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April 2, 2021

Mr. Simon Kinneen
Chairman
North Pacific Fishery Management Council
1007 West Third, Suite 400
Anchorage, Alaska 99501

Mr. Glenn Merrill
Assistant Regional Administrator
National Marine Fisheries Service, Alaska Region
P.O. Box 21668
709 West 9th Street, Room 420
Juneau, Alaska 99802

SUBMITTED ELECTRONICALLY

Re: Central Bering Sea Fishermen's Association Comments on the North Pacific Fishery Management Council April 2021 Agenda Item C2 Concerning BSAI Halibut Abundance-based Management (ABM) Amendment 80 of PSC Limit Initial Review Draft Environmental Impact Statement (March 2021).

Dear Chairman Kinneen and Mr. Merrill:

Please find attached the comments of our client, the Central Bering Sea Fishermen's Association (CBSFA), on the April 2021 Agenda Item C2 Concerning BSAI Halibut Abundance-based Management (ABM) Amendment 80 of PSC Limit Initial Review Draft Environmental Impact Statement, dated March 2021 (DEIS).[1]

[1] CBSFA reserves the right to provide additional comments on the EA/RIR/IRFA when it is finalized.

CBSFA appreciates the opportunity to provide the North Pacific Fishery Management Council (Council or NPFMC) with comments on behalf of its members, who rely on the halibut fishery to sustain their livelihood and communities.

Sincerely,

Granta Y. Nakayama
Partner

Enclosure: Central Bering Sea Fishermen's Association Comments on the North Pacific Fishery Management Council April 2021 Agenda Item C2 Concerning BSAI Halibut Abundance-based Management (ABM) Amendment 80 of PSC Limit Initial Review Draft Environmental Impact Statement (April 2, 2021).

Copy to: Dr. Paul Doremus, Assistant Administrator for Fisheries
Mr. Samuel D. Rauch, Deputy Assistant Administrator for Regulatory Programs
Dr. Dave Wilson, IPHC

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Central Bering Sea Fishermen's Association

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Submitted Electronically

Re: Central Bering Sea Fishermen's Association Comments on the North Pacific Fishery Management Council April 2021 Agenda Item C2 Concerning BSAI Halibut Abundance-based Management (ABM) Amendment 80 of PSC Limit Initial Review Draft Environmental Impact Statement (March 2021)

Dear Chairman Kinneen and Mr. Merrill:

The Central Bering Sea Fishermen's Association (CBSFA) appreciates the opportunity to provide the North Pacific Fishery Management Council (Council or NPFMC) with comments on the April 2021 Agenda Item C2 Concerning BSAI Halibut Abundance-based Management (ABM) Amendment 80 of PSC Limit Initial Review Draft Environmental Impact Statement, dated March 2021 (DEIS).[1]

CBSFA is the management organization for St. Paul Island under the Western Alaska Community Development Quota Program (CDQ). Through the CDQ Program, which was created in 1992, the federal government has awarded various species of

[1] CBSFA reserves the right to provide additional comments on the EA/RIR/IRFA when it is finalized.

fish, including halibut, (CDQ allocations) from the Bering Sea and Aleutian Islands (BSAI) commercial fisheries to six CDQ groups including CBSFA. Pursuant to the CDQ Program Statute (16 U.S.C 1855(i)(1)), the CDQ groups manage these allocations to promote social and economic development in their respective regions.

As the CDQ organization for St. Paul Island, CBSFA is actively engaged in the Pacific halibut fishery in IPHC Area 4CDE and is committed to developing a fishery-related economy that enhances the social and economic well-being of the community. A number of the residents also hold halibut IFQ. From a historic, cultural, subsistence, and commercial perspective, halibut is a critically important species to the mostly Unangan (Aleut) residents of St. Paul Island. As such, CBSFA has a direct interest in ensuring that Pacific halibut stocks are equitably utilized among user groups and that they are managed to ensure a viable and sustainable fishery for St. Paul Island in the long-term.

CBSFA also manages pollock and groundfish allocations that are important to CBSFA's business operations and its ability to fund projects and programs that benefit St. Paul Island in furtherance of CDQ Program objectives. Given its stake in both the halibut stocks and the groundfish fisheries that use halibut PSC, CBSFA is uniquely positioned to understand the balancing that is needed under the Magnuson-Stevens Act's (MSA) National Standards to provide for healthy, diversified, fisheries-based economies in halibut and groundfish dependent communities in the BSAI.

I. Summary of Position

CBSFA strongly supports Council action to utilize an abundance-based approach to set reasonable halibut bycatch limits by "link[ing] the Amendment 80 commercial groundfish trawl fleet's (Amendment 80 sector) Pacific halibut prohibited species catch (PSC) limits in the Bering Sea and Aleutian Islands (BSAI) groundfish fisheries to halibut abundance."[2] **To the extent the Council intends to take action to implement ABM at its upcoming meeting, we strongly support the Council's Alternative 4, which best addresses the needs of directed halibut users and halibut-dependent communities.**[3] None of the other alternatives under consideration is sufficient to meet the needs of CBSFA's members and the communities that depend on the halibut directed fishery, which have been forced to bear disproportionate and crippling effects of excessive PSC and bycatch mortality in the Amendment 80 sector.

However, it is critical that the Council take the time needed to ensure that the proposed ABM action is defensible and made in accordance with the MSA National Standards, particularly National Standard 2 requiring the utilization of the best scientific information available and National Standard 9 concerning the minimization of bycatch to the extent practicable. **CBSFA is especially concerned that**

[2] Draft EIS (March 2021) at 11.
[3] Id. at 17.

the Council's proposed ABM action continues to be based, at least in part, on a faulty simulation model. Significant, long-standing, and problematic assumptions and inputs that have not been corrected remain in this model. As such, it cannot serve as the basis for any reasoned or defensible decision by the Council regarding ABM. The Council's analysis must be revised to eliminate any reliance on the flawed version of the ABM model.

However, if the Council is intent on using a simulation model in developing its ABM approach, the model must be thoroughly reviewed and demonstrated to be sound, first by the SSC, and then preferably by a third party such as the CIE. This could require that the current model either undergo significant corrections and further review, or that it be abandoned in favor of a more representative model, such as the model developed by IPHC that has recently been completed. Only in this way can the Council develop a defensible approach that satisfies its obligation under the National Standards, including the requirement under NS 2 that its decisions reflect the best scientific information. Whichever course is chosen, these substantive changes would require a new initial review of the EIS analysis, and CBSFA supports the Council taking the time to do so.

Regarding the SSC, as discussed above, CBSFA asks that it conduct a complete review of any operating model that may be used in any ABM action. In particular, CBSFA asks the SSC for the following:

- The Council's model is flawed, as discussed below, but if the Council chooses to revert to the use of the model in any form, please correct the model's flawed assumptions and inputs, as discussed in Section IX below.

- If the Council chooses to discontinue use of the model then the SSC and the Council must not rely on the model in any form, including all references to the model in future publications and the reliance on any conclusions based on the model or any of the model's outputs, as discussed in Section IX below.

- We depend on the SSC to provide clear direction concerning what it believes in regards to the model and how it will be used, corrected, or discontinued.

II. The St. Paul Island Community Depends on the Directed Halibut Fishery

St. Paul Island relies on a viable directed halibut fishery. Historically, residents of St. Paul Island, many of whom are Unangan (Aleut), engaged in the commercial fur seal harvest. After the commercial fur seal harvest was phased out in 1983, however, St. Paul's residents turned to halibut for their survival, at the direction of the U.S. Government. They developed a thriving local halibut fishery. This, in turn, drove critical federal, state, local, and private infrastructure investment. Examples of these investments, which continue to this day, include construction of a small boat harbor to provide safe and sufficient moorage for our local fishing vessels and to enhance the

community's ability to generate future revenue; the purchase of a tanker to provide for the safe transport of fuel through the community and to ensure regular scheduled delivery service to the fleet during the halibut season; as well as other critical investments in the harbor, port infrastructure, fuel farm, processing plants, and vessels. These investments and development gave St. Paul Island's residents hope for a sustainable future at a critical time.

Today, the halibut fishery is the primary source of private employment and income for St. Paul residents. Of the 481 residents of St. Paul Island, in 2019, 12 vessels participated in the fishery and employed about 60 people who depend on a viable halibut fishery for their livelihoods and survival. This figure—which includes more than a dozen fishermen/vessel owners who, in turn, hire an average of 5 to 6 crew members and baiters per vessel—represents a large segment of the St. Paul Island's working-age population. Note that the numbers of vessels and fishermen has declined since 2011. Regardless, no source of employment or economic development is more important to the economic prosperity of the community's residents than the halibut fishery.[4]

St. Paul Island's reliance on the halibut fishery is not limited to direct employment in the fishery itself. Halibut is also an important and historically significant subsistence fishery that is key to St. Paul Island's cultural and psychological well-being. St. Paul identifies with this ancient resource, and the halibut harvest and sharing the bounty with the community is a source of deep personal and cultural pride.

In addition, numerous other residents of St. Paul are employed in businesses that provide critical support services to the halibut fishery and fleet, including fuel, storage, and catch processing and packaging. For example, all the halibut harvested by St. Paul fishermen – both CDQ and IFQ – is delivered to and processed by the Trident plant on the island. Like the fishermen, these individuals are also directly dependent upon a viable and economically sustainable halibut fishery. Finally, the fishermen/vessel owners who are engaged in the directed halibut fishery are the community's only small business owners. They are the source of economic opportunity, as well as the community's political and business leadership. They are the heart of the community.

St. Paul Island is not unique in this respect. Rather, it is simply one example of the many communities throughout the Bering Sea and Alaska that depend upon the directed halibut fishery today, just as they have for generations. In short, the importance of a viable and sustainable directed halibut fishery to the residents of St.

[4] The snow crab fishery developed later, in the early 1990s. The economic activities surrounding crab processing and deliveries are important to St. Paul Island's economy as a whole through fisheries taxes; leasing and service agreements; and sales of fuel and supplies. However, fewer of St. Paul Island's residents are directly employed in the crab fishery.

Paul Island and other coastal Alaskan communities cannot be overstated. As we explain below, however, the situation faced by the directed halibut fishery is now dire.

III. Halibut PSC in the BSAI Trawl Fisheries Is Unacceptably High and Grossly Disproportionate to Directed Fishery Landings

Unfortunately, the economic and cultural base of St. Paul Island is in jeopardy yet again. Having been forced to transition from fur sealing to halibut at the U.S. Government's direction, the same government's failure to place appropriate and necessary limits on halibut PSC now threatens to deny the people of St. Paul Island access to the resource they were encouraged to depend upon. The inequities of this compelled transition to a resource that, to date, the government has failed to protect, only highlights the need for careful, well-reasoned, and decisive action by the Council.

Halibut PSC, especially within the Amendment 80 sector (and BSAI TLAS, which comprises about 20% of the bycatch but has been removed from the proposed action), has had a devastating impact on halibut availability and the Area 4CDE directed fishery. Today, bycatch from the BSAI trawl fishery is the single greatest source of halibut mortality. The trends in halibut PSC in the BSAI trawl fishery compared to the directed fishery—and the relative allocation of the resource between those sectors—are disturbing. Directed fishery landings in the BSAI have been decreasing at about the same rate as bycatch mortality in the BSAI has been increasing. This bycatch disproportionately impacts the directed fishery in Area 4CDE. Given these trends, the need for swift Council action to preserve a sustainable directed fishery in Area 4CDE is clear and long overdue.

CBSFA supports all efforts to reduce halibut PSC through voluntary means and believes that more can and should be done to reduce halibut bycatch mortality. Given the history above and the impact of bycatch mortality on directed fisheries, however, only decisive action by the Council to impose mandatory reductions in bycatch at low levels of abundance will maintain a viable directed halibut fishery in Area 4CDE. As discussed below, this will not only help ensure the continued participation of St. Paul and other local fishing communities in Area 4, but also contribute to the overall halibut availability throughout the coastwide range through the migration of halibut biomass to other IPHC Areas.[5]

IV. The Need for Significant Reductions in Halibut PSC Has Been Clear for Decades

The need to reduce halibut PSC mortality comes as no surprise. Since 1962, when bycatch was first reported, it has been the second largest annual source of biomass removal.[6] The IPHC first established the Bering Sea Closed Area in 1967 to protect

[5] We described the significance of these issues in our Comments to the Council in June 2015 and in October 2020. Copies of our prior submissions to the Council are included as Attachments 1 and 2.
[6] IPHC. Report of the Halibut Bycatch Work Group II (Sept. 2014) at 6.

a nursery area for juvenile halibut, in response to severe declines in halibut abundance. Regulations to control halibut bycatch in domestic groundfish fisheries were implemented initially as part of the BSAI groundfish FMP in 1982, which reflected some of the time-area closures in effect for foreign trawl operations. Beginning in 1985, annual halibut PSC limits were implemented for the groundfish trawl fisheries, the attainment of which triggered closures to bottom trawl gear.[7]

More direct regulatory attempts to address the impacts of bycatch on halibut abundance began in the late 1980s, when the Council and NMFS initiated Amendments 12a and 18 to the BSAI and GOA Groundfish FMPs. Since then, the Council has undertaken various amendments to the BSAI and GOA FMPs and other measures in an effort to reduce halibut PSC to levels that are sustainable and that preserve the halibut resource.[8] Unfortunately, as has been clear to anyone observing the declining trends in halibut biomass and the increasing disparity between halibut PSC mortality and available directed fishery yields, these and other voluntary measures have proven ineffective to reduce halibut PSC adequately.

Against this backdrop, possible abundance-based reductions in halibut PSC limits now under consideration by the Council have been reasonably foreseeable to all in the industry. Although the Amendment 80 sector has made significant strides in reducing their level of bycatch mortality since 2015, these measures have been inadequate to address the needs of the directed fisheries.

V. While an Important First Step, the 2015 Council Action to Reduce Halibut PSC Mortality Limits Failed to Sufficiently Increase Halibut Availability

In another effort to curtail the ever-downward trend of directed halibut availability in the BSAI, the Council took action in 2015 to reduce Pacific halibut PSC.[9] CBSFA was deeply engaged in this process and advocated for a 50% reduction in the total annual PSC mortality limit for all sectors —from 4,426 mt to 2,213 mt—as the minimum level required to achieve a viable and sustainable directed fishery. CBSFA explained that reducing the overall PSC limit by 50% "would substantially increase both current and future directed fishery yields in Area 4CDE, the BSAI, and the halibut fishery generally. Reducing O26 halibut PSC results in a direct 1:1 increase in directed fishery yields because those fish not removed as PSC are assumed to be available for the directed harvest."[10] CBSFA cautioned the Council that increasing halibut availability by lowering the allowable PSC limit to 2,213 mt or less was

[7] Stewart, et al. Accounting for and managing all Pacific halibut removals. Int. Pac. Halibut Comm. Report of Assessment and Research Activities 2014: 223-25.
[8] IPHC. Tech. Rpt. No. 57, Report of the 2010 Halibut Bycatch Work Group (2012) at 22-26 (discussing "numerous actions" by the Council and NMFS "to establish bycatch protection areas, encourage bycatch reduction, and improve the selectivity of fishing gear," including the establishment of PSC limits).
[9] Draft EA/RIR/IRFA (May 2015) at 37.
[10] CBSFA Comments on the NPFMC June 2015 Agenda Item Concerning Halibut PSC Reduction and the Draft EA/RIR/IRFA (May 2015) at 18, citing IPHC, Halibut Bycatch Workgroup Report (2014) at 21-22; CBSFA Comments also found in June 2015 Agenda Item C2 Public Comment Group 5 (52715) at 1-39.

"necessary to conserve the halibut resource, avoid dire economic consequences to St. Paul Island and other local fishing communities, and to ensure their continued participation in the fishery going forward."[11]

Unfortunately, the Council took a half step and chose instead, in June 2015, to reduce the total annual PSC mortality limit overall by 21% to 3,515 metric tons.[12] Although this action by the Council was a commendable and important move toward greater halibut conservation, the reduction failed to increase halibut availability in the BSAI and directed fishery quotas have continued to decline.

Figure 1 below shows total halibut removals in Area 4CDE over the last 20 years, as well as the specific removals from the directed fishery and groundfish fisheries as bycatch mortality. As can be seen, total removals have generally trended downward over time, with total 2020 removals representing a 52% reduction from 2001.

The Directed Fishery has been disproportionately affected by these declines. As Figure 1 shows, between 2001 to 2010, Directed Fishery Landings and Total Bycatch Mortality generally followed a similar trend. From 2011 to present, however, the reduction in Directed Fishery Landings has grossly outpaced the reduction in Total Bycatch Mortality. Indeed, during this period, **Directed Fishery Landings were reduced by 53%, while Total Bycatch Mortality has decreased by only 19%.** This is grossly disproportionate and inequitable.

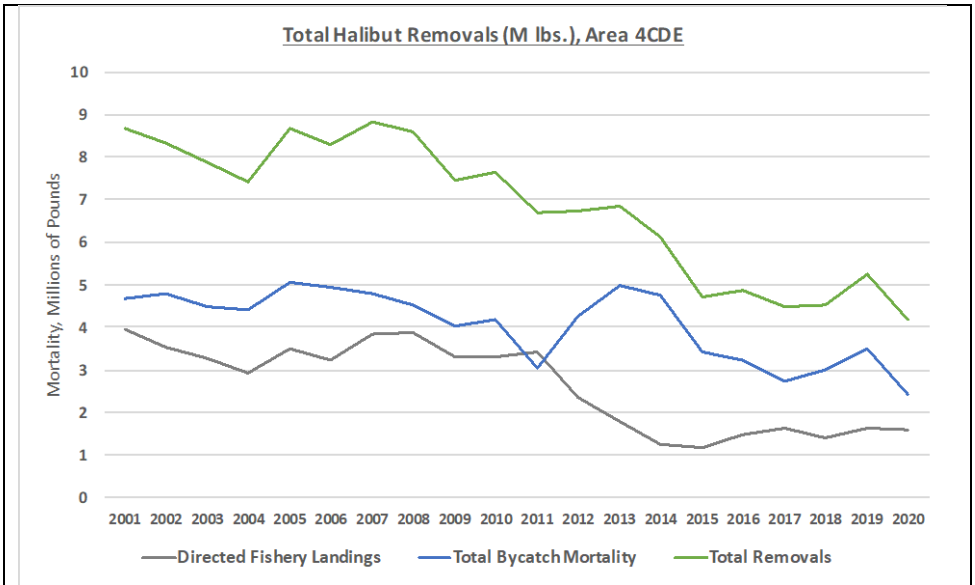

Figure 1. Halibut Abundance as Directed Fishery Landings, Total Bycatch Mortality, and Total Removals BSAI Area 4CDE, 2001-2020.

[11] Id. at 23.
[12] News and Notes, North Pacific Fishery Management Council (June 2015) at 1.

Similarly, Figure 2 illustrates the reduction in directed fishery landings through the composition of removals over time in Area 4CDE. From 2002 to 2011, the composition of removals between the directed halibut fishery sector and the groundfish fisheries as Total Bycatch Mortality was very consistent, with the directed fishery accounting for 43% of total removals. From 2012 to present, however, the directed fishery has been consistently below that average share of removals, with 2020 being the closest to average in recent years. **In short, as total removals have been reduced over time, the directed fishery has had a consistently smaller share of the reduced amount. The directed fishery has been harvesting a share of total removals less than what it had depended on from 2002-2011. A shrinking slice of a shrinking pie.**

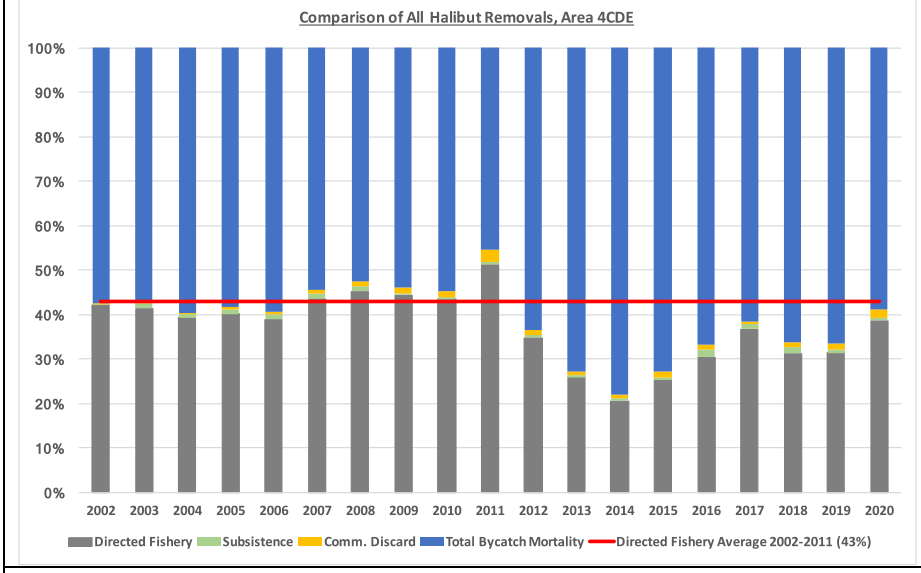

Figure 2. Directed Fishery Landings as Proportion of Total Removals BSAI Area 4CDE, 2002-2020.

VI. The Council Recognized in 2015 that Further Reductions in PSC Would Be Necessary

When discussing the 2015 final action, members of the Council acknowledged that "steeper reductions were warranted," and the Council as a whole emphasized that the 21% PSC mortality limit reduction was "only a first step in addressing BSAI halibut needs among the different user groups." This reflected a recognition that the Council's action would fall short of achieving its conservation goals and, indeed, the analysis for the action establishes this very point, stating that since "the sectors habitually harvest less than the regulated PSC limit, some of the options under Alternative 2 would result in no change to the status quo halibut PSC."[13]

[13] Draft EA/RIR/IRFA (May 2015) at 45-47.

Regrettably, the Council's analysis of the projected impacts from the 2015 PSC mortality limit reductions have been borne out over time. The 2015 Council reduction of halibut PSC mortality limits has not been constraining on the groundfish sector in the intervening years because PSC usage has continued to be well below the new PSC limits, as Figure 3 below shows.

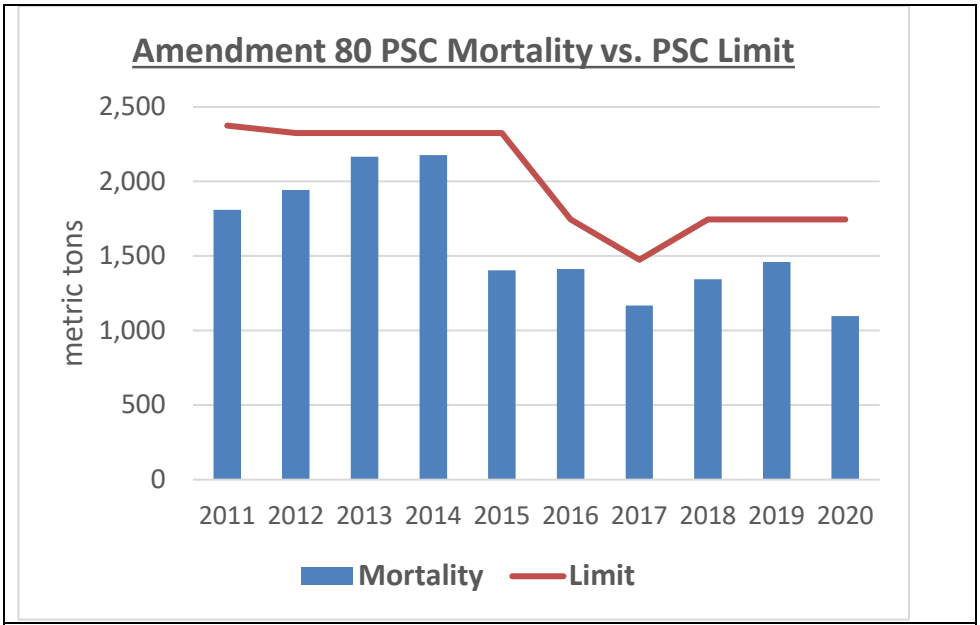

Figure 3. Amendment 80 PSC Mortality Compared to the PSC Mortality Limit, 2011-2020.

The fact that the groundfish sector's PSC usage has been well below the PSC limits for over a decade provides evidence that further bycatch reductions are highly practicable, as required by MSA National Standard 9. Despite predictions of doom and gloom, previous mandatory PSC reductions in this and other fisheries and sectors have been achieved without significant disruption of the regulated fisheries. This is not surprising. Mandatory PSC limits are forcing mechanisms that drive innovation in the fishery and move participants to develop creative means to avoid PSC while continuing to prosecute and profit from their target fishery.

There is ample evidence that meaningful halibut bycatch reductions are achievable, both in the form of prior experience with fishing regulations and in the academic literature addressing this issue. It should be noted that the ability of regulatory requirements to reduce halibut bycatch has been recognized for 30 years when a 50

percent reduction was mandated for foreign fishery fleets operating in the BSAI in 1982 through 1985.[14]

This has been borne out by the facts since the Council action in 2015 reduced PSC limits. The A80 and other groundfish fisheries have adopted innovations such as the use of excluder devices to reduce bycatch levels; deck sorting; and spatial/temporal changes in fishing behavior that have reduced PSC interactions. Given prior experience, CBSFA anticipates a similar response when halibut PSC limits are indexed to abundance and further reductions in PSC would be required at low levels of abundance.

