



Central Bering Sea Fishermen's Association

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May 12, 2020

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 allow for halibut/sablefish IFQ transfer flexibility, thereby waiving owner on board requirements in the halibut/sablefish Individual Fishing Quota (IFQ) fisheries under 50 CFR Section 679.41 for the 2020 season.**

I. **Background:**

In the summer of 2020, CBSFA members would normally be harvesting 325,550 pounds of CDQ halibut out of St. Paul. In addition, CBSFA members hold a total of 126,806 pounds of 4C halibut IFQ in 2020. 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 2020, which all result from the unforeseen COVID-19 pandemic, are multifold:

- 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.

- A steep decline in the market prices for halibut from \$7.60 to \$5.95, resulting from the loss of markets for halibut nationwide and globally compounded by distribution snags and storage capacity issues for unsold halibut inventory;
- The costs of factoring in COVID-19 measures, including quarantine times for incoming crewmembers and workers in the fishery; and
- The loss of regular air service to Saint Paul Island resulting from the recent RAVN Air bankruptcy.

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 this summer at close to \$1 million.

Given the potential health, financial and demographic costs to Saint Paul Island, CBSFA’s fishermen have developed a plan for pursuing the halibut fishery this summer. This plan involves using the 58’ F/Vs Saint Peter and Saint Paul to harvest CBSFA’s halibut CDQ as well as its members’ halibut IFQ for delivery to plants elsewhere in Alaska. The local halibut fishermen would not operate this summer, and the local Trident plant would be closed. The Saint boats and perhaps other vessels would harvest CBSFA’s 325,550 pounds of CDQ halibut, instead of the 14 small local vessels.

In addition, these small boat fishermen who own 4C IFQ, as well as other IFQ holders in the Bering Sea, would need the ability to transfer their IFQ to larger vessels capable of fishing in remote areas and traveling to Akutan or Unalaska to deliver halibut. To enable the largest number of IFQ holders to efficiently transfer quota, CBSFA supports Option 3 in the industry coalition letter requesting an emergency rule to waive owner on board requirements in the halibut/sablefish Individual Fishing Quota (IFQ) fisheries under 50 CFR Section 679.41 for the 2020 season.

The action requested would add COVID-19 to the limited exceptions for temporary transfer of IFQ which currently include Category A IFQ, qualified military service, surviving beneficiaries, and IFQ transfer to CDQ groups during years of low abundance. This will allow all quota holders use of the Temporary Transfer of IFQ during the COVID-19 crisis. Under this option, vessel size classes, limits on at-sea processing and restrictions on corporate leasing would all remain in place.

This request, if granted, would allow IFQ holders to transfer allocations to a hired master in a timely manner, thereby minimizing the risk of spreading COVID-19 to crews, quota holders, and communities.

The City of Saint Paul Island and Aleut Community of St. Paul Island Tribal Government have submitted a letter to the Council in support of temporarily allowing IFQ holders to swiftly

transfer quota to a hired master, as well as lifting the vessel cap in the Bering Sea Aleutian Island halibut regulatory areas 4B, 4C, 4D, and 4E. (See the CBSFA letter under agenda item C2 requesting the Bering Sea vessel cap waiver.)

Both emergency measures, by temporarily reducing the active number of vessel fishery participants, would help reduce the spread of the virus to crews, quota holders, and communities, while allowing the fisheries to continue to be pursued, thereby providing benefits to the various stakeholders and the nation's food supply.

St. Paul's fishermen are working to get the fish out of the water in the safest and most economical way possible. If fish are not harvested, all revenue will be lost, at a time when fishermen and their communities most need them. Halibut fishermen are already hurting badly from reduced allocations – and many family businesses are barely surviving. Maximum flexibility, including an emergency transfer and vessel cap exemption, for the 2020 season may help BSAI small boat fishers, IFQ holders, and communities stay afloat during this difficult time.

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.”¹

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 owner on board requirements in the halibut/sablefish IFQ fisheries, IFQ holders will be unable to safely harvest halibut/sablefish IFQ without the risk of further spreading the coronavirus among harvesters, crewmembers and communities. Given these risks to health and safety, it is likely that a substantial percentage of the halibut and sablefish IFQ in the water off Alaska may be stranded. The halibut and sablefish IFQ fisheries opened on March 14th and last until November; there is insufficient time to pursue regulatory relief through standard rulemaking procedures. If halibut and sablefish are stranded, there is a substantial amount of revenue for the respective fleets and dependent communities that will be foregone, at a time when these revenues are critically needed.

IV. The Criteria for Emergency Action Have Been Met:

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

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.

