed fishery catches and catch limits.” September IRDEIS at 27. Similarly, the IRDEIS indicates that “SSB is largely insensitive to the range of PSC limits under consideration.” IRDEIS at 21, Figure ES-3. This tradeoff for a small potential benefit to the directed halibut fishery (which is managed by another management entity) cannot be reconciled with the Council’s duty under the MSA to achieve OY from the groundfish fisheries under its jurisdiction. This is particularly true for a measure with no conservation benefits, and for fisheries that are not overfished.

The negative impacts to the Amendment 80 sector, the sector’s approximately 66% minority employees, and the food supply from each reduction in PSC limits would be extensive because of the multiplier effects of each ton of halibut PSC caught in the groundfish fishery. For example, for every ton of halibut mortality taken by the sector, the fleet generates over 200 tons of groundfish. IRDEIS at 105, Table 3-13 and IRDEIS at 127, Table 3-19. In terms of value, for every ton of halibut mortality taken by the A80 fisheries in the period from 2016-2019, the fleet generated approximately \$260,000 of value from groundfish. IRDEIS at 133, Figure 3-32. Any PSC reduction correspondingly impacts the sector’s blue collar and largely minority employees, whose compensation is derived in part from the amount of groundfish caught by a vessel.

In contrast, the available analyses conclusively establish that even large reductions in PSC limits show very little economic benefit to the directed halibut fisheries and extremely small benefit to the fishing communities of the Bering Sea.⁷ In particular, any additional catch that accrues to the directed fishery in Area 4CDE as a result of lower PSC usage by the Amendment 80 sector would not accrue at a 1:1 relationship because of the differences in selectivity between the sectors. See Discussion Paper at 36; IRDEIS at 25. Further, the analysts have repeatedly noted that benefits to directed halibut fishery users in current and future years associated with reductions in PSC mortality are dispersed across IFQ, CDQ and non-commercial user groups, and dispersed

⁷ Despite this data, the IRDEIS *assumes* that there would be a “potential benefit” to the Area 4 commercial halibut fishery. IRDEIS at 213-14.

across areas inside and outside of the Bering Sea due to movement of halibut. See, e.g., Discussion Paper at 37.

Further, subsistence users would not directly benefit from potential reallocations between the Amendment 80 sector and the Area 4 commercial halibut fishery under the ABM alternatives, because the IPHC accounts for incidental halibut removals in the groundfish fisheries, recreational and subsistence catches, and other sources of halibut mortality before setting commercial halibut catches each year. IRDEIS at 34. There are no caps on Area 4 subsistence halibut removals analogous to the annual quotas for the commercial halibut fishery, nor are there size limits on personal use harvests. IRDEIS at 215.

The MSA states that the term “optimum” with respect to the yield from a fishery, means the amount of fish that “will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems.” 16 U.S.C. § 1802(33)(A). The ABM alternatives under consideration by the Council do not meet this standard. They would negatively impact food production, will have only minimal benefits for halibut catch levels, and do nothing to increase halibut spawning biomass.

Finally, the IRDEIS improperly resorts to unsupported conclusory statements such as “[t]his action is not expected to interfere with the achievement of optimum yield on a continuing basis.” IRDEIS at 262. The incomplete analysis as to the expected impacts on the Amendment 80 sector leaves the Council and the public without the pivotal information needed to make a National Standard 1 consistency determination for this complex and significant action. Under the MSA and NEPA, the Council’s responsibility is to thoroughly understand the impacts of an action *on the fisheries under its jurisdiction*. At this juncture, the Council does not have that information. The relevant analyses should be supplied before further action is taken on an ABM program.

f. Conclusion.

The available information before the Council conclusively demonstrates that the selected indices do not track halibut encounters by the Amendment 80 sector, and therefore necessarily do not result in practicable management measures consistent with National Standard 9. Moreover, by omitting forward-looking analyses of the impacts of client change and the sustainability of the Amendment 80 sector under each of the proposed alternatives, the IRDEIS fails to provide the Council with the information that it needs in order to assess the alternatives’ consistency with the National Standards.

In summary, the IRDEIS’ assessment of the ABM approach is legally flawed and insufficient. NEPA and its implementing regulations require agencies to take a “hard look” at the

environmental consequences of their actions.⁸ This “hard look” must be “timely, and it must be taken objectively and in good faith, not as an exercise in form over substance, and not as a subterfuge designed to rationalize a decision already made.” *Metcalf v. Daley*, 214 F.3d 1135, 1142 (9th Cir. 2000). The IRDEIS must be substantially revised to provide the Council and the public with complete information as to the impacts of the proposed action.

Thank you for your consideration of these comments.

Very truly yours,



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LRL:lr

⁸ See, e.g., *Northern Plains Resources Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1076 (9th Cir. 2011); *Churchill Cnty. v. Norton*, 276 F.3d 1060, 1072 (9th Cir. 2001); *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348 (1989); *Kleppe v. Sierra Club*, 427 U.S. 390, n.21 (1976).