In estimating the impact of a bycatch reduction, it can be tempting to simply assume that to achieve a given percentage reduction in bycatch there will be a proportional reduction in fishing effort, and therefore harvest. Such an approach is unrealistic, grossly conservative and is belied by historical fishing data and basic economic analysis. Vessel operators will seek to maximize their catch while minimizing bycatch to the extent necessary to meet any bycatch limits. To the extent that the halibut encounter rate can be reduced, the bycatch can also be reduced without necessarily reducing the A80/groundfish harvest.

VII. Halibut-Dependent Communities Continue to Suffer Disproportionately, Requiring Decisive Action from the Council

The ongoing instability in the BSAI directed halibut fishery, and the continued decline in halibut abundance and directed fishery amounts, has led to a drastic decline in participation by dependent fishermen and communities in the directed fisheries. (Figure 4)

[14] Report of the Halibut Bycatch Work Group, IPHC, Technical Report No. 25, 1992, at 4. ("Of special note was the scheduled reduction of halibut bycatch rates specified for the Bering Sea Aleutian Islands area (BSAI) foreign trawl fisheries. This resulted in a 50 percent reduction in bycatch rates between 1982 and 1985.").

	Catcher Vessels				CP/CASO
	B	C	D	Total	A
2010	216	60	33	309	10
2011	243	62	32	337	4
2012	214	60	28	302	2
2013	227	52	25	304	3
2014	81	48	21	150	1
2015	44	53	22	119	3
2016	48	50	21	119	4
2017	48	50	19	117	8
2018	47	56	20	123	9
2019	49	53	20	122	12
Average	**122**	**54**	**24**	**200**	**6**
Median	**65**	**53**	**21.5**	**136.5**	**4**

Figure 4. Number of Vessels in the Area 4 Halibut Fishery by Vessel Class, 2010-2019.[15]

As Figure 4 illuminates, the decline in participation by dependent fishermen and communities in the directed fisheries has sharply dropped over time, from a 2010-2014 average of about 280 total Catcher Vessels to a 2015-2019 average of only about 120 total Catcher Vessels. **This 58% decline in average Catcher Vessels between these two periods indicates the devastating impact of insufficient halibut PSC mortality policies on the directed fisheries, and the total loss of 187 Catcher Vessels since 2010 is particularly telling. During the same time period the A80 sector has continued to grow and has added new vessels to it fleet.**

[15] Draft EIS (March 2021), Table 4-4, at 163.

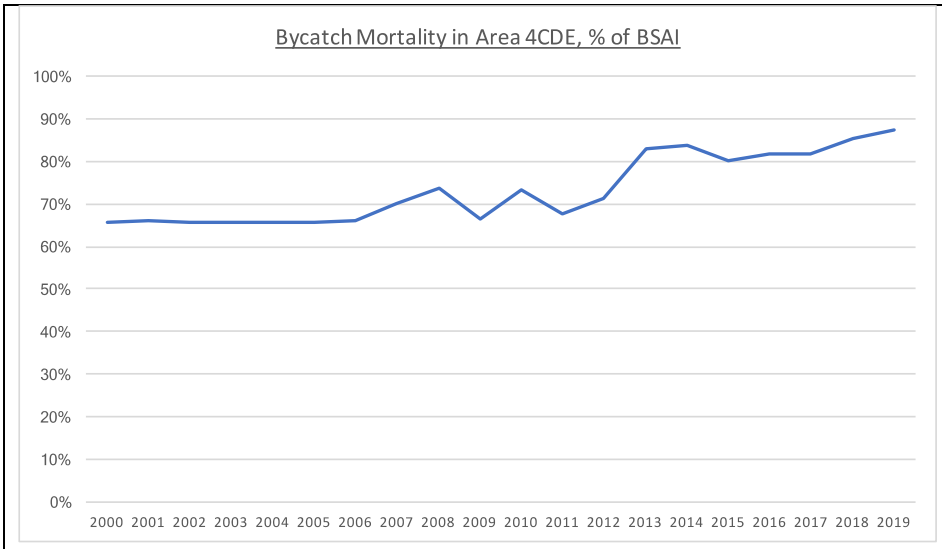

Figure 5. Halibut Bycatch Mortality Area 4CDE as a Proportion of BSAI, 2000-2019.

Moreover, bycatch mortality is disproportionately concentrated in Area 4CDE. Figure 5 shows the proportion of BSAI bycatch mortality that has occurred in Area 4CDE. **In 2019, bycatch mortality in Area 4CDE accounted for 87.3% of total BSAI bycatch mortality – an all-time high for the time series.**[16] This makes clear that halibut bycatch in the BSAI has consistently been the highest in IPHC Regulatory Area 4CDE. Equity among user groups must be restored. The current management regime has resulted in directed fisheries losing access to a fair share of the exploitable halibut biomass, with halibut bycatch removals exceeding the directed halibut fishery removals since 2011.

While this action is about the entire BSAI because the overwhelming majority of bycatch occurs in 4CDE it is appropriate that our focus is on 4CDE. If the Council finds an equitable solution for 4CDE, that solution will extend to all areas in the BSAI. Doing otherwise would mean the impacts to 4CDE will be masked when grouped with the other two regulatory areas.

The negative economic impacts of the decline in participation by dependent fishermen and communities within the BSAI directed fisheries cannot be overstated. These impacts could also be avoided—and directed halibut catch could increase—if halibut bycatch were reduced at low levels of abundance. As evidenced by the PSC groundfish sector's demonstrable ability to "habitually harvest less than the regulated PSC limit," it is apparent that the sector is more than capable of reducing halibut bycatch

[16] IPHC. 2020; IPHC-2020-AM096-10. Table 3, p. 6; IPHC. 2021. Table 2. 2020 estimates of total removals (net weight)… IPHC-2021-AM097-05 Rev_1; https://meetings.npfmc.org/CommentReview/DownloadFile?p=f9a83be6-4dfc-4fd4-a0c8-a64ad0736336.xlsx&fileName=U26_O26%20bycatch%20mortality%20by%20area%20all%20groundfish%20sectors%20combined.xlsx

when required to do so and that the cost of bycatch reduction to the sector, relative to its overall economic value, is nominal in comparison to the disproportionately negative impacts of reduced halibut catch on the economies of directed fisheries.

Simply put, reducing halibut bycatch means marginally increased efforts by the PSC groundfish sector. In contrast, reduced halibut catch, caused by excessive bycatch, means the destruction of lives, livelihoods, and entire communities for directed fisheries, many of which are comprised of indigenous peoples who have been fishing these waters since time immemorial. This should be an easy choice.

VIII. Abundance-Based Management of Halibut PSC Must Be Adopted to Restore a Workable and Sustainable Fishery Consistent with the National Standards

Congress enacted the Magnuson-Stevens Fishery Conservation and Management Act (MSA or the Act) to create a "national program for the conservation and management of the fishery resources of the United States."[17] When the provisions of the original act were insufficient to fulfill the conservation purpose of the Act,[18] Congress passed the Sustainable Fisheries Act in 1996 to "put our fisheries back on a sustainable path"[19] by making abundantly clear its objectives for management of the fishery resource of the United States:

- "insure conservation"
- "promote domestic commercial and recreational fishing under sound conservation and management principles"
- "provide for the preparation and implementation, in accordance with national standards, of fishery management plans which will achieve and maintain, on a continuing basis, the optimum yield from each fishery"
- "assure that the national fishery conservation and management program utilizes, and is based upon, the best scientific information available"
- "consider[] the effects of fishing on immature fish and encourage[] development of practical measures that minimize bycatch and avoid unnecessary waste of fish"
- "[be] workable and effective."[20]

[17] 16 U.S.C. § 1801.
[18] See, e.g., 142 Cong. Rec. H11418, 11439 (Sept. 27, 1996).
[19] 142 Cong. Rec. S10794, 10811 (Sept. 18, 1996).
[20] 16 U.S.C. § 1801.

The MSA also directs the Regional Fishery Management Councils to "exercise sound judgment in the stewardship of fishery resources."[21] The objectives of the Act, particularly after the Sustainable Fisheries Act amendments, prioritize sustainability of the fishery resource over other objectives. Thus, any action by the Council must abide by that priority and an action cannot be "sound judgment" unless it ensures stewardship of the fishery resource.

To assist the Councils and NOAA in carrying the requirements of the Act, Congress further mandated that all plans and regulations must be consistent with ten national standards,[22] several of which are pertinent to the halibut PSC issue:

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

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

- 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 United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

- 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.

- National Standard 8 - Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities by utilizing economic and social data that meet the requirements of paragraph (2), in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.

[21] Id.
[22] 16 U.S.C. § 1851.

- National Standard 9 - Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.[23]

Compliance with the Act and these National Standards cannot be achieved unless the Council acts to establish a scientifically defensible Abundance-based Management regime for setting halibut bycatch limits.

A. The Council's Development of an ABM Approach

Prior to the Council's 2015 action on PSC bycatch limits, the IPHC began the development of a program of Management Strategy Evaluation (MSE) "to evaluate the consequences of alternative management options, known as harvest strategies."[24] MSE programs are also referred to as closed-loop simulations or operating models because they simulate the real-world operations of fishery systems "to test whether potential harvest strategies—or management procedures—can achieve pre-agreed management objectives."[25] The development of operating models such as these take a significant amount of time – often many years – to create, iterate, and revise, especially within the context of the governmental administrative process that requires public notice and comment at each stage of the MSE effort. The use of operating models can be an integral part of creating dynamic fishery management programs; the Council began shifting in that direction after the 2015 halibut bycatch reduction action.

The PSC mortality limits set by the Council in 2015, and in years prior, are static limits that are not linked to the actual abundance of halibut within the BSAI and, consequently, bycatch has continued to represent an increasingly larger proportion of all halibut removals. To remedy this disparity, the Council upheld their commitment that the 2015 PSC mortality limits were "only a first step" by initiating, in 2016, the analysis for setting dynamic PSC mortality limits that are directly connected to halibut abundance – (ABM).[26] Since dynamic programs like ABM can be more effective when built around an MSE or closed-loop simulation to ascertain species abundance, the Council sought out a halibut operating model as a basis for the action. Rather than coordinating with the development of the IPHC's halibut operating model, which had already been in progress for three years but was not yet complete or operational at that time, the Council decided to work towards creating an independent halibut operating model that would mirror the IPHC model.[27]

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[23] Id.

[24] Management Strategy Evaluation, IPHC, available online at https://iphc.int/management/science-and-research/management-strategy-evaluation.

[25] Management Strategy Evaluation for Fisheries, The Pew Charitable Trusts, available online at https://www.pewtrusts.org/-/media/assets/2019/07/harvest-strategies/hs_mse_update.pdf, at 1.

[26] Draft EIS (March 2021) at 36-37.

[27] Draft EIS (September 2020) at 22-24.

Unfortunately, as discussed below, the Council's efforts to develop a halibut operating model have been marked by issues with inputs and assumptions.

B. The Alternatives Under Consideration

In the Draft EIS, the Council proposes four alternatives:

- Alternative 1: No action – maintains status quo
- Alternative 2: A 3X2 look-up table with PSC limits that range from current PSC limit to 20% below current limit, at lower levels of halibut abundance.
- Alternative 3: A 4X2 look-up table with PSC limits that range from 15% above current PSC limit at higher levels of halibut abundance, to 30% below current limit at lower levels of halibut abundance.
- **Alternative 4 (CBSFA's Preferred Alternative):** A 4X2 look-up table with PSC limits that range from current PSC limit to 45% below current limit at lower levels of halibut abundance.

Of these, CBSFA strongly supports Alternative 4, as explained in greater detail below. While this alternative is not sufficient in and of itself—and more will need to be done to return the halibut directed fishery to sustainable levels—it is the only alternative currently under consideration that would reduce halibut PSC by Amendment 80 to levels that could halt the decline of the halibut directed fishery and, hopefully, allow the directed fishery to begin to recover. The other alternatives are insufficient to achieve a long-term, sustainable directed fishery and should be rejected.

Additionally, the Council has suggested four additional "Options," which would modify the alternatives.

- Option 1: PSC limit is determined using a 3-year rolling average of survey index values instead of the most recent survey value.

- Option 2: PSC limit varies no more than (sub-options: 10% or 15%) per year.

- Option 3: Establish an annual limit of (sub-options: 80% or 90%) of the PSC limit generated by the look-up table. In 3 of 7 years, the A80 sector may exceed the annual limit up to the PSC limit generated by the look-up table. If the A80 sector has exceeded the annual limit in 3 of the past 7 years, then (sub-options: 80% or 90%) of the PSC limit generated by the look-up table is a hard cap for that year.

- Option 4: (mutually exclusive with Options 2 and 3) PSC unused in one year may roll to the following year to increase the PSC limit generated by the lookup table up to 20%. Any PSC savings in excess of 20% would stay in the water.

Regarding the Options, CBSFA supports the further development of Option 3 as an incentive program for bycatch avoidance. We strongly oppose Option 2 and Option 4, both of which would clearly weaken whatever action is taken. We also oppose the inclusion of Option 1, as it would limit the ability of the program to respond quickly to changes in halibut abundance.

C. Only Alternative 4 Approaches Meeting the Needs of Directed Fishery Members and Halibut-Dependent Communities

Only Alternative 4 approaches meeting the needs of CBSFA members, and those of other halibut dependent communities and stakeholders. Alternative 4 provides the best option for conservation of the halibut resource with the lowest possible PSC limits (45% below current) at the lowest levels of halibut abundance. This will preserve more adult and juvenile halibut to contribute to the coastwide biomass, and to the directed fishery.

Lower PSC limits are projected to result in greater directed halibut fishery catches at more than a 1:1 ratio according to a recent IPHC paper.[28] The current pressure to conserve the halibut resource is borne by the directed halibut fisheries, with those fisheries constrained by lower catch limits as the halibut abundance declines. Requiring lower bycatch limits as the halibut abundance declines will help share the conservation mandate and help sustain economies of halibut-dependent communities.

None of the other alternatives under consideration comes close to meeting the needs of halibut-dependent communities. Figure 6 below shows the directed fishery's share of halibut removals from 2016 to 2020 under each of the four alternatives in Area 4CDE. The red dashed line in the figure represents the directed fishery's historical share of halibut removals (43%) from 2002 to 2011, before the steady decline of the halibut resource. Each of the bars represents the share that would have been achieved in each year if the various alternatives had been in place.

As can be seen, only Alternative 4 results in any meaningful increase in directed fishery share. In every year except 2019, none of the other alternatives results in any material increase in directed fishery share. Alternatives 2 and 3 are each virtually identical. Neither results in any real constriction in Amendment 80 removals. And, for that reason, they are effectively indistinguishable from the status quo, which has proved wholly inadequate to support a viable directed fishery at current low levels of halibut abundance. In these circumstances, only Alternative 4 presents a viable path forward for a continued directed fishery and halibut-dependent communities.

[28] https://www.iphc.int/uploads/pdf/am/2020am/iphc-2020-am096-inf06.pdf

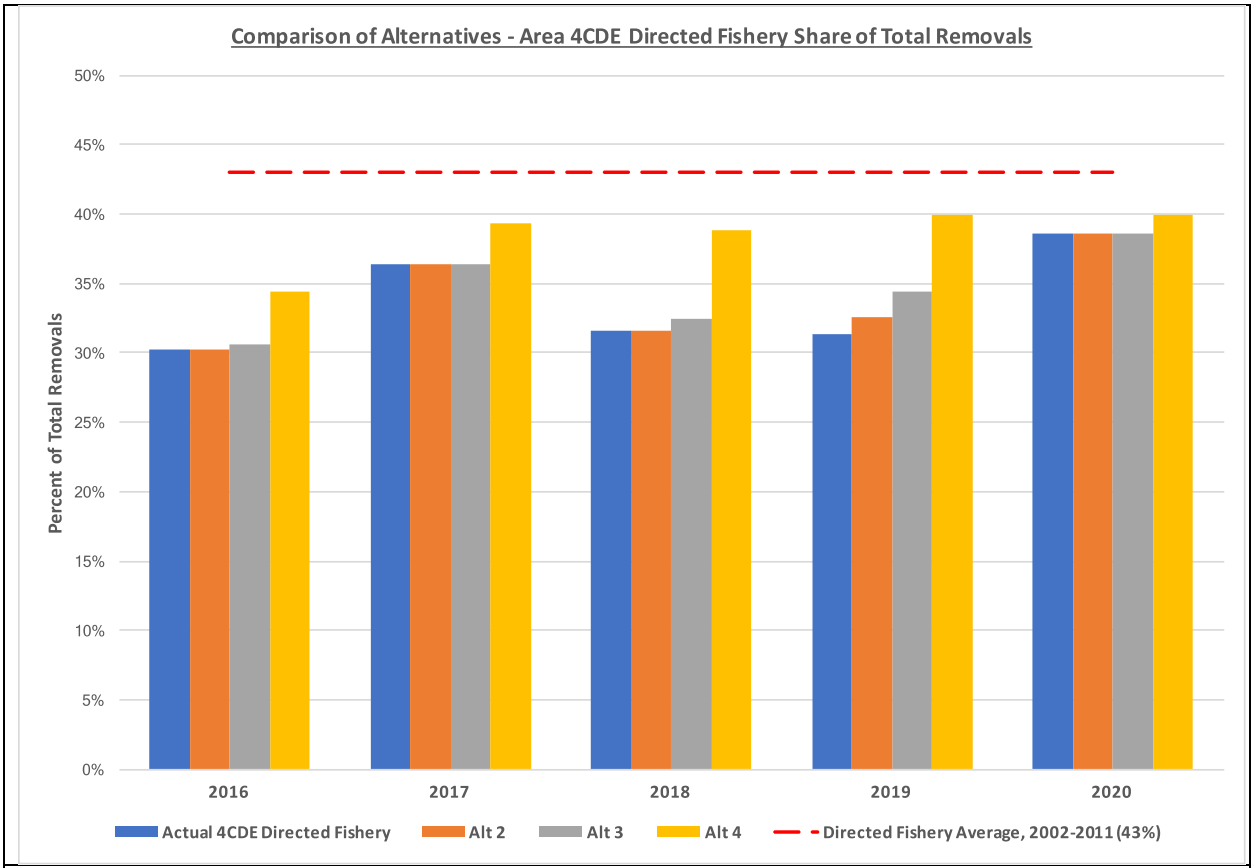


Figure 6. Comparison of Alternatives: Area 4CDE Directed Fishery Share of Total Removals

This is not to say that Alternative 4 achieves the PSC reductions that the directed fishery needs over the long term. It does not. Even under Alternative 4, the directed fishery's share of halibut removals at low levels of abundance does not return to the historical levels necessary to support a viable directed fishery into the future. Additional bycatch reductions will be required, some of which are anticipated to occur in other actions. Nevertheless, given the alternatives now under consideration, and in light of the Amendment 80 sector's overwhelming contribution to halibut PSC, Alternative 4 is an important first step in providing relief to members of the directed fishery and the communities they support.

D. Alternative 4 is the Most Consistent with the National Standards

In addition to being the only alternative that approaches the needs of halibut-dependent communities, it is also the most consistent with the National Standards. For example:

- Consistent with National Standard 9, Alternative 4 achieves the greatest reduction in bycatch mortality, thus minimizing both bycatch and bycatch

mortality.

- Consistent with National Standard 8, Alternative 4 appropriately takes into account the importance of fishery resources to halibut-dependent fishing communities. It is also the only alternative under consideration that can provide for the sustained participation in the fishery by members of halibut-dependent communities, who have been driven from the fishery in record numbers by declining share of the catch resulting from unsustainable PSC in the Amendment 80 sector. And it is the only alternative that minimizes the economic impact of the Amendment 80 sector's excessive PSC.

- Consistent with National Standard 4, Alternative 4 is the only alternative that even approaches the fair and equitable treatment of participants in the halibut fishery, and takes into account responsibilities towards Native Americans in Federal policymaking.

- Consistent with National Standard 5, Alternative 4 best promotes the efficient use of the halibut resource by properly limiting wasteful bycatch and PSC mortality in the Amendment 80 sector and contributing instead to increased yields in the directed fishery.

Others have suggested that NS1 and NS9, mentioned in the Purpose and Need statement, are the most applicable Standards, but this is not correct. All National Standards are included in the Purpose and Need Statement by reference. In addition, all Council actions must include adherence to all National Standards.

Pitting NS1 against NS9 seems to lead some to the automatic conclusion that every groundfish that can legally be caught must be caught, no matter the consequences to species taken as bycatch. If bycatch avoidance is deemed not "practicable" by the bycatch users, applying an economic measure, it does not mean that the Council must accept that reasoning to more heavily weigh in favor of Optimum Yield.

E. Environmental Justice Considerations Weigh Heavily in Favor of Alternative 4

Executive Order 12898, which was issued to achieve "environmental protection for all communities," tasks federal agencies with "identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations."[29] More recently, President Biden has made environmental justice a priority in his administration, tasking agencies with developing ways to update Executive Order 12898 and directing that increased benefits from federal

[29] Exec. Order No. 12,898, 59 Fed. Reg. 7629, 7629 (Feb. 16, 1994).

actions flow to disadvantaged communities (see Section XI - Comments on the Draft Social Impact Assessment).

This is also consistent with the Council's longstanding objectives in this area. Indeed, "achieving environmental justice" is a part of the Council's mission—one that is especially important here, given the past and present reality that, as discussed above, the largely indigenous populations of the BSAI 4CDE have borne grossly disproportionate impacts of the Council's policies on PSC bycatch mortality.[30] These disparate impacts should be fully analyzed in any revised draft Environmental Impact Statement. Finally, the practicable steps envisioned by Alternative 4—which will begin to remedy these real-world impacts from excessive Amendment 80 PSC mortality on indigenous people who depend on the halibut fishery—are exactly the type of federal action that E.O. 12898 encourages.

F. The Council's Analysis Must Not Rely on Its Simulation Model

As discussed below, the Council's halibut operating model is flawed and cannot serve as the basis for any ABM action by the Council. This, in large part, is why the Council signaled its intent in October 2020 to abandon that model in favor of a more qualitative approach.

Yet, aspects of the Council's analysis in the Draft EIS continue to rely on the flawed halibut operating model. For example:

- The Draft EIS suggests that spawning biomass is not affected by the range of PSC values under consideration. This is not unexpected and doesn't need a model since IPHC manages on total mortality (referred to as Ozero). This means that impacts from PSC mortality are absorbed from other areas and fisheries. In this way, the model (and thus the results of the analysis) effectively treats the directed fishery as a conservation buffer, allowing PSC mortality to fluctuate without any resulting impacts to overall spawning biomass. It is critical that this reality is communicated clearly in the analysis as it serves as a caveat to prior statements concluding that bycatch removals do not have a conservation effect on the spawning biomass.

- The probabilities of being at different PSC levels in the lookup table (Table ES-3) appear to be highly dependent on, and ultimately driven by, the simulated abundance in the BSAI from the model. This renders any analysis comparing the impacts of the alternatives meaningless.

[30] Id.; see also Mercola, M., *The Hard Look Doctrine: How Disparate Impact Theory Can Inform Agencies on Proper Implementation of NEPA Regulations*, 28 J. L. & Pol'y 318, 339-351 (2020), available at https://brooklynworks.brooklaw.edu/jlp/vol28/iss1/7 (suggesting that an agency's hard look assessment should incorporate a disparate impact analysis to ensure environmental justice is achieved).

- The suggestion in the analysis that reductions in PSC mortality do not result in meaningful benefits to the directed fishery also appears to be derived from the model, which provides unreasonable and unrealistic directed fishery effects. These low ratios of directed fishery to bycatch fishery in the alternatives also appear to reflect flawed model assumptions (see Section XI - Comments on the Draft Social Impact Assessment).

These misleading conclusions, derived from the halibut operating model, must be corrected before any further action is taken. To the extent this requires the Council to release an updated Draft EIS for initial review, the Council should take the opportunity to do so.

Finally, we note that the analysis underestimates benefits to the directed fishery that would result from downstream effects from reducing PSC mortality in the Amendment 80 sector. The analysis doesn't fully address this, either quantitatively or qualitatively. The ratio described in the analysis does not account for downstream impacts; the IPHC has stated that *"Mortality reduced in non-directed fisheries, because it has a larger effect on smaller/younger Pacific halibut, generally corresponds to a larger yield in directed fisheries, in this case an average of 115% over the period 1992-2018."* The document quantifies the ratio as *"…0.094 to 0.609 net pounds per net pound of PSC limit reduction."* While the document does caveat the low ratio (see page 202), it does not go on to further address potential downstream impacts/benefits. And just limits the impacts to BSAI directed catch limits.[31]

The analysis states that "Longer term benefits to the directed halibut fisheries could accrue throughout the distribution of the halibut stock, from a reduction of halibut PSC mortality to fish that are less than 26 inches (U26). Benefits from reduced mortality of these smaller halibut could occur both in the Bering Sea and elsewhere as these halibut migrate and recruit into the directed halibut fisheries."[32] But the impacts are not long-term – the impacts are realized immediately in practice through current IPHC management. BSAI bycatch of U26 halibut decreases the TCEYs across all IPHC regulatory areas coastwide, in turn affecting all commercial, sport, and recreational users.