IFQ provisions at § 679.41 restrict the ability of halibut/sablefish IFQ holders to transfer IFQ to hired masters. These regulations are designed to encourage active participation in the fisheries and prevent consolidation of IFQ and harvesting capacity in fewer hands, thereby reducing opportunities for new entrants and depriving communities of the economic activity associated with more numerous fleets and crews.

However, as noted above, there are considerable risks to harvesters, crews, and communities resulting from the coronavirus pandemic. The greater the number of participants and crews, the greater the risks. In addition, many Alaskan fishing communities do not have the medical and public health infrastructure, or quarantining facilities, necessary to respond to instances of coronavirus. It is with these public health concerns in mind that a broad spectrum of halibut and sablefish IFQ holders, including CBSFA, is requesting emergency action to allow IFQ transfer flexibility, waiving owner on board requirements

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

While the coronavirus public health emergency does not present a clear conservation problem in the fishery, the current situation is a serious management problem. The risk of COVID-19 spreading to harvesters, crews, and communities, is significant. Should this virus spread among the fleet and dependent communities, the consequences could be catastrophic from a public health and economic perspective. Such a result would surely generate management problems in the halibut and sablefish IFQ fisheries for potentially years to come. By allowing IFQ transfer flexibility, the IFQ fisheries would be pursued to the benefit of harvesters, quota-holders, crews, and communities, while minimizing the risks of contributing to the spread of the disease.

(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 described above can be addressed through emergency regulations to waive restrictions on the transfers of IFQ under Section 679.41 on a temporary basis for the halibut and sablefish IFQ fisheries.

The normal Council process of notice-and-comment rule making, for its part, would need to occur within the next month:

- (a) the Council would have to produce a thorough analysis with a range of alternatives and take action. Given the normal timing of Council meetings and the delays to its agenda caused by the pandemic, this action would have to occur at the earliest during the Special Meeting set for May 15th or as a fallback at the June 2020 Council meeting.² The IFQ fishing season opened on March 14, 2020, and the fishing season lasts approximately 9 months.
- (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, other CDQ groups, and other IFQ holders believe 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 by statute to 180 days. 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 foregone); (3) social (prevent significant community impacts or conflicts); or (4) public health. CBSFA and other stakeholders believes that there are economic, social, and public health justifications for the requested emergency action.

The COVID-19 health mandates, travel restrictions, quarantine requirements, and potential health risks are creating management problems in the IFQ fisheries. If there is no additional flexibility to transfer IFQ, some IFQ holders may forego harvesting due to the additional costs and logistical obstacles created by these mandates and requirements. If harvesters forego participating in the IFQ fisheries, this could result in stranded resource in excess of the 10% that can be rolled over to the following year for those unable to participate. Under existing regulations, only 10% of an IFQ holder's remaining balance can be rolled over to the following year. Anyone unwilling or unable to harvest or transfer their IFQ would therefore forgo 90% of their final remaining 2020 IFQ

balance. Φιναλλω, ιφ τηε ΝΠΦΜΧ ανδ ΝΜΦΣ δο νοτ provide for IFQ transfer flexibility, COVID-19 is likely to spread more rapidly to harvesters, processors, and communities. The result would be a worsening of the economic, social, and public health impacts of the pandemic on fishery participants, with possibly devastating consequences.

² In response to stakeholder requests and in response to the declarations of health emergencies by the White House and the State of Alaska, the NPFMC has scheduled a Special Meeting on May 15th, where this and other emergency requests will be considered. This is not the regular course of business and for this and other requests to serve their purposes, the rest of the normal rulemaking process must be obviated.

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 and sablefish IFQ for 2020 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 IFQ resources will be stranded.

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

The abovementioned request respects NMFS' and the IPHC's biological assessments for the IFQ fisheries 2020 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 IFQ fisheries as stocks.

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 of owners on board and participating vessels along with the use of fuel and other supplies could have a salutary effect on ecosystem and thus indirectly on the IFQ fisheries.

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.

Allowing for IFQ transfer flexibility and waiving the owner on board requirements to avoid forgoing IFQ catch promotes the efficient utilization of the IFQ resources. 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 IFQ fishery participants. On the contrary, the benefits of this action outweigh the risks resulting from the further spread of COVID-19 and 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 and the other stakeholders are supporting the above action in part order to protect vulnerable communities from the dangerous spread of COVID-19 thus ensuring the long-term, sustained, participation of these communities in the IFQ fisheries and minimizing the adverse impacts of the pandemic on their residents. Moreover, the substantial amount of foregone IFQ 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, this action 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 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 allow IFQ transfer flexibility under 50 CFR Section 679.41 for the halibut and sablefish IFQ fisheries.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Phillip Lestenkof", with a long, sweeping horizontal line extending to the right.

Phillip Lestenkof, President
Central Bering Sea Fishermen's Association