IX. The Council's Simulation Model is Flawed and Cannot Be Used to Support its ABM Action

A. Utilizing Erroneous Simulation Modeling for Abundance-Based Management of Halibut is Inconsistent with National Standard 2

National Standard 2 requires the Council to base its fishery management decisions on the "best scientific information available." The regulatory guidelines for NS2 not

[31] See https://www.iphc.int/uploads/pdf/am/2020am/iphc-2020-am096-inf06.pdf.
[32] Draft EIS (March 2020) at 35.

only require fishery management programs to use "high quality and timely"[33] scientific information but also insist that "scientific information that is used to inform decision making should include an evaluation of its uncertainty and identify gaps in the information."[34] The guidelines speak directly on the use of models, noting that "the data requirements and assumptions associated with a model should be commensurate with the resolution and accuracy of the available primary data."[35] This means that the assumptions of a model are just as important as the primary data that the model draws upon.

There are several criteria that should be used to determine what is the best scientific information available, some are which are particularly pertinent to the issues at hand. Inclusiveness is key, and the guidelines underscore a particularly important point for the below discussion:

To begin, "alternative scientific points of view should be acknowledged and addressed openly when there is a diversity of scientific thought."[36] Of course, scientific information should be objective—"accurate, with a known degree of precision"[37]—and the Transparency criteria states that scientific information products "should identify major assumptions and uncertainties of analytical models."[38] Although the Timeliness criteria does emphasize the importance of speedy scientific analysis, this principle is balanced by the crucial need to take all the time required "to audit and analyze recently acquired information to ensure its reliability."[39]

Scientific information must be verified and validated to be considered the best. Verification, axiomatically, relates to independent third-party examination, requiring "that the data and procedures used to produce the scientific information are documented in sufficient detail to allow reproduction of the analysis by others with an acceptable degree of precision"[40] To be Valid, models should be tested to confirm that they are fit for the purpose for which they were designed and that "the estimates are robust to model assumptions."[41]

Finally, Peer Review should be used to "ensure objectivity, reliability, and integrity of scientific information," especially when novel and complex scientific information is at stake. "If formal peer review is not practicable due to time or resource constraints,

[33] 50 C.F.R. § 600.315(a)(1)
[34] Id. at (a)(2).
[35] Id. at (a)(4).
[36] Id. at (a)(6)(ii)(B).
[37] Id. at (a)(6)(iii).
[38] Id. at (a)(6)(iv)(B).
[39] Id. at (a)(6)(v).
[40] Id. at (a)(6)(vi)(A).
[41] Id. at (a)(6)(vi)(B).

the development and analysis of scientific information used in or in support of fishery management actions should be as transparent as possible."[42]

B. The Council's Halibut Operating Model Has Serious Flaws that Must Be Addressed Before Further Development of the Proposed ABM Action

To the extent the Council utilizes an MSE or operating model for the core of an Abundance-based Management initiative, that model must be subjected to rigorous testing to ensure its assumptions and outputs are valid.

The Council's halibut operating model, however, has been hindered by problems since early in its development. It has never worked properly and, apparently due to erroneous assumptions, it has consistently provided unrealistic results. For example, "failed to lead to increases in spawning biomass" even when PSC limits of zero are input into the model.[43] **How can a model that is intended to simulate the degree to which limiting PSC mortality affects halibut abundance (represented by spawning biomass in this instance) be at all effective when not even a PSC mortality limit of zero increases halibut abundance?** This is clearly illogical and inconsistent with real-world experience. It is certainly not a representation of the best scientific information available.

The Council's halibut operating model has numerous other flaws as well. For example, the model assumes a one-way movement of fish between BSAI and GOA, and also assumes a one-way stock trend (up), both of which severely influence conclusions regarding the action's potential effects on the coastwide stock. This action certainly concerns equitable use of halibut in the Bering Sea, and the effects of bycatch on Bering Sea directed fisheries, but it is also an action based on MSA principles that has effects stock-wide.

CBSFA, other stakeholders, and the SSC have repeatedly pointed out the many problems with the Council's model, which render it unreliable. While some of these concerns were addressed, many others remain. And, given these flaws, the model cannot be used to generate a reliable and defensible ABM approach, as the Council has recognized. Any attempt to reverse course by continuing to rely on the model would epitomize arbitrary and capricious agency decisionmaking.

C. The IPHC's Halibut Operating Model Should Be Considered for Use in Creating the Council's Proposed ABM Program

If the Council is intent on developing and using a model as a basis for implementing future ABM actions, the Council must correct the major flaws in its halibut operating model. To the extent these flaws cannot be corrected, and the reliability of the model

[42] Id. at (a)(6)(vii).
[43] Draft EIS (September 2020) at 188.

cannot be demonstrated, the Council must abandon it and seek a replacement that meets the standard of being the best science available.

The IPHC's halibut operating should be given strong consideration in any such effort. The model is now fully functional and presents a vital opportunity for the Council's pursuit of the best scientific information available.[44] While the model would need to be modified slightly to evaluate bycatch effects, we understand that this could be accomplished in a matter of weeks with minimal time, effort and expense.

We also understand that the IPHC model is a superior and more reliable platform for evaluating halibut population dynamics and making management decisions. Among other things, we understand:

- The IPHC model utilizes different and more appropriate assumptions regarding the areas of fleets, distribution and migration.

- The IPHC model more appropriately handles the effect of U26 bycatch mortality, which has an effect on biomass but is not captured in the Council's model.

- The IPHC model utilizes more realistic and appropriate assumptions regarding the future level of resources in the Bering Sea. The Council's model, in contrast, assumes groundfish at 3 to 4 times the current levels, which is not realistic. The trawl index was projected to be as much as 4 times greater than status quo (which is defined as the 2019 value). This was presented in the October DEIS for the "low recruitment sensitivity" on page 276. However, Figure 6-5 on page 196 of that October document shows that in the main runs the BTS index is not as high as in the "low recruitment sensitivity", which is odd. With low recruitment the trawl survey index is predicted to increase by at least 2 times and exceed values seen over the last 2 decades. And, as discussed elsewhere, the index is unaffected by the PSC alternatives.

- The IPHC model properly models fisheries by IPHC regulatory area, which the Council's model does not. In that way, the IPHC model is able to focus on effects in Area 4CDE (a subset of the Bering Sea). The Council's model, in contrast, "swamps" the effects of the alternatives on the 4CDE directed fishery.

- The Council's model has not been peer reviewed.

[44] Minutes from IPHC Meeting (January 2020) available online at https://iphc.int/venues/details/96th-session-of-the-iphc-annual-meeting-am096; see also IPHC MSE Results, http://shiny.westus.cloudapp.azure.com/shiny/sample-apps/MSE-Explorer/ for the latest version of the IPHC's halibut operating model.

- The most recent version of the Council's model has not been reviewed by the SSC.

Given this, the IPHC model appears to be significantly more robust and reliable than the model the Council has been developing. We urge the Council to consider adopting it if it intends to move toward a model-based ABM framework.

Even if the IPHC model is not adopted for use by the Council, it can provide an important and independent check on the Council's model, allowing the Council to examine management scenarios and to identify areas of model disagreement, which would bear further examination and inquiry. Alternatively, strong agreement between the models would provide a robust and highly defensible basis for the Council's decisionmaking. Indeed, as Dr. Hilborn and others have recognized, these multiple independent evaluations can provide important information regarding stock status and fishery trends.[45]

In short, we believe the IPHC model is the best science available on this point. Under National Standard 2, the "best science" is the best science, regardless of its source. We thus urge the Council to work with its partners at the IPHC to, at the very least, use the IPHC to improve their own model, if it does not to fully embrace the IPHC model and use it instead as the basis of the Council's ABM program.[46]

D. There is Significant Confusion Around the Council's Final October 2020 Motion C-6 and Whether it Discontinued the Use of the Council's Halibut Operating Model

Considering the flaws of the Council's model, discussed above, there was much discussion during the October 2020 Council meeting about the efficacy and validity of the Council's halibut operating model. As it had done in the past, the SSC made recommendations to the Council about ways to improve the model to make it scientifically defensible. Instead, the Council stated that they would use a "traditional" and more qualitative analytical process, and seemingly discontinued the future use of the Council's halibut operating model as a basis for the proposed ABM action. Final Motion C-6 Halibut ABM ("the Motion") adopted the use of lookup tables for its alternatives analysis, apparently in lieu of using the model.

Based on the discussion preceding the Motion, CBSFA understood the intent was to move away from the MSE process, and away from the further use of the model to guide management decisions. The deliberations on the Motion explained that the intent was to simplify and bring to a conclusion the ABM action that has been long

[45] See Starr, P., Annala, J.H., and Hilborn, R., Contested stock assessment: two case studies, Can. J. Fish. Aquat. Sci. 55: 529□537 (1998).

[46] The Council's newly revised Purpose and Needs statement purports to explain the limitations of the IPHC's role in the Council's rulemaking, but whether this statement is accurate or not does not trump the Council's obligation under NS2 and cannot justify ignoring the best scientific information, which here is the IPHC model.

delayed, due in part to concerns about the model's opacity and complexity, as well as the multiple attempts to strengthen it.

During the introduction of the Motion, Council member Rachel Baker explained that the rationale for the Motion was to "shift away from an MSE approach to a more traditional impacts-based analysis."[47] She stated that "neither the halibut operating model [developed until then] nor Objectives would be an 'essential component' of the new analysis."[48] She emphasized that passing the Motion meant that the Council would be "shifting away from MSE to a traditional approach" because MSE was not a good fit with the Council's process and the public wants a speedy resolution.[49] Council member Bill Tweit agreed that the new more qualitative approach would replace prior options (i.e. the Council's halibut operating model).[50]

Notwithstanding the apparent intent of the Council's Motion to move away from the use of their halibut operating model, the Council still relied upon outputs from the model in the latest version of the EIS, published on March 23, 2021. The continued use of the model and reliance on its outputs to guide Council decisions seems to be in direct conflict with the Motion, which indicates that there is substantial confusion in regard to the effect of the Motion and whether it discontinued the use of the Council's model in whole or in part.

Stakeholders in the groundfish fisheries that use halibut PSC also appear to have understood that the intent of the Motion was to discontinue the Council's model because they requested, in February 2021 comments, that the Council revert to their reliance upon the model and requested the Council to finalize it for inclusion in the ABM Environmental Impact Statement.[51] Given the known flaws with the Council's model discussed above, however, this is not a viable or defensible option.

In the end, the Council must either (1) move away from its use of operating models entirely; (2) correct the flaws in its halibut operating model and subject that model to thorough and complete review by the SSC and independent reviewers; or (3) select a different and more reliable model on which to base its decisions, such as the IPHC model discussed above. These are the only options available that are consistent with National Standard 2 and the Council's obligation to engage in reasoned decisionmaking based on the information before it.

[47] Audio 10-13b, available online at https://app.box.com/s/5cm1pxn8nn, at 00:54:25.
[48] Id. at 00:57:35
[49] Id. at 02:17:00
[50] Id. at 01:25:15.
[51] See The Groundfish Forum Comments to NPFCM regarding Halibut Abundance Based Management of PSC Limits; Best Available Science (February 26, 2021).

X. The Council's NEPA Analysis Must Fully Consider Directed Fishery Impacts

The National Environmental Policy Act (NEPA) requires an agency to take a "hard look at the environmental consequences of the proposed action"[52] and if the agency fails to establish "a rational connection between the facts found and the choice made" then the agency's decision is improper and cannot be upheld.[53]

The Purpose and Needs statement for the Council's Abundance-based Management DEIS states, "When BSAI halibut abundance declines, PSC in Amendment 80 fisheries can become a larger proportion of total halibut removals in the BSAI, particularly in Area 4CDE, and can reduce the proportion of halibut available for harvest in directed halibut fisheries."[54] The DEIS does not include analysis of the proposed policy's impact on Area 4CDE's directed fisheries, despite its specific identification in the Purpose and Needs Statement as a key problem to be addressed by the proposed ABM policy.

This is an omission that must be remedied before any further decisions are made in regard to the development of the ABM policy. As described above, the directed fisheries have been disproportionally impacted by the decline in halibut abundance over the past decades, making the impacts on them and their communities not just important, but absolutely critical, for a full and valid NEPA analysis of environmental impacts. The Council must have a complete picture of all the potential impacts of their proposed ABM policy in order to make the most informed, science-based decisions with the least overall impact on the affected communities. As currently written, the Social Impact Assessment portion of the DEIS is incomplete in that it does not take a hard look at all consequences of the proposed action. The Council's Social Impact Assessment must analyze the effects of the proposed ABM policy on directed fisheries to be in compliance with NEPA.[55]

XI. Comments on the Draft Social Impact Assessment

A. St. Paul's Dependency on Halibut

As stated in previous submissions, CBSFA believes that the Draft Social Impact Assessment (SIA) dated March 2021, which is included as an appendix to the ABM DEIS, does a good job of describing St Paul's halibut dependency, noting for example

[52] Utahns for Better Transp. v. U.S. Dep't of Transp., 305 F.3d 1152, 1163 (10th Cir. 2002); see also Ctr. for Biological Diversity v. Dep't. of Interior, 623 F.3d 633, 641 (9th Cir. 2010) (holding that the court's role is to "ensure that the agency has taken a 'hard look' at the environmental consequences of its proposed action.").
[53] Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co., 463 U.S. 29, 43 (1983).
[54] Draft EIS (March 2021) at 34.
[55] Sierra Club v. Fed. Energy Regulatory Comm'n, 867 F.3d 1357, 1368 (D.C. Cir. 2017) (quoting Latin Ams. for Social & Econ. Dev. v. Fed. Highway Admin., 756 F.3d 447, 475–77 (6th Cir. 2014) (holding that the agency's EIS was sufficient because it discussed the intensity, extent, and duration of the environmental effects of the proposed project on the environmental justice communities, yet suggesting that had the agency completely refused to discuss the demographics of the community, then the agency's EIS would have been deficient)).

that from 2010-2019 Saint Paul was "one of three communities with virtually complete community fleet dependency on BSAI halibut ex-vessel gross revenues, along with St. George and Savoonga...". The SIA further indicates that along with Homer, Kodiak, and Seattle MSA, St. Paul is one of the four most highly engaged communities in the area 4/BSAI commercial halibut fishery (and notably the only one located within area 4), see (SIA p. 168). The SIA further points out that "the St Paul halibut fleet was the highest producing halibut fleet of any community in any CDQ region" and was exceeded among all Alaska communities only by the GOA communities of Homer and Kodiak (see SIA p. 83). Finally, the SIA concludes that "the entire St. Paul commercial fishing fleet is focused exclusively on halibut with virtually no revenue diversification" (SIA p. 83).

CBSFA and the entire community of St. Paul are proud of their achievements in this regard. Pursuant to the directives of the CDQ Program, CBSFA has used the development and maintenance of a local halibut fishery as a major source of employment, income, and subsistence for the community and its members, hence its efforts with the Council and the IPHC to both reduce halibut PSC limits in 2015 and construct a halibut abundance-based management system that is responsive to conserving the resource and providing for directed halibut fishing operations in the Bering Sea.

B. Regulatory Context, National Standard 4, and Executive Order Guidance

CBSFA appreciates the efforts of the analysts since October 2020 to provide the Council with a more complete background on the regulatory context to this action in response to previous comments. CBSFA believes that the additional provisions regarding National Standard 4 – Equity in Allocations, and more specifically inclusion of the NMFS guidelines to National Standard 4 (Section 3 Factors in Making Allocations) which state that "[w]here relevant, judicial guidance and government policy concerning the rights of treaty Indians and aboriginal Americans must be considered in determining whether an allocation is fair and equitable" provide the Council with critical guidance. Since this action impacts the future economic and cultural existence of at least 17 Bering Sea halibut-dependent communities, most of which are overwhelmingly Alaska Native the aforementioned improvements to the SIA will be key for the Council properly weighing the various national standards, as well as NEPA and environmental justice considerations towards indigenous and minority populations.

Many of these communities have been severely impacted by the status quo and several are no longer participants in the fishery. As such, failure to properly manage the groundfish fisheries responsible for halibut bycatch to the detriment of these Native communities may have already violated federal trust responsibilities and treaty rights towards Alaska Natives. The 'trust responsibility' is a legal principle that the U.S. Supreme Court noted in United States v. Mitchell (1983) is "the

undisputed existence of a general trust relationship between the United States and the Indian people" and requires the federal government to support tribal self-government and economic prosperity, duties that stem from the government's treaty guarantees to protect Indian tribes and respect their sovereignty. The purpose behind the trust doctrine is and always has been to ensure the survival and welfare of Indian Tribes and people. This includes an obligation to provide those services required to protect and enhance tribal lands, resources, and self-government, and also includes those economic and social programs which are necessary to raise the standard of living and social well-being of the Indian people to a level comparable to the non-Indian society.

In this regard, since the current action could have a disproportionate impact on Alaska Natives, CBSFA further appreciates the analyst's effort to identify recent Executive Orders by the Biden Administration on: Tribal Consultation and Collaboration (EO 13175); Advancing Racial Equity and Support for Underserved Communities through the Federal Government (EO 13985); and Tackling the Climate Crisis at Home and Abroad (EO 14008) which are likely to be important considerations for this action, once guidance is developed and implemented, hopefully before Final Action is taken. The analyst's additional efforts to clearly identify the federally recognized tribal affiliation of each community, as well as their CDQ and ANCSA affiliations, greatly facilitate the federal and tribal government consultation process that will need to take place, as well as the potential scope of the federally-recognized rights of the various indigenous populations affected by this action.

However, before concluding its comments on this section, CBSFA would like to express its concern with statements on page xxviii and page 153 of the SIA concluding that "sustained participation of communities in the BSAI Amendment 80 groundfish or BSAI/Area 4 commercial halibut fishery **would not appear to be directly or at immediate risk from implementation** of no-action or action alternatives." CBSFA understands that conclusions such as these are derived from the Council's previous modeling efforts whose flaws have been pointed out in other sections of this comment. In any event, these conclusions are contradicted by the figures on page 32 of the SIA, which show an overall reduction in the participation of BSAI halibut catcher vessels in more than 25 Alaskan communities by more than 30% since 2008. Clearly, a no action alternative would continue have negative impacts on this trend.

XII. Conclusion

CBSFA urges the Council to address the rapidly dwindling halibut biomass, the continuing decline of the directed halibut fishery (and the communities that depend on it), and the grossly disproportionate impacts that the halibut directed fishery has suffered as a result of excessive PSC mortality in the Amendment 80 sector. To that end, we respectfully request that the Council adopt Alternative 4. It is the only alternative under consideration that approaches the needs of the halibut directed

fishery and fishery-dependent communities. It also reflects practicable reductions on bycatch and PSC mortality that can be readily implemented by the Amendment 80 fleet.

Further, the Council should eliminate any reliance on its halibut operating model in its analysis of alternatives. To the extent the Council intends to utilize a model in developing its ABM approach, the Council's existing model is flawed and cannot serve as the basis for any defensible regulatory action. Instead, the Council should, consistent with National Standard 2, utilize or consider the IPHC model in any model-based ABM action. CBSFA thus respectfully suggests that the Council should work with its regulatory partners at the IPHC to adapt the IPHC's model for purposes of the Council's Abundance-based Management of halibut bycatch.

Sincerely,

Phillip Lestenkof
President
Central Bering Sea Fishermen's Association

cc: Dr. Paul Doremus, Assistant Administrator for Fisheries
Mr. Samuel D. Rauch, Deputy Assistant Administrator for Regulatory Programs
Dr. Dave Wilson, IPHC

Central Bering Sea Fishermen's Association

Comments on the North Pacific Fishery Management Council April 2021 Agenda Item C2 Concerning BSAI Halibut Abundance-based Management (ABM) Amendment 80 of PSC Limit Initial Review Draft Environmental Impact Statement (March 2021)

Attachment 1

W170°

N57°

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

September 30, 2020

Mr. Simon Kinneen, Chairman
Mr. David Witherell, Executive Director
North Pacific Fishery Management Council
1007 West Third, Suite 400
Anchorage, Alaska, 99501-2252

Re: C6 – Halibut ABM

Dear Mr. Kinneen:

The Central Bering Sea Fishermen's Association (CBSFA) appreciates the opportunity to provide the North Pacific Fishery Management Council (NPFMC) with comments on the Initial Review Draft Environmental Impact Statement (DEIS) regarding BSAI Halibut Abundance-Based Management (ABM) of PSC Limits, and the Discussion Paper (DP) on Approaches to Abundance-Based Halibut PSC Limits, both under agenda item C-6 Halibut ABM.

CBSFA believes that Alternative 4, with the inclusion of Element 8, and with further analysis and adjustment, could best respond to the purpose and needs statement and the objectives established by the NPFMC for this action. CBSFA asks for another initial review, and requests that:

- **the Council instruct the ABM working group to analyze the effect on the starting point element, the floor and the ceiling of removing all sectors except A80;**
- **the Council instruct the ABM working group to identify and correct the inaccuracies in the analytic model so that it more closely reflects management reality, and bring results and analysis to the Council;**
- **the Council modify the objective "Provide for directed halibut fishery operations in the Bering Sea" to add ". . . at a level that achieves equity through providing for the historic average proportion of directed halibut use from 2002 to 2011" and,**
- **the Council add a performance metric and further analysis to reflect the need for equity between the directed halibut users and the bycatch users.**

These requests are detailed in Sections IV, V, VI and VII.

I. Background:

CBSFA is the management organization for St. Paul Island under the Western Alaska Community Development Quota Program (CDQ). Through the CDQ Program, which was created in 1992, the federal government has awarded various species of fish, including halibut, (CDQ allocations) from the Bering Sea and Aleutian Islands (BSAI) commercial fisheries to six CDQ groups including CBSFA. Pursuant to the CDQ Program Statute (16 U.S.C 1855(i)(1)), the CDQ groups manage these allocations to promote social and economic development in their respective regions.

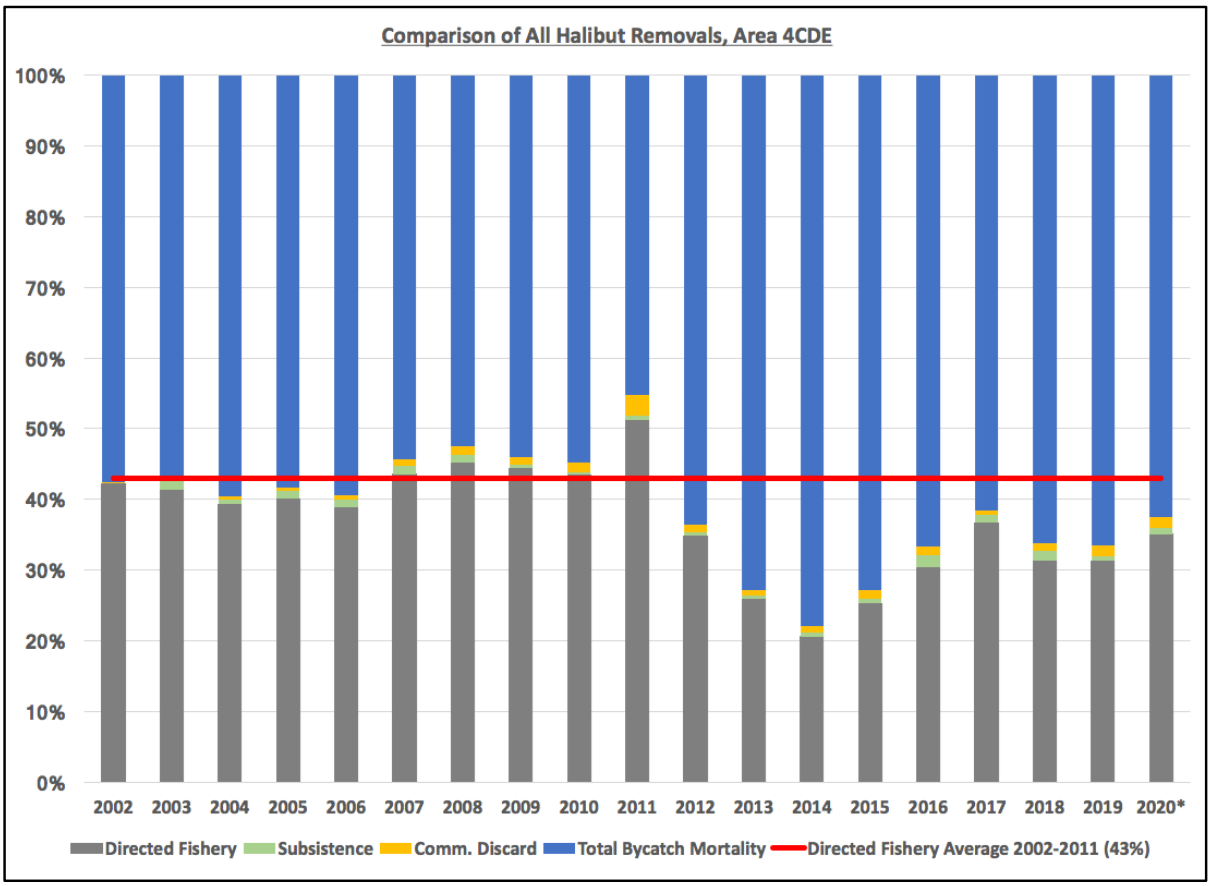
As the CDQ organization for St. Paul Island, CBSFA is actively engaged in the Pacific halibut fishery in IPHC Area 4CDE and is committed to developing a fishery-related economy that enhances the social and economic well-being of our community. A number of our residents also hold halibut IFQ. From a historic, cultural, subsistence, and commercial perspective, halibut is a critically important species to the mostly Unangan (Aleut) residents of St. Paul Island. As such, CBSFA has a direct interest in ensuring that Pacific halibut stocks are equitably utilized among user groups and that they are managed to ensure a viable and sustainable fishery for St. Paul Island in the long-term.

CBSFA also manages pollock and groundfish allocations that are important to CBSFA's business operations and its ability to fund projects and programs that benefit St. Paul Island in furtherance of CDQ Program objectives. Given its stake in both the halibut stocks and the groundfish fisheries that use halibut PSC, CBSFA is uniquely positioned to understand the balancing that is needed under the Magnuson-Stevens Act's (MSA) National Standards to provide for healthy, diversified, fisheries-based economies in halibut and groundfish dependent communities in the BSAI.

II. Unfair and Inequitable Use of the Halibut Resource:

Since 2012, as area 4CDE halibut landings declined by as much as two thirds from over 3.4 million pounds in 2011 and earlier years, to 1.2 million pounds in 2015, an ever greater share of the halibut resource has been taken as bycatch/PSC. On average this has resulted in a situation where the groundfish fisheries took close to 70% of the resource as PSC from 2015 to 2019, leaving about 31% for the directed fisheries, whereas from 2002 to 2011 the share of the resource averaged 55% PSC use, 43% directed[1].

[1] IPHC-2018-AM094-09. Table C2. Time-series of removals from all sources by regulatory Area, Table C1. Time-series of fishery landings by regulatory Area; IPHC-2020-AM096-00. Table 3. Recent mortality of Pacific halibut from all sources by IPHC Regulatory Area.; IPHC-2020-AM096-00. Table 2. 2019 estimates of total removals



This development has had a detrimental impact on halibut dependent fishermen and communities throughout the BSAI most of whom are Alaska Native. Reduced FCEYs have in many instances made the directed fisheries unviable. As noted by the ABM Draft Social Impact Assessment, the halibut quota was too low to economically run processing operations in many communities. In St. Paul's case, in order to maintain the economic and social benefits of its halibut fishery at such low levels, CBSFA has had to subsidize the operations of the local processing plant. Clearly, directed fishermen and their home communities have borne the brunt of the conservation effort of the halibut resource at the current lower levels of abundance. This is inequitable, unfair, and in violation of the MSA's National Standards.

In recognition of this reality, the NPFMC took action in June of 2015 to reduce halibut PSC limits by an overall 21%. This was an important action and resulted in achievable bycatch reductions. These reductions, however, have not been constraining on the groundfish sector as evidenced by the fact that in the intervening years, PSC usage has been well below the new PSC limits. Meanwhile, the ongoing instability in the BSAI directed halibut fishery and the continued decline in halibut abundance and directed fishery amounts, and in participation by dependent fishermen and communities is further evidence of the limited benefits of the June 2015 action.

At the time, the NPFMC recognized that compliance with the MSA's National Standards required further action. A majority of Council members, including the NMFS representative, stated on the record that the proposed PSC reductions were only a "first step." *See* News and Notes, NPFMC, June 2015. Indeed, the analysis for the action conceded this very point.[2] This was a tacit admission that the action to reduce bycatch failed to reach "the extent practicable." The MSA does not accept promises of future action in place of compliance. *Pacific Marine Conservation Council v. Evans*, 200 F. Supp. 2d 1194, 1201 (N.D. Cal. 2002). Action on halibut ABM is long overdue.

III. BSAI Halibut Abundance-based Management of PSC Limits:

In 2016, after presentation of the first discussion paper on ABM, the NPFMC adopted a Purpose & Needs Statement for this action (subsequently modified in 2017) which noted that "[t]he current fixed yield-based halibut PSC caps are inconsistent with management of the directed halibut fisheries and Council management of groundfish fisheries, which are managed based on abundance." To guide the development of the action, the NPMFC derived several objectives roughly based on the pertinent National Standards, and reflective of the Purpose and Needs Statement:

- Halibut PSC limits should be indexed to halibut abundance
- Halibut spawning stock biomass should be protected especially at lower levels of abundance
- There should be flexibility provided to avoid unnecessarily constraining the groundfish fishery particularly when halibut abundance is high
- Provide for directed halibut fishing operations in the Bering Sea
- Provide for some stability in PSC limits on an inter-annual basis

CBSFA believes that Alternatives 3 and 4 are potentially most responsive to the purpose and needs statement and to the objectives listed above, with the suggested modifications. These alternatives are also responsive to the balancing required by the National Standards.

A majority of fisheries are managed based on abundance. It makes sense that use of a fishery, whether directed or through PSC be based on the abundance of the resource. At times of low abundance use of the resource must be constrained in order to conserve it. The fundamental problem in the way halibut is managed by both the IPHC and the NPFMC (through groundfish PSC limits) is that the PSC limits are fixed, inflexible while the directed halibut limits are governed by abundance. This means that at times of low abundance, as has been the case since

[2] See pages 55-57 of the Draft Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis for a Proposed Amendment to the Fishery Management Plan for Groundfish of the Bering Sea/Aleutian Islands Management Area, dated May 2015 (Draft EA/RIR/IRFA).

2012, the directed fishermen bear the burden of conservation through cutbacks. This has impacted a number of fishermen and halibut dependent communities. Many have left the fishery entirely. This is unfair, unequitable, and a violation of National Standards 4 and 8.

Although the modeling and the ranges examined by the DEIS currently show that the benefits of ABM to the spawning stock biomass (that is the sustainability and conservation of the resource) are limited, that does not detract from the sound basis for managing halibut based on abundance. We address the shortcomings of the model and analysis in Section V. The halibut resource has clearly declined since 2011 and ABM is the most flexible, sensitive, and responsive tool for responding to fluctuations in the fishery, as well as the resulting impacts on the multiple user groups.

The objectives established by the NPFMC for this action, as well as the National Standards, are collectively best served through ABM, whether: indexing halibut PSC limits to abundance; protecting halibut spawning stock biomass especially at low levels of abundance; providing flexibility to avoid constraining the groundfish fishery particularly when halibut abundance is high; provide for directed halibut fishing operations in the Bering Sea; or providing for some stability in PSC limits on an interannual basis. The status quo which involves a fixed PSC limit is not responsive to conserving the resource at low levels of abundance.

In the absence of ABM, the other possible tool is to further reduce PSC limits either through an action similar to the one the NPFMC undertook in Sitka in 2015 or by adjusting the setting of PSC limits annually through the groundfish specifications process. At the low levels of halibut abundance currently being experienced, an additional option is through Emergency Action under MSA Section 305 to cut PSC on an ad hoc basis in order to preserve the directed fisheries. While potentially one or two of the NPFMC objectives and National Standards might be addressed by the above, these tools are clearly not as responsive to the collective National Standards. In recognition of this, the NPFMC has specifically rejected these approaches when previously proposed.

IV. Council Action at this Meeting:

Given the dependence of St. Paul Island on the halibut fishery, our continuing concern for the declining halibut resource, and the clear need for equitable management of halibut bycatch, particularly in times of low halibut abundance, **CBSFA supports the Council going forward with another initial review of this action, with the additional analysis, changes and revisions identified in this comment letter.**

Regarding staff's suggestion to review the Purpose and Need Statement in light of the reduced scope of the action to apply only to the Amendment 80 sector, we point out that we did not advocate for removing the other sectors. Indeed, having one sector's bycatch managed according to abundance, and the other sectors, especially TLAS and CDQ, managed under static

caps, presents potential operational issues, and reduces the overall effectiveness of the alternatives in achieving Council objectives.

As one CDQ group, CBSFA would like to reaffirm our commitment to an abundance-based and equitable approach to bycatch management. As an indication of that commitment, in 2015 and 2016, CBSFA left our CDQ flatfish species allocation in the water, as the halibut bycatch saved are seen as more important to the local community-based halibut fisheries in Western Alaska.

In addition, we ask for further analysis of the effect of removing other sectors on the original intent of the starting point, the floor and the ceiling. The removal of all other sectors, and the method used to determine the A80 share of the starting point, the floor and the ceiling, may alter the intended outcomes of the stakeholder-derived alternatives. We have already seen that the working group's method of arriving at the A80 share of the Council-imposed floor of 1000 MT overall involved a choice not made by the Council, and affects the outcomes of Alternative 4.

Regarding **the Objectives**, we request the addition of clarifying language to the objective **"Provide for directed halibut fishery operations in the Bering Sea." We recommend making clear what "providing for the directed fishery" actually means. We propose that equity be the goal, and that equity be described in relation to the historic proportion of halibut available to the directed fishery before the current decline that began in 2011. We request the addition of ". . . at a level that achieves equity through providing for the historic average proportion of directed halibut use (FCEY?) from 2002 to 2011."**

We continue to support the potential for Alternative 4 with its essential elements to meet the Council's objectives. It is imperative to include the starting point identified in Alternative 4, and the added Element 8, with the ability to reduce the PSC cap beyond the floor in case of halibut abundance below B30. However, analysis should be focused on the effect on the starting point of removing sectors from this action: the resulting starting point applied just to A80 needs particular consideration.

Also, if the PSC cap is permitted to be responsive to halibut abundance going down, as far as needed to maintain equity of access as well as protection of the resource, the Council could consider allowing the PSC cap to also be responsive to very high abundance of halibut.

However, **we are deeply concerned that shortcomings in the model are resulting in outcomes across the alternatives that are not representative of reality.** We ask that the model be corrected. Without better information provided by the model, and subsequent qualitative analysis, the public will be unable to see the true outcomes of the action alternatives, and the Council will be unable to make informed policy decisions. The origins of the inexplicable inconsistencies of the model results must be made transparent. Closed meetings of the Council working group during the development and discussion of the operating model has resulted in very little public understanding of the process, the assumptions and the parameters. This is in

contrast to the public meetings of the Crab and Groundfish Plan Teams where models pertaining to those species' abundances are discussed and shared.

We also ask that the Council consider the addition of a performance metric to the analysis, one that acknowledges the difference between the last nine years (2011-2019) average proportion of directed fishery to bycatch use of halibut, and the previous 10 years (2002-2011) historical proportion. The performance metric would measure the level of adherence to the equity concept expressed in the Objective modification language recommended on Page 4.

V. DEIS/Model Corrections Needed:

Effects on the directed fishery and SSB:

While we see that both Alternative 3 and Alternative 4 constrain A80 and add to the directed fishery, we believe that **the model outcomes are underestimating the effect of the alternatives on the directed halibut fishery, particularly in Area 4CDE.** For a variety of reasons, the model is dampening the feedback loop between PSC and the directed fishery.

Also, the analysis shows that there are basically no observable impacts to Spawning Stock Biomass (SSB) across the alternatives (Figure 6-13). They have no significant effect on SSB. As long as TCEY>Total Mortality this result would hold, since the directed fishery acts as a buffer against PSC mortality. When the model was run with an extreme low abundance scenario there is a noticeable impact to SSB. But in the analysis as currently constructed, are there any area specific effects that are masked by considering the BSAI as a whole? To expand more on that question, are there any results that show Area 4CDE Total Mortality exceeding the 4CDE TCEY (no directed fishery for 4CDE) but in which SSB could still be protected as long as the BSAI TCEY is still greater than Total Mortality. We have come very close in reality to having significantly reduced FCEYs in 4CDE.

Why is the model generating results that do not match expectations and management reality in these two areas? Generally, there may be confusion about the difference between a projection model, which is based roughly on the IPHC halibut stock assessment, and a prediction model. The projection model was not designed to be used as a prediction model, as it is here.

Also, there are many places where the IPHC process may not be accurately reflected in the model, and without direct understanding of the model it is difficult to pinpoint those areas. **We request that the Council direct the ABM working group to identify and correct the aspects of the operating model that result in inconsistencies in these areas**, and as needed elsewhere, and specifically ask the SSC for their advice in doing so. In addition, we suggest that the Council explore the possibility of engaging independent modeling experts to identify and remedy these model issues:

1. The assumption of TCEY related to SSB is quite flat, showing a 10% change in the TCEY with 1 unit change in the spawning biomass. This is missing the importance of small fish in determining the TCEY and doesn't account for the population structure like Spawning Potential Ratio (SPR) does. The model uses approximation rather than Spawning Potential Ratio (SPR) to drive results, which dilutes the impacts on PSC limits and thus on the directed fishery.

2. Fish movement was taken from IPHC research, but the BSAI here is modelling 4A, 4B, and 4CDE. Perhaps movement of young fish is high (ages 2-6 are fixed to be the same). In the IPHC Management Strategy Evaluation (MSE) Operating Model, different movement rates can correlate with other parameters to produce similar results, and movement is probably one of the most important areas to investigate further.

3. One of the most unexpected results is that directed fishery yield is not responsive to changes in the PSC. Benefits of O26 bycatch reductions to the directed fishery should be at least one to one – for every pound of O26 bycatch reduction the directed fishery should benefit by approximately a pound[3]. In the discussion paper, on page 36, analysts say "In the most recent years, the yield-gain ratio has been approximately a 1.2 pound gain to the coastwide directed fishery for a one-pound reduction in coastwide bycatch mortality." The current outcomes of the model do not reflect that reality.

    a. Figure 6-2 shows a slight gain to directed fishery yield. It is hard to determine the gain in yield because it is not clear what the y-axis is (it is not 1 t, but may be 1000 t). If 1000 t, then the gain could be maybe 10-20%. That doesn't seem reasonable, especially in 2021 where you would expect a much greater trade-off between a drop in PSC and the directed fishery yield. Furthermore, Figure 6-6 shows large declines in PSC limit but little gain in directed fishery.

    b. Is this because trawl fishery selectivity is highest for small fish? The selectivity scenarios seemed to have little effect. Perhaps movement of fish out of BSAI is high before they are encountered by the directed fishery, but there doesn't seem to be an effect on the "other" area.

    c. The percentage of the TCEY that goes to the directed fishery seems high in Table 6-6 (see Errata) which shows it at 77% under status quo in 2025, even though currently the directed fishery limit is 48% of the TCEY. This occurs with a decline in Spawning Biomass over the next 5-10 years in the model. Regardless of

[3] Stewart et al., 2020. Analysis of the effects of historical discard mortality in non-directed fisheries. IPHC- 2020 AM096-INFO6. Accessible at: https://iphc.int/uploads/pdf/am/2020am/iphc-2020-am096- inf06.pdf.

the actual values in this table, the key outcome is that Alternatives 3 and 4 result in a higher percentage.

4. The analysis' conclusion that O26 bycatch reductions offer no benefit to the SSB does not make sense. If there is a reduction in bycatch mortality, how can that reduction not accrue to the directed fishery and/or to the SSB. If there isn't a 1:1 benefit to the directed fishery, then what is happening to the fish? Would they not provide a benefit to the SSB if the directed fishery isn't harvesting them?

5. The model does not include the effect of under-26 inch (U26) bycatch on the TCEY (Total Constant Exploitation Yield) and the directed fishery.

    a. The IPHC incorporates the impact of U26 bycatch as part of arriving at the TCEY for each regulatory area. The anticipated O26 bycatch is then subtracted to arrive at FCEY – those halibut that will be available to the directed fishery. The treatment of U26 is particularly important in the first few years of the simulation as is appears the biggest differences among alternatives are occurring in U26 usage. The IPHC includes the effects of U26 in each year's TCEY calculation, even if they are spread out over the entire coastwide TCEY. Treatment of U26 did not seem so crucial when all sources of PSC were under consideration, but now that the focus is on only the A80 sector, these effects are much more important.

    b. In addition, the amount of halibut allocated to Canada is augmented by 50% of the U26 bycatch in the Alaska areas. This certainly affects the directed users in Area 4, as it does all Alaska directed users.

    c. Also, the DEIS does not show how reductions in U26 bycatch will benefit the directed users throughout the range in future years.

6. The spatial effects in the Bering Sea are not accounted for in the model. The variability in year-to-year PSC usage by individual IPHC Regulatory Area is potentially a large contributor to variability in directed fishery limits, but is not included in the current analysis as the focus is at the level of the entire BSAI. The model outputs are in relation to ALL of Area 4, with the inclusion of 4A and 4B with Area 4CDE. So the model is calculating effects that are for the entire BSAI rather than for just the Bering Sea. It is Area 4CDE where directed halibut availability is most affected by the magnitude of A80 bycatch, occurring mainly on the shelf. Bycatch could be reduced in Areas 4A and 4B while increasing in 4CDE. It is possible for PSC removals in 4CDE to cause a negative TCEY in this area, resulting in no directed fishery in this area

7. The no-recruitment scenario (extreme low scenario for Spawning Biomass (SB)) may not be the best way to investigate the effect of Element 8 (application of the 30:20 control

rule to the PSC limit). This is because the dynamic Relative Spawning Biomass is used to determine the status which accounts for recruitment. As stated in point b) on page 23, "... *changes in stock status are insensitive to changes in recruitment regimes, and other life history changes and only sensitive to changes in fishing mortality levels. In these results, this means that the population is unlikely to fall below 30% of unfished spawning biomass unless the TCEY or PSC limits are large.*" The low recruitment scenario will have a feedback on the fishing mortality because the biomass will decline and fishing intensity will increase, and this is seen in Figure A2-4, but it takes 40 years to get there. Also, the Control Rule 0 run indicates that the 30:20 control rule was not applied to the directed fishery limit as well. An important comparison is between the Control Rule applied only to the directed fishery, and CR applied to both the directed fishery and the PSC limit.

VI. Element 8, and Effects on the SSB:

Another distinct and problematic aspect of the model, and the resulting analytical narrative, is the treatment of Element 8. This element was requested by stakeholders and added at the February NPFMC meeting in order to illustrate the effect of more steeply reducing PSC caps in times of low halibut abundance, or when the coastwide stock is below B30. This was suggested in response to observations in October 2019 that none of the alternatives as written had an appreciable effect on the Spawning Stock Biomass (SSB), even at low levels of abundance.

Apparently, the current operating model inputs/assumptions regarding the abundance indices did not go below B30. However, the SSC had recommended that the modelers provide a scenario that DID assume very low abundance indices, well below B30, which resulted in the clear conclusion in the DEIS (Appendix 2) that imposing Element 8 in those instances reduced the PSC cap to lower levels, and did indeed have an effect on the SSB.

A related issue is the imposition of a floor no lower than 1000 metric tons (for all sectors combined at that time) on each alternative. That barrier would not permit the PSC cap to go down to very low levels in response to very low levels of halibut abundance, and would thus not be protective of the halibut stock under very low scenarios.

In order to illustrate the potential effect of Element 8, indeed the effect of very low halibut abundance, the cap would need to be allowed to go below the floor. The analysts only provided the results of Alternative 4 using Element 8, and did so both with and without a floor.

Finally, the analysis should acknowledge the clear need for an eventual rule to include management responses to low levels of abundance. This condition should be reflected in the operating model itself, not just in a separate scenario as it is currently. All managed species fisheries in the Council purview operate with rules that include the management response to low levels of abundance. Council management of the halibut bycatch fishery should as well. A

system for management at low abundance of halibut would need to be part of any action alternative.

VII. Other DEIS Issues and Conclusions:

1. Equity needs to be defined and measured:

This action sprang from the Council's determination in June 2015 that bycatch reduction should be further considered, and the Council's subsequent decision that abundance-based management was the best way to proceed. The clear connection between halibut abundance and the directed halibut fishery is captured in the purpose and need statement:

"When halibut abundance declines, PSC becomes a larger proportion of total halibut removals and thereby further reduces the proportion and amount of halibut available for harvest in directed halibut fisheries".

Refer to Page 3, bar graph on proportions, with average proportions from 2002-2011 and from 2012 to 2019.

That was the nut of the matter then, and it remains a driving issue for this Council. The signal that was flashing five years ago has become blindingly clear, as halibut abundance has declined and the proportion available to the directed fishery has further declined. However, this severe and growing lack of equity between the two user groups has not been directly addressed in the analysis, and needs to be highlighted by additional language in the Council objectives. We recommend making clear what "providing for the directed fishery" actually means. We propose that equity be the goal, and that equity be described in relation to the historic proportion of halibut available to the directed fishery before the current decline that began in 2011.

Also, none of the performance metrics have been explicitly designed to measure the proportional change, and the attainment of equity. Indeed, there has been very little discussion by the Council of the performance metrics, which were constructed by the working group in response to some suggestions gathered by the now defunct stakeholder committee.

The directed halibut fishery stakeholders proposed a performance metric in 2019 that addressed the equity issue, but it was not chosen by the working group, and the Council passed the working group recommendations with little discussion.

To address equity, we ask the Council to add language to one of the Objectives and add a Performance Metric.

Recommended addition to the Objective: "Provide for directed halibut fishery operations in the Bering Sea." We request the addition of ". . . at a level that achieves equity through

providing for the historic average proportion of directed halibut use (FCEY?) from 2002 to 2011."

Recommended additional performance metric: Number of years that the proportion of halibut available to the directed fishery compared to the halibut harvested by the bycatch fishery is equal to the historical proportion of those fisheries in the period 2002 through 2011. (higher is better)

We also request that the analysis address the extent to which each alternative meets this performance metric.

2. **Status Quo Starting Point is counter to the Council objectives:**

It is clear from the analysis that any rule that adopts the current usage as a starting point is not going to make a difference in the directed fishery, or likely in the halibut stock.

As illustrated on page 21, the directed fishery would have been worse off under Alternative 2 (which uses the current status quo cap as a starting point) from 2013 though the present than it was and is under status quo. Over the years, the BSAI directed fishery has fallen further, and the 4CDE directed fishery catch limit has threatened to fall to zero. The Council will not restore a measure of equity to the directed fishery unless the starting point is at or below the current use--and can continue to drop if abundance continues to decline.

Page 69 in the analysis shows that since 2015, when PSC cap reductions were approved and further reductions discussed, abundance has dropped by an additional 15% to 33%, depending on which of the Council's selected indices are used. No starting point should be selected that results in a PSC limit that is higher at 2015 levels of abundance than the cap set in 2015 (1745 mt); only Alternatives 3 and 4 meet this criterion. Alternative 2 would establish bycatch caps **higher at 2015 levels of abundance** than the 1745 mt limit approved by the Council—clearly a step away from the objectives of providing for a directed fishery.

3. **Trawl survey as index**

It is also clear that using the trawl survey as an index provides for a large disconnect in this action. The U26 fish portion of the trawl survey numbers have less of an immediate impact on the calculation of the halibut available to the directed fishery than do the O26 fish in that survey, and the O26 fish captured in the longline survey.

VIII. <u>Comments on the Social Impact Assessment</u>:

1. **St. Paul's Dependency on Halibut**:

CBSFA believes the Initial Review Draft Social Impact Assessment (SIA) that is included as an appendix to the ABM DEIS, does a good job of describing St Paul's halibut dependency, noting

for example that from 2010-2019 "the St Paul halibut fleet was the highest producing halibut fleet of any community in any CDQ region" and was exceeded among all Alaska communities only by the GOA communities of Homer and Kodiak (see SIA p. 79). The SIA further notes that "the St. Paul halibut fleet is 100% dependent upon BSAI halibut…with virtually no revenue diversification" (SIA p. 79).

CBSFA and the entire community of St. Paul are proud of their achievements in this regard. Pursuant to the directives of the CDQ Program, CBSFA has used the development and maintenance of a local halibut fishery as a major source of employment, income, and subsistence for the community and its members, hence its efforts with the NPFMC and the IPHC to both reduce halibut PSC limits in 2015 and construct a halibut abundance-based management system that is responsive to conserving the resource and providing for directed halibut fishing operations in the Bering Sea.

2. **Regulatory Context, National Standard 4 Guidance Missing**:

There is a topic in the SIA section on the Regulatory Context (see SIA pp. 3-4) which CBSFA finds is missing. The SIA indicates in this section that its assessment of the proposed action is guided largely by MSA National Standard 8, NEPA, and Executive Order 12898 regarding Environmental Justice in Minority and Low Income Populations. CBSFA believes that in addition to these, an important guide to SIA and the NPFMC is National Standard 4 – Equity in Allocations, and more specifically the NMFS guidelines to National Standard 4 (Section 3 Factors in Making Allocations) which state that **"[w]here relevant, judicial guidance and government policy concerning the rights of treaty Indians and aboriginal Americans must be considered in determining whether an allocation is fair and equitable."**[4]

The SIA has highlighted 17 Bering Sea halibut-dependent communities in its assessment, most of which are overwhelmingly Alaska Native. Many of these communities have been severely impacted by the status quo and several are no longer participants in the fishery. As such, failure to properly manage the groundfish fisheries responsible for halibut bycatch to the detriment of these Native communities may have already violated federal trust responsibilities and treaty rights towards Alaska Natives. The 'trust responsibility' is a legal principle that the U.S. Supreme Court noted in United States v. Mitchell (1983) is "the undisputed existence of a general trust relationship between the United States and the Indian people" and requires the federal government to support tribal self-government and economic prosperity, duties that stem from the government's treaty guarantees to protect Indian tribes and respect their sovereignty. The purpose behind the trust doctrine is and always has been to ensure the survival and welfare of Indian Tribes and people. This includes an obligation to provide those services required to protect and enhance tribal lands, resources, and self-government, and also includes

[4] See: 50 CFR 600.325

those economic and social programs which are necessary to raise the standard of living and social well-being of the Indian people to a level comparable to the non-Indian society.[5]

Since the current action, which is partly allocative in nature, could have a disproportionate impact on Alaska Natives, National Standard 4 is a key guide to the NPFMC's decision-making on this action. As noted in the National Standard 4 guidelines, the NPFMC must take into account the government to government relationships and treaties that the pertinent Tribal Governments have with the Federal Government and which may be affected by future NPFMC action. In the case of St. Paul and St. George in particular, as noted by the Department of Interior in 2015, the tribal governments and members have federally protected fishing rights, the protection of which is vitally important (see DOI Letter attached). The DOI letter further notes that this requires access to the halibut fishery resource at a level sufficient to sustain the local fishing economy and the subsistence needs of the Tribe.

Obligations by the federal government and its agencies towards the Pribilof Aleuts are further spelled out in the Fur Seal Act of 1983 (P.L. 98-129) and the Pribilof Islands Transition Act of 2000 (P.L. 106-562). The primary objective of both of these acts of Congress was to direct federal agencies and provide funding to "promote the development of a stable, self-sufficient enduring and diversified economy not dependent on sealing" in the Pribilofs which was understood in the Congressional Record as providing for the sustained participation of both Pribilof communities in the Bering Sea fisheries. Cognizant of these obligations and of the tragic history of the Pribilof Aleuts, both as slaves of the federally managed and highly profitable fur seal harvest, and during the World War II removal of the entire population to Funter Bay which resulted in the death of 30% of the Pribilof Aleut population due to neglect and mistreatment, Congress has further authorized and appropriated close to $150 million since 1983 for the development of harbors and other fisheries-related infrastructure on St. Paul alone, as well as enacted legislation such as the Crab Rationalization Program to protect, through regionalization, the stake of the Pribilof Aleuts in the fisheries that sustain them.

As noted by the SIA concerning CEQ guidance on NEPA, "the identification of a disproportionately high and adverse human health or environmental effect … on a low-income population, minority population, or Indian Tribe does not preclude agency action from going forward… Rather, the identification of such an effect should heighten agency attention to alternatives, mitigation strategies, monitoring needs, and preferences expressed by the affected community or population" (see footnote 4, SIA p. 4). In the context of ABM, directed halibut fishermen including those that are represented by CBSFA who are also members of the St. Paul Tribe, have expressed a clear preference for Alternative 4 of the action, which they believe and the DEIS shows, is most responsive to the purpose and needs statement and the NPFMC

[5] See: bia.gov/frequently-asked-questions

objectives, as well as to federal laws and trust responsibilities towards the Pribilof Aleuts and other Alaska Natives.

IX. Discussion Paper on Possible Approaches to ABM Halibut PSC Limits:

We have wrestled with the uncertainty created by the introduction of potential additions to the main action alternatives, several of which fall outside an abundance-based management action. Our comments on the inadmissible nature of two of the three discussion paper suggestions are below.

However, there was clarity provided in the discussion paper that added to our understanding of this action.

Table 2-2 (p. 9) and Figure 2-4 (p. 10) show that eight out of ten years may have resulted in PSC limits that could have potentially been constraining. Note that with implementation of deck sorting, the effective DMR in recent years has been 48-53%. For 2015 and prior years, it was closer to 80%. If the DMR under deck-sorting is applied to those prior years, then the PSC limit under the proposed 3x2 would NOT have been constraining. Note that 2019 has the highest "Encounter" in the last 10 years.

Figure 2-5 shows how disconnected the current PSC management is. From 2017-2019, both indexes have trended downward while A80 mortality has increased. Catch/Encounters from 2015-2019 has an upward trend while the indices have a downward trend over the same time period. That should not be allowed to happen in a properly managed fishery.

1. Lookup Table:

Of the three suggestions, only one is based on halibut abundance: the concept of using a look-up table rather than a continuous line to arrive at a PSC cap. Element 7 in the main motion is the use of a lookup table, and may be included in an alternative; the element is a relic of a proposed alternative from the freezer longline sector, removed in February by the Council. The freezer longline sector proposal used a 9 by 9 lookup table. This iteration uses what is actually a 3 by 2 lookup table, and is thus even more coarse in its results – as pointed out in the discussion paper. The discussion paper makes clear that a table with more dimensions would be more responsive to the changes in abundance in the indices, and would also allow for more stability. The paper does a good job of describing the potential volatility of a PSC cap which is based on very few steps in a stairstep approach.

If such an approach is taken, CBSFA would support a lookup table that is closer to 9 by 9.

In contrast to the Council's earlier direction – reflected in the February motion – to use only one index to determine halibut abundance, the lookup table uses both indices, the trawl survey and

the longline survey. Instead of breakpoints and the magnitude of the changes at those breakpoints expressed in Elements 4 and 5, the lookup table approach expresses those breakpoints in its definition of high, medium and low values, and in the magnitude of the PSC cap at the intersecting abundances. Clearly, the Council would be making decisions about those values in the same way they would be making decisions about the values expressed using Elements 4 and 5.

Perhaps the main contrast between the lookup table and the current alternatives is the use of indices. As stated, the lookup table uses both indices. The current Alternative 2 uses the trawl index; Alternatives 3 and 4 use the setline survey index. The use of quite different indices is one of the factors leading to the widely different outcomes of the two alternative types. If a new alternative is introduced with the use of both indices once again, there could be wide differences among the alternatives' outcomes caused in large part by the differences among the indices used.

We have no issue with using both indices – our original Alternative 4 used both indices, with the setline survey as the primary index. However, we would reject as unreasonable an alternative using both indices that did NOT give more influence to the setline survey. The setline survey is the index used by the IPHC to determine halibut abundance, and hence has a large impact on directed halibut fishery numbers. As such it is more applicable to the objectives of this action. The trawl survey captures a large percentage of smaller fish.

As proposed, the State's look-up table, with both indices currently at low levels, would place the PSC limit starting point in the low:low tier **with nowhere lower to go**. If abundance continues to drop, as it is projected to do based on the IPHC stock assessment, the full burden of conservation will again be placed on the directed fishery since the PSC limit would not be reduced. In essence, the look-up table equates the starting point to the floor and ties PSC limits to abundance only in coarse stairsteps upward. We believe this is a blunt tool for addressing the Council's identified objectives for this action. The Council would be better served by modifying Element 6 in Alternatives 3 or 4, which controls PSC responsiveness, if additional PSC stability is a Council objective.

We would ask the Council to very carefully consider the values in the lookup table and design them to achieve those objectives of the Council related to providing for a directed fishery. These objectives should include the language suggested in Section VII to help define the concept of equity.

If the Council decides to add the concept of a lookup table to the action, we would like the opportunity to develop a directed halibut stakeholder alternative that uses the lookup table approach, and also ensures that the most important aspects of Alternative 4 remain intact: appropriate breakpoints and values for low, medium and high; the lower starting point, and the application of Element 8 in response to very low levels of halibut abundance. The floor should

at least be as low as 496MT (the A80 share of 1000 MT), and Element 8 should be overriding if abundance declines below B30.

Finally, since the lookup table results would presumably be run through the same modeling process as the current process results, **it would remain imperative that the model shortcomings be effectively addressed.**

2. **Performance Standard Concept:**

As the discussion paper states, the performance standard concept as presented is not part of an abundance-based management strategy for halibut bycatch. Rather, it revolves around the current, status quo, fixed PSC cap. As such, the concept as drafted by A80 should be dismissed from this action.

In addition, as the discussion paper illuminates, the performance standard approach using a number of years is problematic when applied to this action. Should the Council desire to create a regulatory performance standard, a different method would need to be developed to account for the very direct, annual relationship between bycatch use assumptions and the halibut available to the directed fishery.

Conversely, should A80 desire to use a performance standard program, the Council may consider endorsing a voluntary program that is designed by A80 to best meet their needs and goals, upon the conclusion of this action.

3. **CDQ Compensation Concept:**

CBSFA has concerns with the consideration of this concept for several reasons, some of which were detailed in the discussion paper.

A. NEPA:

Under the National Environmental Policy Act (NEPA) this concept may lie outside the scope of the current action, which is focused on managing halibut based on abundance. The CDQ compensation concept assumes the current, status quo, fixed PSC limit of 1745 tons for A80, and as such is not linked to the NPFMC's ABM action. In addition, if the CDQ compensation concept were the action taken by the NPFMC, under NEPA standards it would likely be invalidated because the NPFMC and NMFS failed to adequately consider all the responses or because it failed to consider a wide enough range of alternate management measures, including those that would prevent damage to the environment or have conservation benefits.

B. Area 4CDE Catch Share Plan:

Broadly speaking, the compensation concept could be a useful tool to provide for directed halibut fishing operations in the Bering Sea under low abundance conditions, but ONLY if it was based on a management system in which PSC limits were indexed to halibut abundance, AND if conservation of the halibut resource remained a priority of the NPFMC's action.

Also, as noted by the discussion paper, as proposed, the benefits would be limited due to the Catch Share Plan applicable to area 4CDE. The Catch Share Plan includes CDQ users, non-CDQ commercial IFQ holders and subsistence/recreational sectors. Since only 46% of additional directed fishery pounds associated with a reduction to the A80 PSC limit accrues to the CDQ groups, this concept would fail to meet its intent to directly create additional catch opportunity for all user groups in the Bering Sea.

C. MSA:

Finally, as pointed out by the discussion paper, a direct allocation of any additional halibut catch limits to CDQ groups would require amending the CDQ Statute that is part of the MSA. This would require an act of Congress – perhaps as part of the long-pending reauthorization of the MSA, or some other germane fisheries-related legislation. This is unlikely and uncertain at this time. Moreover, such an initiative would likely be contentious among CDQ groups, over long-standing differences regarding the proper level of fisheries allocations between the groups, as well as with other user groups that might be excluded from this allocation.

X. <u>The MSA, the National Standards, and ABM</u>:

Congress enacted the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to create a "national program for the conservation and management of the fishery resources of the United States."[6] When the provisions of the original act were insufficient to fulfill the conservation purpose of the Act,[7] Congress passed the Sustainable Fisheries Act in 1996 to "put our fisheries back on a sustainable path."[8] The MSA also directs the Regional Fishery Management Councils to "exercise sound judgment in the stewardship of fishery resources."[9] The objectives of the MSA, particularly after the Sustainable Fisheries Act amendments, prioritize sustainability of the fishery resource over other objectives. Thus, any action by the Council must abide by that priority and cannot be "sound judgment" unless it does so.

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6 16 U.S.C. § 1801.

7 *See, e.g.,* 142 Cong. Rec. H11418, 11439 (Sept. 27, 1996).

8 142 Cong. Rec. S10794, 10811 (Sept. 18, 1996).

9 *Id.*

The overriding priority of fisheries management and any NPFMC action is to foster the long-term biological and economic sustainability of the nation's fisheries. Abundance-based Management of halibut and its derivative benefit of reducing bycatch at times of low abundance allows juvenile halibut to grow and contribute to the long-term sustainability of the population. Common sense compels the conclusion that bycatch reduction at low levels of abundance benefits the MSA's conservation objectives. The MSA requires that NPFMC action to promote these goals, yet the results of the DEIS minimize the conservation benefits of ABM. CBSFA believes that by addressing the recommendations made in sections IV, V, and VI of these comments, the DEIS will be more responsive to the MSA.

To further assist the Councils and NMFS in carrying out the requirements of the MSA, Congress mandated that all plans and regulations must be consistent with ten national standards,[10] several of which are pertinent to halibut ABM.

- **National Standard 1 - Optimum Yield.**

National Standard 1 requires the Council and NOAA Fisheries to establish harvest limits that prevent overfishing while ensuring, on a continuing basis, the optimum yield from each fishery.[11] Notably, halibut bycatch is the only major species fishery that is not managed by the NPFMC on the basis of the overall health and abundance of the resource. Indexing PSC limits to abundance would help optimize yield across the fisheries as halibut PSC mortality directly reduces the fishery yield available to the directed fishery.

The IPHC has steadily reduced directed halibut catch limits over the last two decades in response to a declining available halibut resource and the need to conserve total halibut biomass in the face of massive removals by fishery sectors outside the Commission's regulatory jurisdiction.[12] Yet the halibut PSC limits remained virtually unchanged for 20 years at levels set during a period of high halibut abundance, subject only to minor reductions with the adoption of voluntary measures sporadically implemented within the A80 and groundfish fisheries.[13] The NPFMC action in June 2015 which reduced overall PSC limits by 21% and A80 PSC limits by 25% was a significant, yet insufficient step in the right direction. Since 2015, the use of PSC by A80 has been under the PSC limits of 1745 MT and the sector has remained viable.

The imbalance between halibut PSC mortality permitted by the caps for the BSAI groundfish fisheries, and the yield available to the directed halibut fishery remains. At the NPFMC meeting in June 2015, CBSFA and other directed halibut stakeholders pointed out that only a 50-percent

[10] 16 U.S.C. § 1851.

[11] 16 U.S.C. § 1851(a).

[12] Leaman, et al. 2015. Considerations Concerning Bycatch Controls and Abundance-based Prohibited Species Catch Limits for Pacific Halibut in the Bering Sea/ Aleutian Islands. Joint NPFMC-IPHC Meeting: 26.

[13] Williams, G.H. Halibut bycatch limits in the 2014 Alaska groundfish fishery. Int. Pac. Halibut Comm. Report of Assessment and Research Activities 2014: 340.

reduction of halibut PSC could rebalance these fisheries and optimize yields among the various fishery sectors. The groundfish fisheries, including A80 and BSAI TLAS fisheries, could continue to function and remain economically viable at levels then under consideration. Furthermore, a reduction of 50 percent provided an appropriate buffer against lower TCEY in the future and would preserve more juvenile halibut to increase future fishery yields. CBSFA also noted that a decision by the NPFMC not to require these reductions would effectively close the directed fishery in Area 4CDE in favor of continued exploitation in the groundfish fisheries.

Neither the MSA nor the National Standard rules define optimum yield purely on financial terms. Keeping the profits of the A80 fleet virtually or entirely whole is not the "greatest overall benefit to the Nation", when directed halibut fishermen and their home communities are being progressively excluded from the fishery In the five-year period since 2015, the FCEY determined by the IPHC for area 4CDE has been so low as to make a directed halibut fishery unviable on at least two occasions. Keeping the 4CDE fishery viable required commitments made by the A80 sector to reduce halibut bycatch and mortality. This situation is unsustainable, inequitable and creates instability in the directed fisheries, and through the potential for emergency actions, the A80 sector and other groundfish fisheries as well.

- **National Standard 2 - Best Available Scientific information**

The proposed action is required to use the best available scientific information. If the intent of the Council model was to reproduce the IPHC modeling process, would it be more appropriate to use the IPHC model? The IPHC conducts their stock survey and assessment using peer-reviewed science; all products of the IPHC system use the best available science and should be incorporated into the analysis. Further, over the last five years, the IPHC has been engaged in further refining their management processes, and has developed a model, including a spatial model, that should be considered in the analysis of this action.

- **National Standard 4 – Equity in Allocations.**

National Standard 4 sets forth three requirements that must be met whenever fishing privileges are allocated: (i) the allocation must be fair and equitable; (ii) it must be reasonably calculated to promote conservation; and (iii) it must not allocate an excessive share of privileges to any particular group.[14] Failure to ensure a viable directed fishery in area 4CDE is inconsistent this standard.

The BSAI halibut fishery is allocated among various halibut user groups, including the CDQ, IFQ, charter, and subsistence sectors. The CDQ and IFQ halibut harvesters operate under true catch share management programs. In contrast, participants in other BSAI groundfish fisheries,

[14] C & W Fish Co. v. Fox, Jr., 931 F.2d 1556, 1563 (D.C. Cir. 1991); 16 U.S.C. § 1851(a)(9).

most notably A80, have no allocation of the halibut fishery resource.[15] As such, they are not entitled to any halibut per se. Instead, their significant impacts on halibut abundance—and thus the halibut available to the directed fishery—are merely an incident of their allocation in *other* fisheries under the BSAI Groundfish FMP.

That said, the A80 sector impacts halibut abundance at a grossly disproportionate rate. Over time, bycatch mortality in this sector has reduced halibut abundance approaching levels that could practically preclude the harvest of any halibut through a directed fishery in Area 4CDE. As the NPFMC allocates fishing privileges among participants in the various BSAI groundfish fisheries, it must take these impacts into account.

The NPFMC's allocation of the BSAI groundfish have dramatically different impacts on the conservation of halibut resources. When allocating a fishery to one sector or gear type would have an exponentially larger impact as compared to another—and when the allocation to the former could potentially destroy the economic viability of another fishery but an allocation to the latter would not—a decision to allocate resources to the more destructive sector or gear type cannot possibly be reasonably calculated to promote conservation. Nor would it be fair and equitable. As noted in the National Standard 4 guidelines, **an FMP objective to preserve the economic status quo cannot be achieved by excluding a group of long-time participants in the fishery**. This would be the case, if no action is taken on ABM and long-term participants in the directed halibut fishery are effectively excluded from the fishery.

The above is especially true when, as here, the NPFMC has the authority to establish effective, flexible, and practicable PSC limits based on abundance that would mitigate the effect of its allocation decisions. Any action that fails to exercise those powers to address the erosion of the halibut resource caused by its groundfish allocation decisions—and that fails to maintain even the already reduced directed fishing levels in Area 4CDE—would fail each of the requirements of National Standard 4.

Of further consideration under National Standard 4, and more specifically the NMFS guidelines is that **"[w]here relevant, judicial guidance and government policy concerning the rights of treaty Indians and aboriginal Americans must be considered in determining whether an allocation is fair and equitable."** As discussed earlier in these comments, the 17 Bering Sea halibut-dependent communities highlighted in the SIA are overwhelmingly Alaska Native and have been severely impacted by the status quo. Failure to properly manage halibut bycatch may have already violated federal trust responsibilities and treaty rights towards Alaska Natives.

Since the current action is partly allocative in nature and could have a disproportionate impact on Alaska Natives, National Standard 4 guidelines are important to the NPFMC's decision-making

[15] 50 C.F.R. § 600.325(c)(1) ("An 'allocation' or 'assignment' of fishing privileges is a direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete user groups or individuals.")

on this action and require that the NPFMC take into account the "rights of treaty Indians and aboriginal Americans." In the specific case of St. Paul, many of the federal government's obligations were spelled out in various of acts of Congress adopted since the phase-out of the commercial fur seal harvest in 1983 (see Section VIII).

- **National Standard 8 – Sustained Community Participation.**

National Standard 8 requires the Council and NMFS to adopt management measures that account for the importance of fishery resources to local fishing communities. It requires that management measures provide for the sustained participation of local fishing communities, and that fishery management decisions be tailored to minimize the economic impacts on communities that depend on fishery resources.

When proposing rules for National Standard 8, NMFS succinctly outlined the priorities in addressing economic impacts. The rules are clear that only if alternatives are conservation-neutral do economic impacts come into play.

> In successive drafts of standard 8, Congress clarified that the importance of fishery resources to fishing communities must be considered within the context of the conservation requirements of the Magnuson-Stevens Act by including in the final standard the phrase ''consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks).'' Therefore, the proposed guidelines emphasize that national standard 8 must not compromise the conservation goals of the Magnuson-Stevens Act.[16]

In the final rule, NOAA was equally, if not more, pointed.

> This standard requires that an FMP take into account the importance of fishery resources to fishing communities. This consideration, however, is *within the context of the conservation requirements* of the Magnuson-Stevens Act. Deliberations regarding the importance of fishery resources to affected fishing communities, therefore, must not compromise the achievement of conservation requirements and goals of the FMP. **Where the preferred alternative negatively affects the sustained participation of fishing communities, the FMP should discuss the rationale for selecting this alternative over another with a lesser impact on fishing communities. All other things being equal, where two alternatives achieve similar conservation goals, the alternative that provides the greater potential for sustained participation of**

[16] NOAA, Magnuson-Stevens Act Provisions; National Standard Guidelines, 62 Fed. Reg. 41,907, 41,910-11 (Aug. 4, 1997).

> **such communities and minimizes the adverse economic impacts on such communities would be the preferred alternative**.[17]

The rules are thus clear that only if alternatives are conservation-neutral do economic impacts come into play

St. Paul's dependence on the BSAI halibut fishery is well documented in the SIA and earlier submissions. However the dependence of St. Paul and other local fishing communities in Alaska is measured, it stands in stark contrast to Seattle, Washington, where all of the A80 fleet is based. Seattle has thriving, broad-based economies that are many orders of magnitude larger than the halibut dependent communities in the Bering Sea.

As a result of excessive halibut PSC limits in other sectors, the directed fishery harvest limits for St. Paul Island and other fishery-dependent communities have been dramatically reduced. These levels are economically unsustainable in the longer term. They affect the viability of the local halibut fishery and the important role it plays in the community as documented in the SIA, and the ability to maintain and sustain the considerable fisheries-related infrastructure that has been built on St. Paul since 1983 to provide a platform for the Bering Sea's commercial fisheries and the local fishing operations.

Further reductions in halibut PSC are therefore necessary to conserve the halibut resource, avoid dire economic consequences to St. Paul Island and other halibut-dependent fishing communities, and to ensure their continued participation in the fishery going forward. Linking PSC limits to abundance would result in the sharing of the burdens of conservation between directed and PSC users, especially at low levels of abundance, and is responsive to the requirements of National Standard 8.

- **National Standard 9 – Bycatch.**

National Standard 9 provides that conservation and management measures "shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch." Applicable regulations do not permit Councils to address bycatch in any way other than wholeheartedly.

> Inconvenience is not an excuse; bycatch must be avoided as much as practicable, and bycatch mortality must be reduced until further reductions are not practicable. Adherence to the national standards is not discretionary.[18]

[17] 50 C.F.R. § 600.345(b)(1).

[18] NOAA, Magnuson-Stevens Act Provisions; National Standard Guidelines, 63 Fed. Reg. 24,212, 24,224 (May 1, 1998).

In promulgating the National Standard rules, NMFS explained further that "the Councils will need to prioritize their actions to address those fisheries where actions to reduce bycatch can have the greatest impact."[19] As explained earlier in these comments, halibut PSC currently accounts for the majority of halibut removals in the BSAI. Under ABM, there are reasonable and practicable means to minimize this bycatch, consistent with the requirements of National Standard 9.

Despite predictions of doom and gloom, previous mandatory PSC reductions in this and other fisheries and sectors have been achieved without significant disruption of the regulated fisheries. This is not surprising. Mandatory PSC limits are forcing mechanisms that drive innovation in the fishery, and move participants to develop creative means to avoid PSC while continuing to prosecute and profit from their target fishery.

There is ample evidence that meaningful halibut bycatch reductions are achievable, both in the form of prior experience with fishing regulations, and in the academic literature addressing this issue. It should be noted that the ability of regulatory requirements to reduce halibut bycatch has been recognized for 30 years when a 50 percent reduction was mandated for foreign fishery fleets operating in the BSAI in 1982 through 1985.[20]

This has been borne out by the facts since the NPFMC action in 2015 reduce PSC limits. The A80 and other groundfish fisheries have adopted innovations such as the use of excluder devices to reduce bycatch levels; deck sorting; and spatial/temporal changes in fishing behavior that have reduced PSC interactions. Given prior experience, CBSFA anticipates a similar response when mandatory halibut PSC limits are indexed to abundance and further reductions in PSC would be required at low levels of abundance.

In estimating the impact of a bycatch reduction, it can be tempting to simply assume that to achieve a given percentage reduction in bycatch there will be a proportional reduction in fishing effort, and therefore harvest. Such an approach is unrealistic, grossly conservative and is belied by historical fishing data and basic economic analysis. Vessel operators will seek to maximize their catch while minimizing bycatch to the extent necessary to meet any bycatch limits. To the extent that the halibut encounter rate can be reduced, the bycatch can also be reduced without necessarily reducing the A80/groundfish harvest.

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[19] Id. at 24,227; see also 62 Fed. Reg. 41,907, 41,912 (Aug. 4, 1997) ("Because limited resources are available to the Councils and NMFS to address bycatch problems, and a variety of bycatch problems exists in most fisheries, each Council should identify and prioritize the bycatch problems in its fisheries, based on the benefits to the Nation expected to accrue from addressing these problems."); id. at 41,911 ("This standard applies to all existing and planned conservation and management measures, because most of these measures can affect amounts of bycatch or bycatch mortality in a fishery, as well as the extent to which further reductions in bycatch are practicable.") (emphasis added).

[20] Report of the Halibut Bycatch Work Group, IPHC, Technical Report No. 25, 1992, at 4. ("Of special note was the scheduled reduction of halibut bycatch rates specified for the Bering Sea Aleutian Islands area (BSAI) foreign trawl fisheries. This resulted in a 50 percent reduction in bycatch rates between 1982 and 1985.").

Use of the word “practicable” necessarily implies the exercise of agency judgment about the level of acceptable impact resulting from efforts to minimize bycatch and bycatch mortality. Where, as here, bycatch mortality threatens the continued viability of a longstanding and important directed fishery—and the record conclusively establishes that other fisheries can be prosecuted at great profit in most years—it is not impracticable under National Standard 9 to require lower PSC limits on other fisheries in order to achieve the objectives of National Standards 1, 4, and 8.

Thank you for considering our comments on the ABM action. CBSFA believes that the deliberative Council process has the potential to result in an equitable outcome for all halibut users, and one that will benefit the halibut resource and the health of the North Pacific.

Sincerely,

Phillip Lestenkof, President

Central Bering Sea Fishermen’s Association

United States Department of the Interior
OFFICE OF THE SECRETARY
Washington, DC 20240

MAY 2 6 2015

The Honorable Eileen Sobeck
Assistant Administrator for Fisheries
National Oceanic Atmospheric Administration
United States Department of Commerce
1404 Constitution Avenue, NW, Room 5128
Washington, DC 20239

Dear Ms. Sobeck:

Earlier this year, I wrote to Deputy Assistant Administrator Rauch regarding the issue of halibut bycatch and the Aleut Community of St. Paul's (Tribe) federally protected fishing rights in the Bering Sea. I appreciate the work National Oceanic Atmospheric Administration (NOAA) has done to date to ensure that the Tribe's harvest quota is not further diminished while the regulatory community works to address the issue of halibut bycatch. Pursuant to our government-to-government relationship with federally recognized tribes, protection of tribal fishing rights is a vitally important shared role of our respective agencies.

Based on recent discussions with the Tribe, we understand that NOAA intends to commence a rulemaking regarding halibut bycatch based on recommendations to be provided by the North Pacific Fishery Management Council (Council). We are hopeful that the Council will recommend, and NOAA will propose in its rulemaking, an approach to regulate the halibut fishery through meaningful reduction in halibut bycatch. We understand under current conditions a reduction of 45 percent to the overall halibut prohibited species catch (PSC) caps in the Bering Sea groundfish fisheries would limit the directed halibut fisheries in the Central Bering Sea to the same volume as in 2014 and 2015. Given that over the past 10 years the Tribe's directed halibut fishery has been severely impacted by the increase in bycatch of halibut by other users, maintaining the same volume as 2014 and 2015 allows only a minimal, maintenance fishery for the Tribe.

We appreciate NOAA's work to ensure that the Tribe's harvest quota was not further diminished this year. The Tribe's longstanding use and reliance on the fishery for the community's health, welfare, and livelihood has been heightened since 1983 with the end of commercial fur seal harvesting. Access to the fishery resource at a level sufficient to sustain the local fishing economy and subsistence needs of the Tribe is critical to its health and welfare. The fishery not only provides employment and revenue to satisfy the community's most basic needs, it reflects a way of life that has defined this tribal community for generations.

As we explained in our letter dated February 19, 2015, we intend to share with you soon the Department of the Interior Solicitor's Office analysis of the Tribe's federally reserved fishing rights. My staff and attorneys within the Solicitor's Office have initiated conversations with NOAA officials and attorneys regarding the Tribe's federally reserved fishing rights.

My office continues to stand ready to assist NOAA and the Tribe on this important matter. Should the Council issue final action on halibut bycatch at the June 2015 meeting that does not meet the needs of the Tribe, the Department will support NOAA in taking action to ensure a viable directed halibut fishery for the Tribe for 2016 and beyond.

Thank you for your hard work to help us meet our responsibilities to Alaska Natives.

Sincerely,

Kevin K. Washburn
Assistant Secretary – Indian Affairs

Cc: Chairman Amos Philemonoff, Sr.
Aleut Community of St. Paul Island

Central Bering Sea Fishermen's Association

Comments on the North Pacific Fishery Management Council April 2021 Agenda Item C2 Concerning BSAI Halibut Abundance-based Management (ABM) Amendment 80 of PSC Limit Initial Review Draft Environmental Impact Statement (March 2021)

Attachment 2

W170°

N57°

CENTRAL BERING SEA FISHERMEN'S ASSOCIATION

Post Office Box 288 ▲ St. Paul Island, Alaska 99660 ▲ Phone (907) 546-2597 ▲ Fax (907) 546-2450

May 26, 2015

Mr. Dan Hull
Chairman
North Pacific Fishery Management Council
605 West 4th Street
Anchorage, Alaska 99501

Mr. Glenn Merrill
Assistant Regional Administrator
National Marine Fisheries Service, Alaska Region
P.O. Box 21668
709 West 9th Street, Room 420
Juneau, Alaska 99802

Re: Central Bering Sea Fishermen's Association Comments on the North Pacific Fishery Management Council June 2015 Agenda Item Concerning Halibut PSC Reduction and the Draft Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis for a Proposed Amendment to the Fishery Management Plan for Groundfish of the Bering Sea/Aleutian Islands Management Area (May 2015).

Dear Chairman Hull and Mr. Merrill:

The Central Bering Sea Fishermen's Association (CBSFA) appreciates the opportunity to provide the North Pacific Fishery Management Council (Council) with comments on the June 2015 Agenda Item Concerning Halibut PSC Reduction and the Draft Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis for a Proposed Amendment to the Fishery Management Plan for Groundfish of the Bering Sea/Aleutian Islands Management Area, dated May 2015 (Draft EA/RIR/IRFA).[1]

[1] Materials cited in these comments have been submitted electronically by disk delivered directly to NOAA's Anchorage Office. CBSFA reserves the right to provide additional comments on the EA/RIR/IRFA when it is finalized.

CBSFA is the management organization for St. Paul Island under the Western Alaska Community Development Quota Program (CDQ). 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 commercial fisheries to CBSFA. In turn, CBSFA manages these allocations to promote social and economic development at St. Paul Island. CBSFA is actively engaged in the Pacific halibut fishery in IPHC Area 4CDE, and is committed to developing a fishery-related economy that enhances the social and economic well-being of our community. As such, CBSFA has a direct interest in ensuring that Pacific halibut stocks are managed to ensure a viable and sustainable fishery that is equitably utilized among user groups.

To help address these concerns, CBSFA and other directed halibut users in the Bering Sea and the Gulf of Alaska formed the Alaska Concerned Halibut Users (ACHU). ACHU is an informal coalition organized in response to the declining status of halibut in the Bering Sea, as well as the need to reduce bycatch in groundfish fisheries.

CBSFA strongly supports Council action to require a reduction of 50 percent in halibut prohibited species catch (PSC) caps in the BSAI groundfish fisheries. Bycatch reduction is first and foremost a resource conservation issue. More than 62 million pounds of halibut were removed as bycatch over the last decade in the Bering Sea/Aleutian Islands (BSAI) alone.[2] Of this, approximately 51.5 percent were removed as juveniles, which never contribute to future fishery yield and which never recruit to the fishery.[3] Quite simply, the sustained removal and killing of millions of pounds of juvenile halibut annually as bycatch—in conjunction with significant removals of larger fish—has crippled the directed fishery. This commonsense connection has been confirmed by scientific research and summarized by the IPHC.[4] It has now become widely recognized by those focused on maintaining

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[2] Williams, G.H. 2015. Incidental catch and mortality of Pacific halibut, 1962-2014. Int. Pac. Halibut Comm. Report of Assessment and Research Activities 2014: 327-328.

[3] Int. Pac. Halibut. Comm. (2005-2014) IPHC Annual Meeting Handouts.

[4] "The IPHC has identified the biological impacts of halibut bycatch to be: 1) reduced yield due to reduced recruitment and increased mortality of adults; 2) out of area or "downstream" impacts where halibut removals in one area reduce recruitment and yield in another area; and 3) reduced spawning biomass and egg production." Report of the Halibut Bycatch Work Group II September 5, 2014 at 21.

this unique resource that the impact of bycatch is widespread throughout the North Pacific "affect[ing] directed halibut fishermen and dependent communities in the commercial, recreational, and subsistence sectors throughout Alaska, and coastwide through Canada, Washington State, Oregon, and Northern California."[5] Put another way, every pound of unnecessary bycatch represents waste, a squandering of nature's bounty and a lost opportunity to restore the resource and sustainably harvest it. In this sense, bycatch caps are distinct from allocations. Bycatch does not directly benefit a fishery or its users, and amounts of bycatch allowed under a regulatory limit are not allocations of the halibut fishery resource. Achieving reductions in bycatch, however, benefits both the halibut resource, and its directed users who have been allocated a catch share or a regulatory harvest right. Thus, for a well-managed resource, it is vital that this unnecessary waste is limited to the maximum extent possible.

Bycatch reduction in the BSAI—especially in Area 4CDE—has become critical to the continued viability of the directed fishery. Over the past decade, bycatch mortality in the BSAI has increased to 60 percent of total removals, while directed fishery landings have declined to just 34 percent of removals.[6] These trends are even more pronounced in Area 4CDE, where directed fishery landings have decreased by 62 percent over the past five years in the face of ever-increasing bycatch mortality.[7] Despite efforts reported at various Council meetings to reduce halibut PSC voluntarily, Amendment 80, BSAI TLAS and other bycatch fisheries actually increased their total bycatch

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[5] Letter from Alaska Longline Fisheries Association, Alaska Marine Conservation Council, Alaska Trollers Association, Aleut Community of St. Paul Tribal Government, Aleutians East Borough, Aleutian Pribilof Island Community Development Corporation, Central Bering Sea Fishermen's Association, City of St. Paul Island, Alaska Coal Point Seafood Company, Fishing Vessel Owners' Association, Halibut Association of North America, Homer Charter Association, North Pacific Fisheries Association, Pioneer Alaskan Fisheries, Inc., Tanadgusix Corporation, and United Fishermen's Marketing Association to Alaska Congressional Delegation dated April 22, 2015.

[6] Stewart, I.J. 2015. Overview of data sources for the Pacific halibut stock assessment and related analyses. Int. Pac. Halibut Comm. Report of Assessment and Research Activities 2014: 107,110; Williams, G.H. 2015. Incidental catch and mortality of Pacific halibut, 1962-2014. Int. Pac. Halibut Comm. Report of Assessment and Research Activities 2014: 327-328; Draft EA/RIR/IRFA, at 74, Table 3-15.

[7] International Pacific Halibut Commission. 2015. Total and Fishery CEY and removals by Areas, 1995-2014, available at www.iphc.int/meetings/2015am /bb/02_06_TotalandFisheryCEYandRemovals.pdf.

mortality in 2014.[8] These bycatch users are estimated to have killed and discarded far more individual halibut than were landed in the directed fishery in all of Alaska. ***This was seven times more individual halibut than the directed fishery landed in the BSAI, based on mean weight***.[9]

These trends must be reversed to: (1) conserve the resource as a whole, (2) preserve a viable directed fishery in Area 4CDE, and (3) in the longer term, conserve directed halibut fisheries coastwide. The 2015 directed fishery limit was set at the minimum level necessary to preserve a maintenance fishery in Area 4CDE. These limits, which were set by the IPHC with the encouragement of NOAA Assistant Administrator for Fisheries, Eileen Sobeck,[10] were expressly predicated on voluntary reductions in halibut PSC by other sectors in 2015 and future action by the Council to reduce halibut PSC. Efforts to voluntarily reduce bycatch in the BSAI did not result in sufficient reductions in 2014, and we cannot know until the end of 2015 whether or not the promised voluntary reductions will be achieved this year, as high-bycatch fisheries have not yet been prosecuted and the performance to date this season is unlikely to be representative of the year.[11] Based on prior experience, however, we do know that the willingness of certain industry members to implement the reasonable measures necessary to meet these objectives is uncertain, at the very best. Decisive action by the Council is now required.

I. The St. Paul Island Community Depends on the Directed Halibut Fishery

St. Paul Island relies on a viable directed halibut fishery. Historically, residents of St. Paul Island, many of whom are Unangan (Aleut), engaged in the commercial fur seal harvest. After the commercial fur seal harvest was phased out in 1983, however, St. Paul's residents turned to halibut for their

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8 Draft EA/RIR/IRFA at 83, Table 3-17.

9 Stewart, I.J. Pers. comm. (March 23, 2015); NMFS. 2015. Halibut Mortality Estimate, Jan. 8, 2015, in Draft EA/RIR/IRFA at 74, Table 3-15; Forsberg, J.E. 2015. Age distribution of the commercial halibut catch for 2014. Int. Pac. Halibut Comm. Report of Assessment and Research Activities 2014: 83; Stewart, I.J. 2015. Overview of data sources for the Pacific halibut stock assessment and related analyses. Int. Pac. Halibut Comm. Report of Assessment and Research Activities 2014: 107.

10 Letter from Eileen Sobeck, NOAA Assistant Administrator for Fisheries, to Dr. Bruce Leaman, IPHC Executive Director (Jan. 20, 2015).

11 Draft EA/RIR/IRFA at 83.

survival, at the direction of the U.S. Government. They developed a thriving local halibut fishery. This, in turn, drove critical federal, state, local, and private infrastructure investment. Examples of these investments, which continue to this day, include construction of a small boat harbor to provide safe and sufficient moorage for our local fishing vessels and to enhance the community's ability to generate future revenue; the purchase of a tanker to provide for the safe transport of fuel through our community and to ensure regular scheduled delivery service to our fleet during the halibut season; as well as other critical investments in the harbor, port infrastructure, fuel farm, processing plants, and vessels. These investments and development gave St. Paul Island's residents hope for a sustainable future at a critical time.

Today, the halibut fishery is the primary source of employment and income for St. Paul residents. Of the 450 residents of St. Paul Island, as many as 110 participate directly in the CDQ/IFQ halibut fishery in the summer months, and depend on a viable halibut fishery for their livelihoods and survival. This figure—which includes 18 to 20 fishermen/vessel owners who, in turn, hire an average of 5 to 6 crew members and baiters per vessel—represents more than 35 percent of the St. Paul Island's working-age population.[12] No source of employment or economic development is more important to the economic prosperity of the community's residents.[13]

St. Paul Island's reliance on the halibut fishery is not limited to direct employment in the fishery itself. Halibut is also an important and culturally significant subsistence fishery that is key to St. Paul Island's cultural and psychological well-being. Further, numerous other residents of St. Paul are employed in businesses that provide critical support services to the halibut fishery and fleet, including fuel, storage, and catch processing and packaging. Like the fishermen, these individuals are also directly dependent upon a viable and economically sustainable halibut fishery. Finally, the fishermen/vessel owners who are engaged in the directed halibut fishery are the community's only small business owners. They are the source of economic opportunity, as well as the community's political and business leadership. They are the compass of the community.

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[12] State of Alaska. 2015. DCCED, Community and Regional Affairs. Community Database Online.

[13] The snow crab fishery developed later, in the early 1990s. The economic activities surrounding crab processing and deliveries are important to St. Paul Island's economy as a whole through fisheries taxes; leasing and service agreements; and sales of fuel and supplies. However, fewer of St. Paul Island's residents are directly employed in the crab fishery.

St. Paul Island is not unique in this respect. Rather, it is simply one example of the many communities throughout the Bering Sea and Alaska that depend upon the directed halibut fishery today, just as they have for generations. In short, the importance of a viable and sustainable directed halibut fishery to the residents of St. Paul Island and other coastal Alaskan communities cannot be overstated.

Unfortunately, the economic and cultural base of St. Paul Island is in jeopardy yet again. Having transitioned its economy to halibut at the U.S. Government's direction, the same government's failure to place appropriate and necessary limits on halibut PSC now threatens to deny the people of St. Paul Island access to the resource they were encouraged to depend upon. The inequities of this compelled transition to a resource that, to date, the government has failed to protect only highlights the need for swift and decisive action by the Council.

II. The Impact of Halibut PSC on Directed Fisheries

All halibut PSC fisheries have some impact on halibut abundance and yield available to the directed fishery. However, the impacts of the various sectors differ significantly. In 2014, for example, halibut PSC mortality in the Longline CV sector was 9,921 pounds net weight. In contrast, 2014 halibut PSC mortality in the Amendment 80 sector was 3,602,900 pounds net weight, or more than 363 times greater.[14] Halibut PSC mortality in the BSAI TLAS was 1,185,534 pounds net weight for the same year.

Given the dire situation faced by the directed halibut fishery, some level of halibut PSC cap reduction is required across the BSAI fisheries. Much greater reductions may be required, however, in those fisheries with the greatest impacts, as discussed below.

A. Halibut PSC in the BSAI Trawl Fisheries Is Unacceptably High and Grossly Disproportionate to Directed Fishery Landings

Halibut PSC, especially within the Amendment 80 sector and BSAI TLAS, has had a devastating impact on halibut stocks and the Area 4CDE directed fishery. Between 2005 and 2014, the Alaskan groundfish fishery killed and

[14] Draft EA/RIR/IRFA at 83, Table 3-17 (converted to pounds net weight).

discarded a total of 97.3 million pounds of halibut as bycatch coastwide in Alaska.[15,16] 62.6 million pounds of that bycatch was taken in the BSAI.[17]

Today, bycatch from the BSAI trawl fishery is the single greatest source of halibut mortality. In 2014, trawl bycatch mortality in the BSAI exceeded 5 million pounds net weight.[18] This consisted of approximately 1.052 million predominantly juvenile halibut, weighing an average of just 4.76 pounds per fish.[19] In contrast, the directed fishery in the BSAI landed 3.28 million pounds net weight. This consisted of approximately 149,000 halibut, at an average weight of 22.1 pounds per fish.[20]

By way of comparison, the BSAI trawl fishery alone removed more individual halibut in 2014 than the directed fishery in the entire State of Alaska, and **seven times** more halibut than the directed fishery landed in the BSAI.[21] (Figure 1)

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15 Williams, G.H. 2015. Incidental catch and mortality of Pacific halibut, 1962-2014. Int. Pac. Halibut Comm. Report of Assessment and Research Activities 2014: 326-328.

16 NOAA Fisheries. 2015 Halibut Mortality Estimate. January 8, 2015, in Draft EA/RIR/IRFA at 74, Table 3-15.

17 NOAA Fisheries. 2015 Halibut Mortality Estimate. January 8, 2015, in Draft EA/RIR/IRFA at 74, Table 3-15; Draft EA/RIR/IRFA at 83, Table 3-17.

18 NOAA Fisheries. 2015 Halibut Mortality Estimate. January 8, 2015, in Draft EA/RIR/IRFA at 74, Table 3-15.

19 Stewart, I.J. Pers. comm. (March 23, 2015).

20 Forsberg, J.E. 2015. Age distribution of the commercial halibut catch for 2014. Int. Pac. Halibut Comm. Report of Assessment and Research Activities 2014: 83.

21 Stewart, I.J. Pers. comm. (March 23, 2015); NMFS. 2015. Halibut Mortality Estimate, Jan. 8, 2015, in Draft EA/RIR/IRFA at 74, Table 3-15; Forsberg, J.E. 2015. Age distribution of the commercial halibut catch for 2014. Int. Pac. Halibut Comm. Report of Assessment and Research Activities 2014: 83; Stewart, I.J. 2015. Overview of data sources for the Pacific halibut stock assessment and related analyses. Int. Pac. Halibut Comm. Report of Assessment and Research Activities 2014: 107.

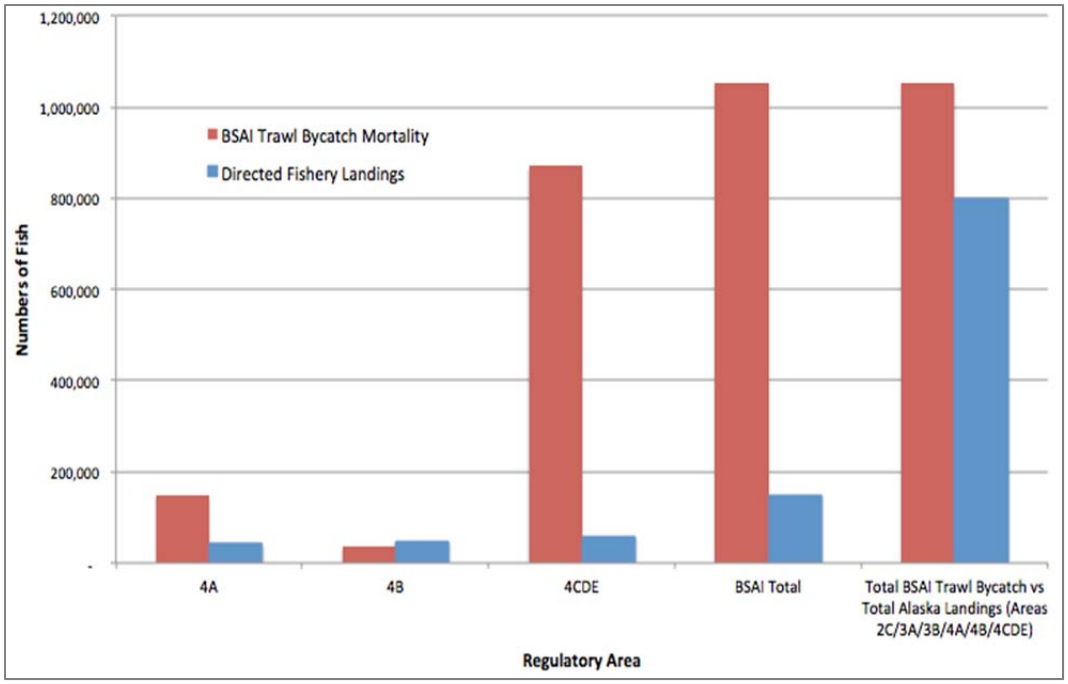

Figure 1. Comparison of Halibut Fishery Landings and BSAI Trawl Bycatch Mortality, 2014.

The trends in halibut PSC in the BSAI trawl fishery compared to the directed fishery—and the relative allocation of the resource between those sectors—are equally disturbing. Between 2005 and 2014, directed fishery landings in the BSAI have decreased from 52 percent of total removals to just 34 percent, while bycatch mortality in the BSAI has increased from 44 percent to 60 percent of total removals.[22] (Figure 2)

[22] Stewart, I.J. 2015. Overview of data sources for the Pacific halibut stock assessment and related analyses. Int. Pac. Halibut Comm. Report of Assessment and Research Activities 2014: 107,110; Williams, G.H. 2015. Incidental catch and mortality of Pacific halibut, 1962-2014. Int. Pac. Halibut Comm. Report of Assessment and Research Activities 2014: 327-328; Draft EA/RIR/IRFA, at 74, Table 3-15.

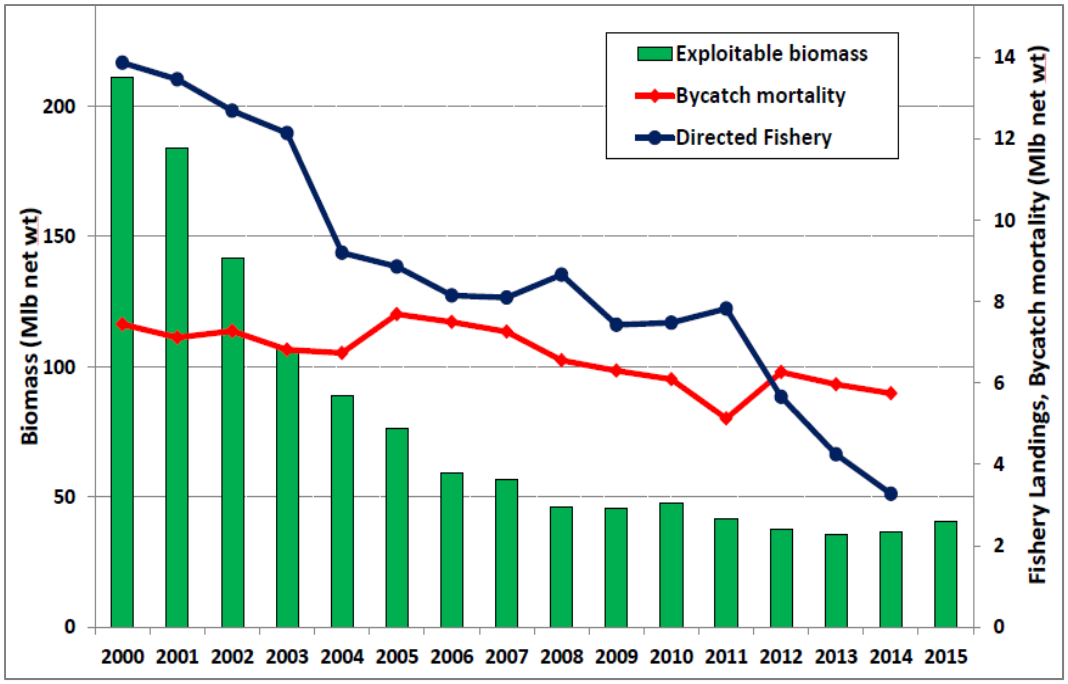

Figure 2. Halibut Exploitable Biomass, Fishery Landings and Bycatch, BSAI 2000-2015.[23]

This bycatch disproportionately impacts the directed fishery in Area 4CDE. Between 2010 and 2014, directed fishery landings in Area 4CDE decreased by 62 percent, while bycatch mortality in the groundfish fisheries increased by 14 percent.[24] Most recently, in 2014, the directed fishery accounted for only 21 percent of total removals, compared to 77 percent of removals attributable to bycatch mortality.[25] (Figure 3, Figure 4)

[23] Reproduced from Leaman et al. 2015. Considerations Concerning Bycatch Control and Abundance based Prohibited Species Catch Limits for Pacific Halibut in the Bering Sea/Aleutian Islands. Int. Pac. Halibut Comm.

[24] International Pacific Halibut Commission. 2015. Total and Fishery CEY and removals by Areas, 1995-2014, available at www.iphc.int/meetings/2015am /bb/02_06_TotalandFisheryCEYandRemovals.pdf.

[25] International Pacific Halibut Commission. 2015. 2015 IPHC Annual Meeting Handout: 240.

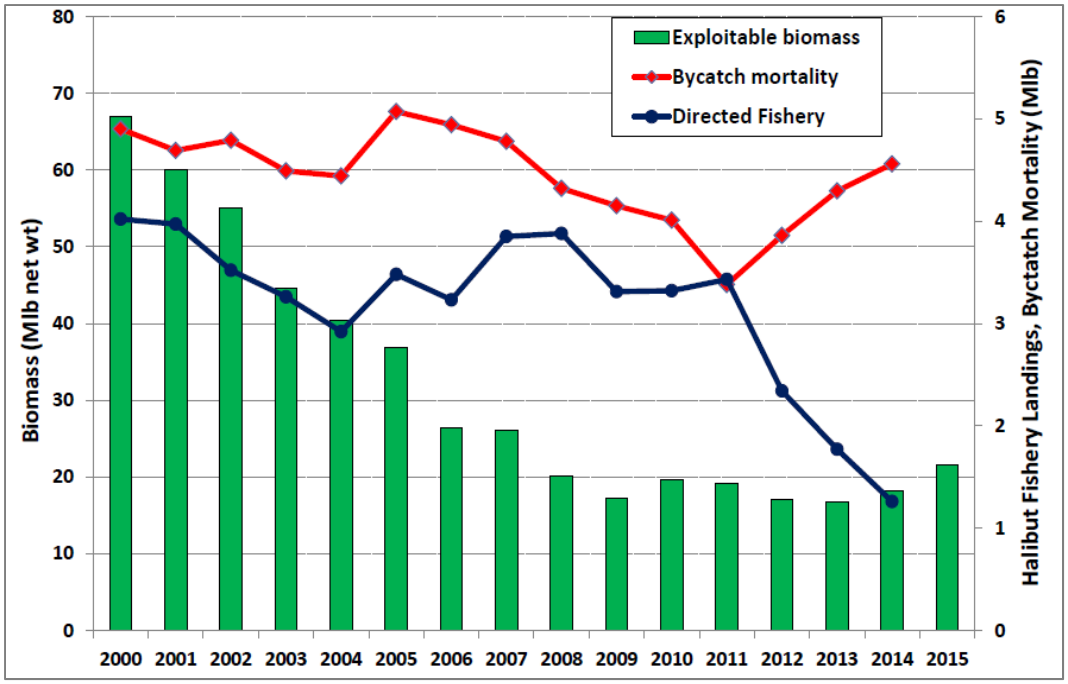

Figure 3. Halibut Exploitable Biomass, Fishery Landings, and Bycatch Area 4CDE, 2000-2015.[26]

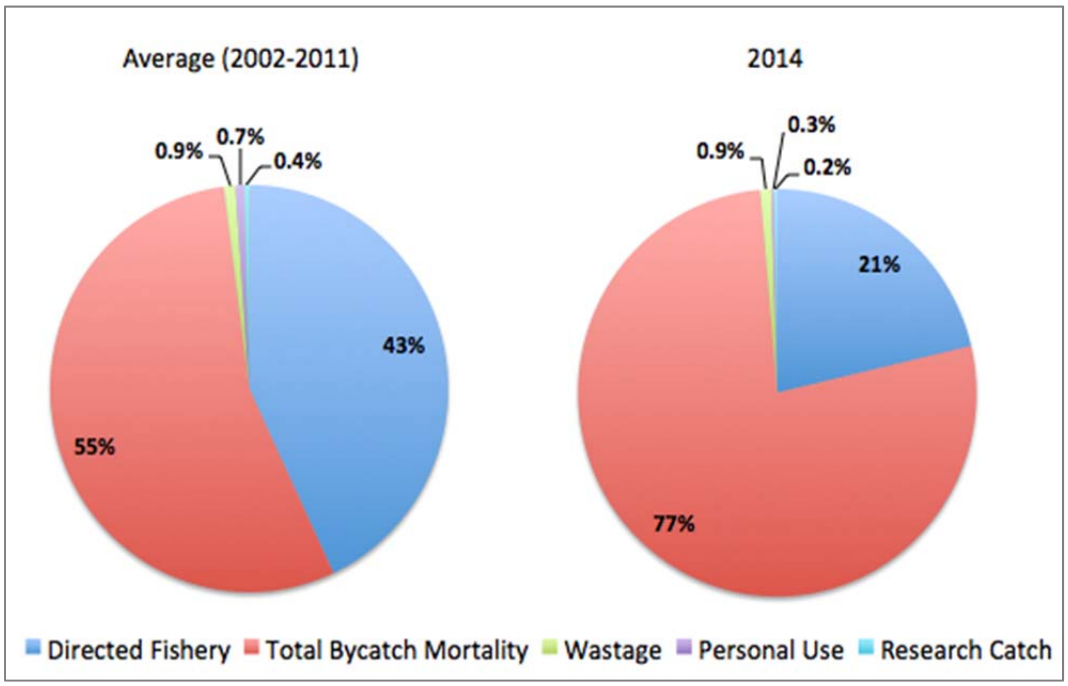

Figure 4. Comparison of Total Halibut Removals in Area 4CDE.[27]

[26] Reproduced from Leaman et al. 2015. Considerations Concerning Bycatch Control and Abundance based Prohibited Species Catch Limits for Pacific Halibut in the Bering Sea/Aleutian Islands. Int. Pac. Halibut Comm.

Given these trends, the need for swift Council action to preserve a sustainable directed fishery, even if only at a maintenance level, in Area 4CDE is clear and long overdue.

B. The 2015 IPHC Harvest Recommendation and the Decision to Preserve a Maintenance Fishery

The continuing trend of increasing halibut PSC in the BSAI Amendment 80, TLAS and other bycatch fisheries and declining directed fishery landings has been both clear and urgent for many years, but reached a critical point at the IPHC interim meeting in November 2014. At that time, the IPHC estimated that about 70 percent of BSAI halibut—and about 93 percent of the halibut in Area 4CDE—would be taken as PSC in 2015, based on actual bycatch in 2014.[28] And because bycatch mortality must be subtracted from the available biomass,[29] only a small fraction of resource remained available to the BSAI directed fishery.

The directed fisheries in Area 4CDE were the most severely affected. Subtracting 2014 O26 bycatch in Area 4CDE from the TCEY, the IPHC provided harvest advice for 2015 that would have set the Area 4CDE Fishery Constant Exploitation Yield (FCEY) at only 520,000 pounds.[30] This represented a 60-percent reduction from 2014 levels, and an 84-percent reduction from the ten-year average.[31]

As the State of Alaska, CBSFA, and others explained, the projected harvest limit was both inequitable and insufficient to maintain a viable directed fishery in Area 4CDE. In response, the IPHC ultimately agreed to increase its Area 4CDE FCEY to 1,285,000 pounds.

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[27] International Pacific Halibut Commission. 2015. 2015 IPHC Annual Meeting Handout: 240; International Pacific Halibut Commission. 2015. Total and Fishery CEY and removals by Areas, 1995-2014.

[28] International Pacific Halibut Commission. 2015. 2015 IPHC Annual Meeting Handout, Table 4: 161.

[29] The IPHC subtracts removals from other sources from the available Total Constant Exploitation Yield (TCEY) to determine the Fishery Constant Exploitation Yield (FCEY), which is used to calculate a recommendation for each Area's catch limit.

[30] International Pacific Halibut Commission. 2015. 2015 IPHC Annual Meeting Handout: 240.

[31] International Pacific Halibut Commission. 2015. Total and Fishery CEY and removals by Areas, 1995-2014.

The IPHC's decision to revise the FCEY upward for Area 4CDE was based on three key factors:

- First, that the initial recommendation was insufficient to maintain a viable directed fishery, and that a FCEY of 1,285,000 pounds was the minimum necessary to preserve a maintenance fishery at 2014 levels in Area 4CDE pending anticipated future action to reduce halibut PSC.[32]

- Second, that actual halibut PSC would be reduced through voluntary commitments by other sector fisheries, "particularly in Areas 4CDE."[33]

- Third, that the Council and/or NOAA Fisheries would undertake this regulatory action and impose significant reductions in halibut PSC and bycatch mortality.[34]

Nothing has changed with respect to the first factor. Harvest levels established in 2014 and 2015 remain the minimum necessary to preserve the directed halibut fishery. Indeed, even at those levels, the fishery is not self-sustaining, but rather requires that CBSFA subsidize processing costs at the Trident Seafood Saint Paul Processing Plant so that processing facilities will be available to enable the directed halibut fishery in Area 4CDE to continue.[35]

With regard to the second factor, the projected voluntary reductions in halibut PSC mortality were not uniformly achieved. To the contrary, the

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[32] NOAA, Pacific Halibut Fisheries; Catch Sharing Plan, 80 Fed. Reg. 13,771, 13,773 (Mar. 17, 2015) ("The IPHC recommended a catch limit in Areas 4CDE that is higher than that which would result from application of its adopted harvest policy in Areas 4CDE. The IPHC made this catch limit recommendation after considering … the adverse socioeconomic impact that could result from a catch limit that was lower than that provided in 2014.").

[33] NOAA, Pacific Halibut Fisheries; Catch Sharing Plan, 80 Fed. Reg. 13,771, 13,773 (Mar. 17, 2015) ("The IPHC also considered ongoing efforts by the North Pacific groundfish fleet to reduce the amount of halibut mortality from bycatch, particularly in Areas 4CDE, during 2014 and 2015. The IPHC noted that reduced bycatch mortality in 2015 is likely to provide additional harvest opportunities for the commercial fishery in the future.").

[34] Letter from Eileen Sobeck, NOAA Assistant Administrator for Fisheries, to Dr. Bruce Leaman, IPHC Executive Director (Jan. 20, 2015).

[35] This, of course, benefits not only participants in the CDQ sector represented by CBSFA, but also participants in the IFQ sector in the same Areas.

sectors with by far the greatest impact on halibut abundance—Amendment 80 and BSAI TLAS—actually increased their halibut PSC mortality in 2014 over their five-year average, to almost 4.8 million pounds.[36] This was especially true in Area 4CDE. As the Draft EA/RIR/IRFA explains, the Amendment 80 sector in particular concentrated its fishing efforts in Area 4CDE during the 2014 season. Rather than reducing halibut PSC, this shift in fishing effort substantially increased bycatch mortality in Area 4CDE, which only exacerbated the Amendment 80 sector's already excessive bycatch rates and their impacts on the directed halibut fishery harvest limit.

CBSFA supports all efforts to reduce halibut PSC through voluntary means, and believes that a great deal more can and should be done to reduce halibut bycatch mortality. Given the history above and the devastating impact of bycatch mortality on directed fisheries, however, only decisive action by the Council to impose mandatory reductions in bycatch will maintain a viable directed halibut fishery in Area 4CDE. As discussed below, this will not only help ensure the continued participation of St. Paul and other local fishing communities in the Area, but also contribute to the overall halibut availability throughout the region through the migration of halibut biomass to other IPHC Areas.

III. The Need for Significant Reductions in Halibut PSC Has Been Clear for Decades

The need to reduce halibut PSC mortality comes as no surprise. Since 1962, when bycatch was first reported, it has been the second largest annual source of biomass removal.[37] The IPHC first established the Bering Sea Closed Area in 1967 to protect a nursery area for juvenile halibut, in response to severe declines in halibut abundance. Regulations to control halibut bycatch in domestic groundfish fisheries were implemented initially as part of the BSAI groundfish FMP in 1982, which reflected some of the time-area closures in effect for foreign trawl operations. Beginning in 1985, annual halibut PSC limits were implemented for the groundfish trawl fisheries, the attainment of which triggered closures to bottom trawl gear.[38]

More direct regulatory attempts to address the impacts of bycatch on halibut abundance began in the late 1980s, when the Council and NMFS initiated

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[36] Draft EA/RIR/IRFA at 83, Table 3-17.

[37] IPHC. Report of the Halibut Bycatch Work Group II (Sept. 2014) at 6.

[38] Stewart, et al. Accounting for and managing all Pacific halibut removals. Int. Pac. Halibut Comm. Report of Assessment and Research Activities 2014: 223-25.

Amendments 12a and 18 to the BSAI and GOA Groundfish FMPs. Since then, the Council has undertaken various amendments to the BSAI and GOA FMPs and other measures in an effort to reduce halibut PSC to levels that are sustainable and that preserve the halibut resource.[39] Unfortunately, as has been clear to anyone observing the declining trends in halibut biomass and the increasing disparity between halibut PSC mortality and available directed fishery yields, these and other voluntary measures have proven ineffective to reduce halibut PSC adequately.

Against this backdrop, the reductions in halibut PSC limits now under consideration by the Council have been reasonably foreseeable to all in the industry. Proactive measures to adapt to these reasonably foreseeable limits could have, and should have, been implemented. In our market economy, those industry participants that took reasonable steps to adapt to foreseeable regulatory change should be rewarded, while complaints from industry participants that did not—and that have instead elected to wait for the Council to impose mandatory limits to compel change within the industry as a whole—should provide no basis to delay long-overdue action, or to adopt half-measures that are inadequate to achieve the Council's objectives. To do otherwise would not only fail to preserve the directed halibut fishery, but also dilute the economic gains earned by those market participants who have acted responsibly to be good stewards of the Nation's fishery resources.

IV. Halibut PSC Must Be Reduced By 50 Percent to Maintain a Viable and Sustainable Directed Fishery Consistent with the National Standards

Congress enacted the Magnuson-Stevens Fishery Conservation and Management Act (MSA or the Act) to create a "national program for the conservation and management of the fishery resources of the United States."[40] When the provisions of the original act were insufficient to fulfill the conservation purpose of the Act,[41] Congress passed the Sustainable Fisheries Act in 1996 to "put our fisheries back on a sustainable path"[42] by making

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[39] IPHC. Tech. Rpt. No. 57, Report of the 2010 Halibut Bycatch Work Group (2012) at 22-26 (discussing "numerous actions" by the Council and NMFS "to establish bycatch protection areas, encourage bycatch reduction, and improve the selectivity of fishing gear," including the establishment of PSC limits).

[40] 16 U.S.C. § 1801.

[41] See, e.g., 142 Cong. Rec. H11418, 11439 (Sept. 27, 1996).

[42] 142 Cong. Rec. S10794, 10811 (Sept. 18, 1996).

abundantly clear its objectives for management of the fishery resource of the United States:

- "insure conservation"
- "promote domestic commercial and recreational fishing under sound conservation and management principles"
- "provide for the preparation and implementation, in accordance with national standards, of fishery management plans which will achieve and maintain, on a continuing basis, the optimum yield from each fishery"
- "assure that the national fishery conservation and management program utilizes, and is based upon, the best scientific information available"
- "consider[] the effects of fishing on immature fish and encourage[] development of practical measures that minimize bycatch and avoid unnecessary waste of fish"
- "[be] workable and effective."[43]

The MSA also directs the Regional Fishery Management Councils to "exercise sound judgment in the stewardship of fishery resources."[44] The objectives of the Act, particularly after the Sustainable Fisheries Act amendments, prioritize sustainability of the fishery resource over other objectives. Thus, any action by the Council must abide by that priority and cannot be "sound judgment" unless it does so.

To assist the Councils and NOAA in carrying the requirements of the Act, Congress further mandated that all plans and regulations must be consistent with ten national standards,[45] several of which are pertinent to the Halibut PSC issue:

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

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[43] 16 U.S.C. § 1801.

[44] Id.

[45] 16 U.S.C. § 1851.

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

- 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 United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

- 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.

- National Standard 8 - Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities by utilizing economic and social data that meet the requirements of paragraph (2), in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.

- National Standard 9 - Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.[46]

Compliance with the Act and these National Standards cannot be achieved unless the Council acts to reduce Halibut PSC caps by 50 percent.

A. Reducing Bycatch in the Groundfish Fishery Would Optimize Yield Across the Fisheries

National Standard One requires the Council and NOAA Fisheries to establish harvest limits that prevent overfishing while ensuring, on a continuing basis, the optimum yield from each fishery.[47]

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[46] Id.

[47] 16 U.S.C. § 1851(a).

As explained earlier, halibut PSC mortality directly reduces the fishery yield available to the directed fishery. The IPHC has steadily reduced directed halibut catch limits over the last 14 years in response to a declining available halibut resource and the need to conserve total halibut biomass in the face of massive removals by fishery sectors outside the Commission's regulatory jurisdiction.[48] Yet the halibut PSC limits have remained virtually unchanged for 20 years at levels set during a period of high halibut abundance, subject only to minor reductions with the adoption of Amendment 80 and voluntary measures sporadically implemented within the groundfish fisheries.[49] Notably, halibut bycatch is the only major species fishery that is not managed by the Council on the basis of the overall health and abundance of the resource.

This has led to an ever-increasing imbalance between halibut PSC mortality permitted by the caps for the BSAI groundfish fisheries, and the yield available to the directed halibut fishery. Today, the BSAI PSC limit of 4,426 MT (round weight) allows up to 7.32 million pounds of halibut (net weight) to be caught and killed as bycatch.[50] Yet in 2015, directed fisheries in the BSAI are limited to 3.815 million pounds (net weight), or roughly half of the allowable bycatch mortality.[51] These disparities are most pronounced in Area 4CDE, where, as noted above, halibut PSC accounted for 77 percent of all halibut removals.

Only a 50-percent reduction of halibut PSC can rebalance these fisheries and optimize yields among the various fishery sectors. The groundfish fisheries, including Amendment 80 and BSAI TLAS fisheries, can continue to function and remain economically viable at any level presently under consideration. In contrast, halibut PSC reductions of 45 percent are required under current conditions just to preserve a maintenance directed fishery in Area 4CDE, at even the assumedly sufficient and substantially reduced 2014 and 2015 harvest levels. A reduction of 50 percent provides an appropriate buffer

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[48] Leaman, et al. 2015. Considerations Concerning Bycatch Controls and Abundance-based Prohibited Species Catch Limits for Pacific Halibut in the Bering Sea/ Aleutian Islands. Joint NPFMC-IPHC Meeting: 26.

[49] Williams, G.H. Halibut bycatch limits in the 2014 Alaska groundfish fishery. Int. Pac. Halibut Comm. Report of Assessment and Research Activities 2014: 340.

[50] Draft EA/RIR/IRFA at 63 (showing conversion from MT to net weight pounds).

[51] IPHC. 2015. Extended catch table projected for the 2015 Adopted catch limits, available at www.iphc.int/meetings/2015am/Final_Adopted_catch_limits_1_30_15.pdf.

against lower TCEY in the future, and preserves more juvenile halibut to increase future fishery yields. A decision by the Council not to require these reductions would effectively close the directed fishery in Area 4CDE in favor of continued exploitation in the groundfish fisheries. As such, only reductions of halibut PSC at these higher levels can optimize the yields between the two fisheries as required.

Reducing halibut PSC in the manner described would substantially increase both current and future directed fishery yields in Area 4CDE, the BSAI and the halibut fishery generally. Reducing O26 halibut PSC results in a direct 1:1 increase in directed fishery yields because those fish not removed as PSC are assumed to be available for the directed harvest.[52] Reducing U26 halibut PSC would result in even greater increases to fishery yield due to the lost yield potential from the U26 portion of bycatch.[53] This is because the growth in biomass of U26 fish would outpace natural mortality as they age and enter the exploitable part of the stock. Coastwide, the IPHC Bycatch Workgroup estimates that halibut PSC reductions would result in 1.14 pounds of additional yield per pound of bycatch. For Area 4CDE, this value increases to 1.28 pounds of yield per pound of bycatch due to influence on lost yield of the catch of very small fish in the BSAI trawl fisheries.[54]

Further, these reductions in halibut PSC would augment stocks throughout the fishery. As the Draft EA/RIR/IRFA explains, the best evidence from mark-recapture studies suggests that the BSAI is a net exporter of halibut biomass. These studies show that individuals tagged in the BSAI distribute broadly to the Aleutian Islands, Gulf of Alaska (70 to 90 percent), and Area 2, and could be in virtually any regulatory area by the age of recruitment to the fishery. As such, conservation of halibut biomass in Area 4CDE, especially through measures to reduce excessive juvenile halibut mortality resulting from the Amendment 80 sector and BSAI TLAS, will enhance and conserve the halibut resource throughout the North Pacific.

Finally, it is arbitrary and capricious to allow unsustainable bycatch levels to continue while ratcheting down the directed fishery where it is being forced

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[52] IPHC, Halibut Bycatch Workgroup Report (2014) at 21-22. It should be noted, however, that U32 halibut cannot be retained in the directed fishery.

[53] IPHC, Halibut Bycatch Workgroup Report (2014) at 21-22.

[54] IPHC, Halibut Bycatch Workgroup Report (2014) at 21-22. In this respect, the Council's analysis ignores the best available science and understates the benefits of reducing U26 halibut mortality when it assumes a 1:1 relationship for both O26 and U26 fish. Draft EA/RIR/IRFA at 102.

toward a shutdown. This continued regulatory inaction is inconsistent with MSA, and wrongly deprives halibut quota holders of the value of their allocations of the halibut resource. Thus, through the regulation (or lack of regulation) of other fisheries, participants in the directed halibut fishery are not only deprived of the annual revenues from the decline of available halibut, but also the market value of the quota rights they hold.

B. Reducing Bycatch Will Help Ensure Continued and Sustained Participation of St. Paul and other Coastal Communities in the Directed Fishery and Minimize Economic Impacts

National Standard 8 requires the Council and NOAA to establish harvest limits that account for the importance of fishery resources to local fishing communities. It requires that harvest limits provide for the sustained participation of local fishing communities, and that fishery management decisions be tailored to minimize the economic impacts on communities that depend on fishery resources.

When proposing rules for National Standard 8, NOAA succinctly outlined the priorities in addressing economic impacts.

> In successive drafts of standard 8, Congress clarified that the importance of fishery resources to fishing communities must be considered within the context of the conservation requirements of the Magnuson-Stevens Act by including in the final standard the phrase "consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks)." Therefore, the proposed guidelines emphasize that national standard 8 must not compromise the conservation goals of the Magnuson-Stevens Act.[55]

In the final rule, NOAA was equally, if not more, pointed.

> This standard requires that an FMP take into account the importance of fishery resources to fishing communities. This consideration, however, is *within the context of the conservation requirements* of the Magnuson-Stevens Act. Deliberations regarding the importance of fishery resources

[55] NOAA, Magnuson-Stevens Act Provisions; National Standard Guidelines, 62 Fed. Reg. 41,907, 41,910-11 (Aug. 4, 1997).

> to affected fishing communities, therefore, must not compromise the achievement of conservation requirements and goals of the FMP. Where the preferred alternative negatively affects the sustained participation of fishing communities, the FMP should discuss the rationale for selecting this alternative over another with a lesser impact on fishing communities. All other things being equal, where two alternatives achieve similar conservation goals, the alternative that provides the greater potential for sustained participation of such communities and minimizes the adverse economic impacts on such communities would be the preferred alternative.[56]

The rules are thus clear that only if alternatives are conservation-neutral do economic impacts come into play.

Reducing halibut PSC by 50 percent is squarely consistent with these requirements. As described above, St. Paul Island and other coastal fishing communities are dependent upon the directed halibut fisheries in Area 4CDE. As a consequence of the government's closure of the historical fur seal trade and the community's successful transition to the CDQ/IFQ halibut fishery, the directed halibut fisheries are the primary source of employment on St. Paul Island today. Indeed, as the Draft EA/RIR/IRFA recognizes, St. Paul Island was the community with the highest 2003 to 2013 annual average catcher vessel halibut ex-vessel gross revenues within the Alaskan directed halibut fishery (more than twice that of the next closest community), and the community with the second highest dependence upon revenues from the directed halibut fishery.[57]

However, the Draft EA/RIR/IRFA's analysis actually understates St. Paul's dependence on the directed halibut fishery. For example, the annual ex-vessel revenues do not reflect actual revenues to halibut fishermen. CBSFA's Halibut Cooperative[58] distributes profits from the sale of halibut directly to

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[56] 50 C.F.R. § 600.345(b)(1).

[57] Draft EA/RIR/IRFA at 367.

[58] CBSFA. (2015). 170 Degrees West, CBSFA Halibut Cooperative. http://www.cbsfa.com/170w.html. The CBSFA Halibut Cooperative purchases all CDQ halibut caught by the local fishermen, as well as a majority of the locally-owned halibut IFQ. Some locally-owned halibut IFQ and IFQ from vessels hailing from other ports outside of St. Paul may be sold to Trident. As a result some years in the analysis show values higher than recorded by the CBSFA Halibut Cooperative.

the fishermen in the form of a retroactive ex-vessel price adjustment. These price adjustments are not captured in the Council's analysis,[59] which underreports actual ex-vessel gross revenue earned by local fishermen in eight out of the eleven years considered in the analysis, as shown below in Table 1.

Year	Council Analysis	CBSFA Halibut Cooperative
2003	$783,308	$1,073,842
2004	$992,515	$902,211
2005	$1,004,799	$1,946,565
2006	$1,750,193	$2,515,236
2007	$1,983,999	$3,261,131
2008	$3,730,680	$2,967,034
2009	$1,328,169	$2,280,608
2010	$2,983,980	$4,144,123
2011	$4,026,026	$5,510,131
2012	$2,991,401	$3,003,049
2013	$2,121,243	$2,002,417
Average	**$2,154,210**	**$2,691,486**

Table 1. St. Paul Island Halibut Catcher Vessel Ex-vessel Gross Revenues, 2003-2013

Furthermore, the Council's analysis does not appropriately take into consideration investments by halibut dependent communities throughout Alaska, often with federal, state, and municipal financial support to build the infrastructure—harbors, docks, fuel farms, and other facilities—that has sustained the participation of these communities in the directed halibut fisheries. On St. Paul alone, these investments have exceeded $100 million, and this is representative of just one community.

Since the phase out of the fur seal harvest in 1983, CBSFA and the community of St. Paul as a whole have relied on the halibut fishery to construct a series of fisheries-related infrastructure projects in order to develop a sustainable, fisheries-based, economy. In recognition of the economic importance of a functioning port amidst the Bering Sea commercial fisheries, St. Paul made the development and subsequent improvements of its harbor a top priority over a thirty-year period.

The first phase of the Saint Paul harbor was completed in 1989, when the main breakwater and a second detached breakwater became operational.

[59] Draft EA/RIR/IRFA, Appendix C, at 30, Table 2-6b.

These initial investments financed with federal and state support were premised initially on the halibut fishery. In addition, the community of St. Paul, through the municipal government, took a $6.5 million CEIP loan from NOAA's Office of Coastal Management in 1986 to construct a bulk fuel farm. This loan was premised on the development of infrastructure required to support oil and gas exploration and development, and providing marine support services for an anticipated year round fishing industry.

Construction of the second phase of the harbor, known as the Harbor Improvements Project, took place between 1999 and 2005 at a cost of $52.5 million. While this expansion was premised to a large degree on the needs of the snow crab fleet, it was also of critical importance to the 4CDE CDQ/IFQ halibut fishery.

The final phase of the development of St. Paul's harbor was the construction of a Small Boat Harbor (SBH). The SBH was completed in 2010. This project required a $20 million local and federal investment, to which CBSFA contributed $6 million of CDQ revenues and the municipal government $11.5 million. The SBH's mooring and docking facilities have a capacity for up to 60 vessels.

In tandem with the SBH project, the Economic Development Administration (EDA) approved in September of 2007 an application by the City of St. Paul for funding to dredge the City berth area. The total cost of the project was $2.85 million for which the City of St. Paul set aside $850,000 as a local match. Work on the EDA Project concluded in September of 2013 and involved dredging the old Unisea processor site to 18 feet, and upgrading the utilities at the berth site, to allow for the eventual installation of a multi-species processing operation or to provide berthing locations for offloading and other activities critical to St. Paul's efforts to diversify.

With EDA support and in conjunction with the Aleut Community of Saint Paul Tribal Government (Tribe), CBSFA has also been pursuing development of a $6.5 million project to build a local vessel repair and ship supply facility. CBSFA has committed $4.7 million to this project, along with $1.8 million by the Tribe, for a total of $6.5 million. The bidding phase is taking place at this time and some site work has begun. At the building site, as of this writing, the Tribe is constructing a 60-foot dock at a cost of $1.5 million to support the facility. The dock project has been funded by the Tribe, the Denali Commission, and $500,000 from CBSFA. However, its future may be in question given the status of the directed halibut fishery in Area 4CDE.

CBSFA has also invested CDQ revenues to build two new 58-foot vessels, the FV Saint Paul and the FV Saint Peter, which target various fisheries and have served to train local residents in the operations of modern fishing vessels. The "Saint Boats" are used in part to harvest IFQ and CDQ halibut in areas further from shore where smaller vessels may be unsafe to operate.

Finally, the importance of the subsistence halibut fishery is substantially underestimated for St. Paul and other Alaskan communities. This is because reporting participation in the subsistence halibut is voluntary and frequently not captured in annual NMFS surveys.[60] Indeed, the Council's Analysis recognizes as much, when it states that halibut subsistence data for BSAI communities are very limited and caution should be used in interpreting these data.[61]

These are just two examples, and CBSFA believes that the Council's analysis likely fails to reflect the actual dependence of other local Alaskan communities as well. However the dependence of St. Paul and other local fishing communities in Alaska is measured, it stands in stark contrast to the Seattle, Washington and Newport, Oregon areas where much of the BSAI groundfish fleet is based. For those communities, which have thriving, broad-based economies that are many orders of magnitude larger, community-dependence on the BSAI groundfish fisheries simply "is not a salient issue."[62]

As a result of excessive halibut PSC limits in other sectors (especially Amendment 80 and BSAI TLAS) that have remained virtually constant for decades, the directed fishery harvest limits for St. Paul Island and other fishery-dependent communities have dramatically reduced. For 2014 and 2015, directed fishery harvest limits in Area 4CDE were set at the minimum levels required to preserve a maintenance fishery. These levels are economically unsustainable in the longer term, and any further reduction would effectively close the directed fishery in Area 4CDE.

Mandatory reductions of 50 percent in halibut PSC are therefore necessary to conserve the halibut resource, avoid dire economic consequences to St. Paul Island and other local fishing communities, and to ensure their continued participation in the fishery going forward. The low levels of harvest described

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60 NMFS. (2015). Alaska Subsistence Halibut Program, FAQ. Available at http://alaskafisheries.noaa.gov/ram/subsistence/faq.htm.

61 Draft EA/RIR/IRFA, Appendix C, at 88.

62 Draft EA/RIR/IRFA at 32.

above were expressly premised on reductions in halibut PSC anticipated under this regulatory action. Should bycatch increases occur instead (even within the current PSC caps), halibut harvest limits may be further reduced in the future from even the minimum level required to preserve a maintenance fishery in Area 4CDE.

Reducing halibut PSC limits will also benefit individuals and local fishing communities far beyond St. Paul Island and Area 4CDE, both in Alaska and coastwide. Both IFQ and CDQ holders harvest halibut in the Bering Sea, while in the rest of Alaska and farther south, the harvesters are IFQ holders. There are currently 2,714 halibut IFQ Holders in the United States, of which 1,965 are Alaskan.[63] At the same time, there are 1,157 vessels in the halibut IFQ and CDQ fleets: 991 vessels are in the halibut IFQ fishery, 238 vessels are in the CDQ halibut fishery, and 36 vessels fish both IFQ and CDQ.[64] The CDQ fleet is based out of 39 Western Alaska villages, while directed halibut fishing vessels made IFQ landings in 32 different community ports in 2014.[65] Each of these communities depends, to varying degrees, on the existence of a viable directed halibut fishery.

Simply put, the continued and sustained participation of St. Paul Island and other local fishing communities depends upon appropriate and significant reductions in the halibut PSC limits. Anything less would fail to meet the sustained-participation requirements of National Standard 8.

C. Reducing Bycatch by 50 Percent is Practicable

National Standard Nine provides that conservation and management measures "shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch." Applicable regulations do not permit Councils to address bycatch in any way other than wholeheartedly.

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63 NOAA Fisheries. 2015. IFQ Halibut/Sablefish Reports and CDQ Halibut Program Reports, Licenses Issued. Retrieved from http://alaskafisheries.noaa.gov/ram/daily/ifqqsholder.csv.

64 Alaska Fisheries Information Network. 2012. Fishing Fleet Profiles, 2012 Addendum. Retrieved from http://www.akfin.org/wp-content/uploads/2013/09/Fishery_Fleet_Profile2012_Addendum.pdf

65 NOAA Fisheries. 2015. IFQ Halibut/Sablefish Reports and CDQ Halibut Program Reports. Harvest and Landing Reports, IFQ Harvest by Port of Landing. Retrieved from http://alaskafisheries.noaa.gov/ram/ifq/14ifqport.pdf.

> The requirement is clearly not discretionary. NMFS disagrees that the guidelines only require the Councils to study the bycatch problem; the Councils must take action to minimize bycatch and bycatch mortality to the extent practicable. … Inconvenience is not an excuse; bycatch must be avoided as much as practicable, and bycatch mortality must be reduced until further reductions are not practicable. Adherence to the national standards is not discretionary.[66]

In promulgating the rules, NMFS explained further that "the Councils will need to prioritize their actions to address those fisheries where actions to reduce bycatch can have the greatest impact."[67]

As explained elsewhere, halibut PSC currently accounts for the majority of halibut removals in the BSAI. There are reasonable and practicable means to minimize this bycatch, consistent with the requirements of National Standard Nine.

The Draft EA/RIR/IRFA correctly recognizes that, despite predictions of doom and gloom, previous mandatory PSC reductions in other fisheries and sectors have been achieved without significant disruption of the regulated fisheries. This is not surprising. Mandatory PSC limits are forcing mechanisms that drive innovation in the fishery, and move participants to develop creative means to avoid PSC while continuing to prosecute and profit from their target fishery. These innovations could include, for example, the proliferation and improvement of excluder devices to reduce bycatch levels, and the adoption of changes in fishing behavior that reduce PSC interactions. Indeed, many ideas to reduce halibut PSC were identified, if not fully implemented, in response to the Council's request for voluntary PSC reductions, which were also later presented to the Commission. Given prior experience, CBSFA

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[66] NOAA, Magnuson-Stevens Act Provisions; National Standard Guidelines, 63 Fed. Reg. 24,212, 24,224 (May 1, 1998).

[67] Id. at 24,227; see also 62 Fed. Reg. 41,907, 41,912 (Aug. 4, 1997) ("Because limited resources are available to the Councils and NMFS to address bycatch problems, and a variety of bycatch problems exists in most fisheries, each Council should identify and prioritize the bycatch problems in its fisheries, based on the benefits to the Nation expected to accrue from addressing these problems."); id. at 41,911 ("This standard applies to all existing and planned conservation and management measures, because most of these measures can affect amounts of bycatch or bycatch mortality in a fishery, as well as the extent to which further reductions in bycatch are practicable.") (emphasis added).

anticipates a similar response when mandatory halibut PSC reductions are imposed.

There is ample evidence that meaningful halibut bycatch reductions are achievable, both in the form of prior experience with fishing regulations, and in the academic literature addressing this issue. It should be noted that the ability of regulatory requirements to reduce halibut bycatch has been recognized for 30 years when a 50 percent reduction was mandated for foreign fishery fleets operating in the BSAI in 1982 through 1985.[68]

The Draft EA/RIR/IRFA discusses the issue of bycatch reduction techniques at length in Appendix B (Mitigation of PSC Reduction Impacts). Bycatch can be reduced by lowering any, or all, of the three factors that determine the total number of halibut destroyed, including (1) reducing groundfish fishing effort, (2) reducing encounters with halibut, and (3) reducing the mortality rate for halibut that encounter fishing gear.[69] The total bycatch is determined by the product of these three factors. Thus, the bycatch or halibut PSC (kg) = groundfish (mt) × halibut encounter rate (kg/mt) × discard mortality rate (DMR).[70] Thus, a reduction of a given percentage in any of the three factors will have an equivalent relative impact on halibut PSC.

In estimating the impact of a bycatch reduction, it can be tempting to simply assume that to achieve a given percentage reduction in bycatch there will be a proportional reduction in fishing effort, and therefore harvest. Such an approach is unrealistic, grossly conservative and is belied by historical fishing data and basic economic analysis. Vessel operators will seek to maximize their catch while minimizing bycatch to the extent necessary to meet any bycatch limits. To the extent that the halibut encounter rate can be reduced, the bycatch can also be reduced without necessarily reducing the groundfish harvest.

The analysis conducted in the Draft EA/RIR/IRFA primarily focuses on reducing the halibut that encounter the Amendment 80 trawl fishing gear due to the availability of data and the significant volume of bycatch from this

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68 Report of the Halibut Bycatch Work Group, IPHC, Technical Report No. 25, 1992, at 4. ("Of special note was the scheduled reduction of halibut bycatch rates specified for the Bering Sea Aleutian Islands area (BSAI) foreign trawl fisheries. This resulted in a 50 percent reduction in bycatch rates between 1982 and 1985.").

69 Draft EA/RIR/IRFA, at 28.

70 Id.

sector. There are several basic techniques that can be used to reduce bycatch. These techniques include, but are not limited to, fishing at times of the year when halibut are less plentiful, fishing for species that are less likely to be co-located with halibut, fishing in areas where there are less halibut, and relocating when hauls indicate high halibut bycatch levels.

Actual Amendment 80 trawl harvest data analyzed in the Draft EA/RIR/IRFA demonstrate that significant reductions in bycatch levels are achievable from all of the identified techniques.[71] For example, bycatch levels are reduced when vessels promptly relocate after encountering high halibut levels.[72] The differences between vessels can be quite striking (a factor of 3.75 in the proportion of high halibut hauls between the best and worst performing vessels).[73] Targeting other flatfish besides Arrowtooth/Kamchatka flounder would reduce the halibut bycatch for the Amendment 80 fleet by approximately 50 percent for that portion of their bycatch resulting from the targeting of Arrowtooth/Kamchatka flounder.[74] Spatial analysis of geographic data confirms that there is significant variation in the halibut levels based on the fishing location with significant potential for bycatch reductions with "with little cost to total groundfish harvest."[75]

Perhaps the most striking characteristic of the analysis is the much higher bycatch rate that occurs annually near the end of the calendar year. As noted in the Draft EA/RIR/IRFA the bycatch rates show a pronounced and

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71 Draft EA/RIR/IRFA, Appendix B.

72 This reduction is noted by both (a) reviewing differing vessel bycatch levels after an initial haul exhibits high bycatch levels (above the 90th percentile), (b) and threshold levels triggering reduction actions in the Gulf of Alaska. Draft EA/RIR/IRFA Appendix B at 425-427.

73 Draft EA/RIR/IRFA Appendix B, Table 4, at 433.

74 Draft EA/RIR/IRFA Appendix B at 432. ("Simply put, given the high rates of halibut PSC observed in the arrowtooth/Kamchatka flounder fishery, using the same amount of halibut PSC in pursuit of other flatfish targets would net nearly double the amount of groundfish.").

75 Draft EA/RIR/IRFA Appendix B at 432. ("The area immediately to the west of St. Paul Island, in Figure 4, is an area with high halibut rates. This area corresponds with the flathead sole target as seen in Figure 6. Unlike arrowtooth/Kamchatka flounder, this area is not the only area known for flathead sole. Avoiding this area would likely result in halibut PSC reduction with little cost to total groundfish harvest as there are other areas immediately to the North where flathead sole can be targeted with a lower risk of high halibut rates.").

dramatic annual increase in November and December.[76] The one possible reason cited is "that vessel operators will know if they have enough halibut PSC to cover fishing for the remainder of the year and may have less incentive to avoid high halibut PSC rates."[77] These data indicate that vessel-operating decisions can have dramatic impacts on bycatch, and that there are significant potential bycatch reductions that are not being realized due to the lack of a regulatory structure that encourages such reductions throughout the year. In fact, almost a quarter of the bycatch from the Amendment 80 fleets occurs from October until the end of the year despite the dramatically lower level of fishing activity.[78]

In addition to the direct evidence of significant unrealized bycatch reductions, academic studies have also addressed the potential for bycatch reductions. In an important recent study of halibut bycatch cited in Appendix B of the Draft EA/RIR/IRFA, observer data on the location and catch of each vessel from the North Pacific Groundfish Observer Program (NPGOP) was analyzed.[79] This study concluded:

- When "individual vessels operated under a multispecies catch share system, with individual accountability for their catch of target and bycatch species" there is "dramatic evidence of a shift in overall catch composition away from bycatch species and toward valuable target species, as well as far less variability in the target/bycatch ratio."[80]

- "[F]ishermen were able to alter their catch composition substantially through their choices of when and where to fish on fine and coarse scales. We find evidence that large-scale shifts in fishing grounds, larger and more immediate reactions to undesired catch compositions, and

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76 Draft EA/RIR/IRFA Appendix B, at 430, Figure 2.

77 Draft EA/RIR/IRFA Appendix B, at 429-430.

78 Draft EA/RIR/IRFA Appendix B, at 429. ("Halibut PSC from November to the end of year accounts for roughly 15% of the Amendment 80 vessels total halibut PSC in the Bering Sea on average during the years analyzed. Halibut PSC from October to end of year accounts for up to 24% of the total halibut PSC in the Bering Sea on average during the years analyzed.").

79 Abbott, Joshua K., Alan C. Haynie, and Matthew N. Reimer. "Hidden Flexibility: Institutions, Incentives, and the Margins of Selectivity in Fishing." Land Economics 91, no. 1 (February 2015): 169-195.

80 Id. at 171.

reduced fishing at night have all contributed significantly to the observed changes."[81]

- "[T]hese margins of change were all available to fishermen before the institutional change and yet were not adopted . . . . [M]anagement systems that provide few incentives for selective fishing may obscure fishermen's ability to alter their catch composition."[82]

Additional confirmation of the availability of significant unrealized bycatch reductions is offered in another recently released paper that examined halibut bycatch off British Columbia.[83] The paper examined "the effectiveness of the individual vessel bycatch quota (IVBQ) system as an incentive structure for the mitigation of halibut bycatch in the British Columbia Groundfish fishery."[84] The study authors based at the University of Alaska found that the bycatch quota system "has proven to be highly effective, confirming the significance of private property rights as a tool for the reduction of bycatch within British Columbia."[85]

There is one critical conclusion arising from the direct evidence offered by past regulations (example: the early bycatch reduction effort of the 1980s cited above), and the studies of the fishing pattern responses to new regulatory requirements: significant bycatch reduction will not occur until a requirement or economic incentive structure (example: individual bycatch caps) is in place. In the absence of a requirement, vessel operators will optimize their fishing efforts based on the existing constraints that will not include bycatch reduction. With no meaningful bycatch reduction requirements in place for the last 20 years, there has been no incentive for vessel operators to adjust their fishing patterns to reduce bycatch. The wasteful fishing practices that are still exhibited towards the end of each calendar year, when it is clear that there is margin to the existing PSC caps, confirms that a significant and mandatory reduction in bycatch limits is necessary.

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81 Id.

82 Id.

83 Edinger, T and Baek, J. The role of property rights in bycatch reduction: Evidence from the British Columbia Groundfish fishery. Fisheries Research, Vol. 168, August 2015, pp. 100–104 (Advance electronic copy accessed at: http://www.sciencedirect.com/science/article/pii/S0165783615001241).

84 Id. at 100.

85 Id.

It is also important to consider the well-established potential benefits that can be provided by rationalization and cooperative management, both in terms of PSC reductions and increased fishery yields and values. As the Draft EA/RIR/IRFA notes, flatfish harvests were routinely lower than current levels prior to the implementation of Amendment 80 in 2008.[86] Participants have thus benefited substantially from the use of cooperative management to increase yields in their fishery sector. Yet it also appears that this sector has not taken full advantage of that cooperative management to systematically reduce the bycatch of halibut, which has remained flat or even increased since the decline in the first year of implementation in 2008.[87] This problem is even more severe in fisheries that lack a fully cooperative management structure. Indeed, participants in the BSAI TLAS specifically identified the existence of sector vessels that are not part of a cooperative as a key reason halibut PSC reductions were not achieved.[88]

Rationalization and cooperative management provides important "tools" to reduce PSC, and it has been used effectively in other fisheries. For example, in the Gulf of Alaska, the rationalized rockfish program has used cooperative management to successfully reduce salmon and halibut bycatch. Likewise, bycatch in the pollock fishery dropped rapidly with rationalization and cooperative management under the AFA. Rationalization and full cooperative management of other fisheries provides similar opportunities to benefit the halibut resource in the BSAI. Where fishery participants have benefited substantially from rationalization, fairness and equity require that they also bear responsibility to use all of the tools available to them by virtue of rationalization to reduce waste and to mitigate their impacts on other fishery resources.

As the above discussion makes clear, closures are unnecessary and an irrational conclusion in the Draft EA/RIR/IRFA, given the plethora of more reasonable measures. But even if the proposed halibut PSC reductions were to result in the periodic closure of the Amendment 80 or BSAI TLAS fisheries—a point that is far from clear—this does not mean that those reductions are not practicable. Use of the word "practicable" necessarily

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86 Draft EA/RIR/IRFA at 24.

87 Draft EA/RIR/IRFA at 149.

88 Draft EA/RIR/IRFA at 85 ("There are ten catcher vessels in the sector that are not part of an AFA coop, and therefore there is no mechanism to require them to use PSC reduction tools. AFA coop managers are communicating with those vessels to share with them the avoidance measures they are requiring of their own vessels.").

implies the exercise of agency judgment about the level of acceptable impact resulting from efforts to minimize bycatch and bycatch mortality. Where, as here, bycatch mortality threatens the continued viability of a longstanding and important directed fishery—and the record conclusively establishes that other fisheries can be prosecuted at great profit in most years—it is not impracticable to require other fisheries to cease operations when they fail to achieve regulatory limits.

D. Failing to Ensure a Viable Directed Fishery in Area 4CDE Would Be Inconsistent with National Standard Four

National Standard Four sets forth three requirements that must be met whenever fishing privileges are allocated: (i) the allocation must be fair and equitable; (ii) it must be reasonably calculated to promote conservation; and (iii) it must not allocate an excessive share of privileges to any particular group.[89]

The BSAI halibut fishery is allocated among various halibut user groups, including the CDQ, IFQ, charter, and subsistence sectors. The CDQ and IFQ halibut harvesters operate under true catch share management programs. In contrast, participants in other BSAI groundfish fisheries, most notably Amendment 80 and BSAI TLAS sectors, have no allocation of the halibut fishery resource.[90] As such, they are not entitled to any halibut per se. Instead, their significant impacts on halibut abundance—and thus the halibut available to the directed fishery—are merely an incident of their allocation in *other* fisheries under the BSAI Groundfish FMP.[91]

That said, the Amendment 80 and BSAI TLAS sectors impact halibut abundance at a grossly disproportionate rate. Over time, bycatch mortality in these sectors has reduced halibut abundance approaching levels that could practically preclude the harvest of any halibut through a directed fishery in Area 4CDE. As the Council allocates fishing privileges among participants in

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[89] C & W Fish Co. v. Fox, Jr., 931 F.2d 1556, 1563 (D.C. Cir. 1991); 16 U.S.C. § 1851(a)(9).

[90] 50 C.F.R. § 600.325(c)(1) ("An 'allocation' or 'assignment' of fishing privileges is a direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete user groups or individuals.").

[91] Amendment 80 created a catch share management program that operates through cooperatives. The BSAI TLAS sector, however, is an anachronism in the North Pacific federal management system, as it operates not through catch share programs or cooperatives, but in a "race for fish."

the various BSAI groundfish fisheries, it must take these conservation impacts into account.

The Council's allocation of the BSAI groundfish fisheries (e.g., allocating the cod fishery to the Amendment 80 sector versus the non-trawl sector) have dramatically different impacts on the conservation of halibut resources. When allocating a fishery to one sector or gear type would have an exponentially larger impact as compared to another—and when the allocation to the former could potentially destroy the economic viability of another fishery but an allocation to the latter would not—a decision to allocate resources to the more destructive sector or gear type cannot possibly be reasonably calculated to promote conservation. Nor would it be fair and equitable.

This is especially true when, as here, the Council has the power to impose effective and practicable PSC limits that would mitigate the effect of its allocation decisions. Any action that fails to exercise those powers to address the erosion of the halibut resource caused by its groundfish allocation decisions—and that fails to maintain even the already reduced directed fishing levels in Area 4CDE—would fail each of the requirements of National Standard Four.

E. A 50-Percent Reduction Achieves Greater Relative Benefits and Removes Incentives for Excessive Investment in Private Sector Fishing Capital

Maintaining a viable directed fishery respects the efficiency achieved by its participants. The O26/32 halibut mortality in the directed fishery is substantially lower than the BSAI Amendment 80 and TLAS fisheries, and the U26 mortality is minimal. Also, the relative value of halibut is greater to the directed fishery. For both Amendment 80 and TLAS (and in both Scenario A and Scenario B), all PSC reduction options result in gains to the directed fishery that are larger on a percentage basis than the revenues foregone by either sector. (Figure 5, Figure 6) Moreover, only a level of PSC reduction that allows for a directed fishery at a maintenance level (at least) prevents the utter loss of the labor, capital and other investment in the directed fishery.

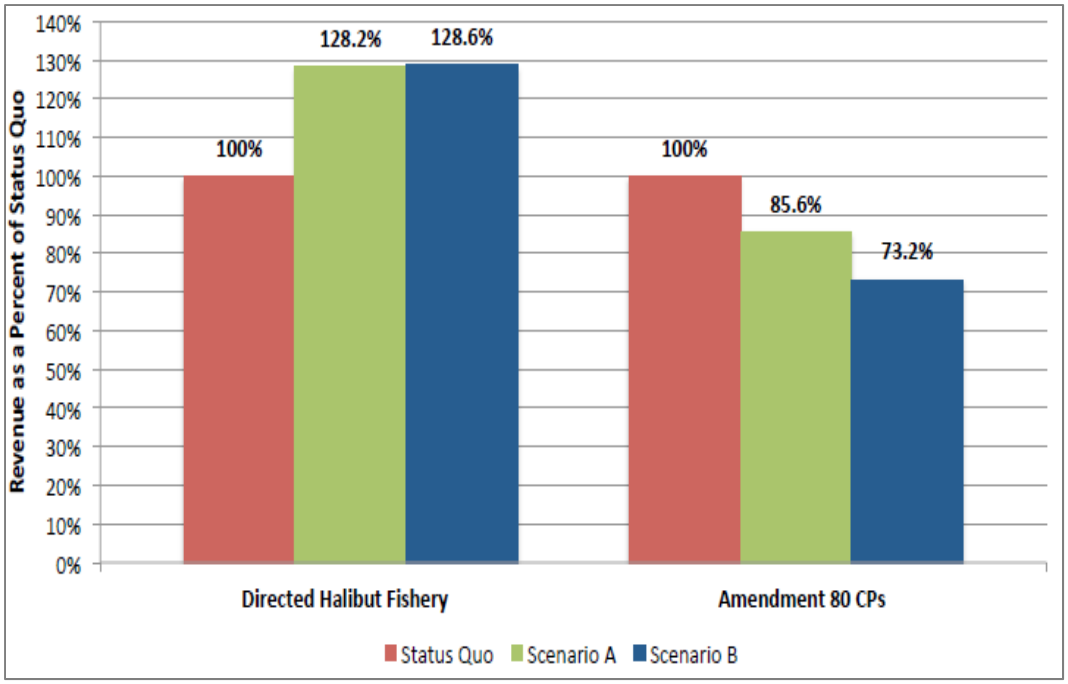

Figure 5. Relative Benefits of 50-Percent Reduction in Directed Halibut Fishery Compared to Amendment 80.

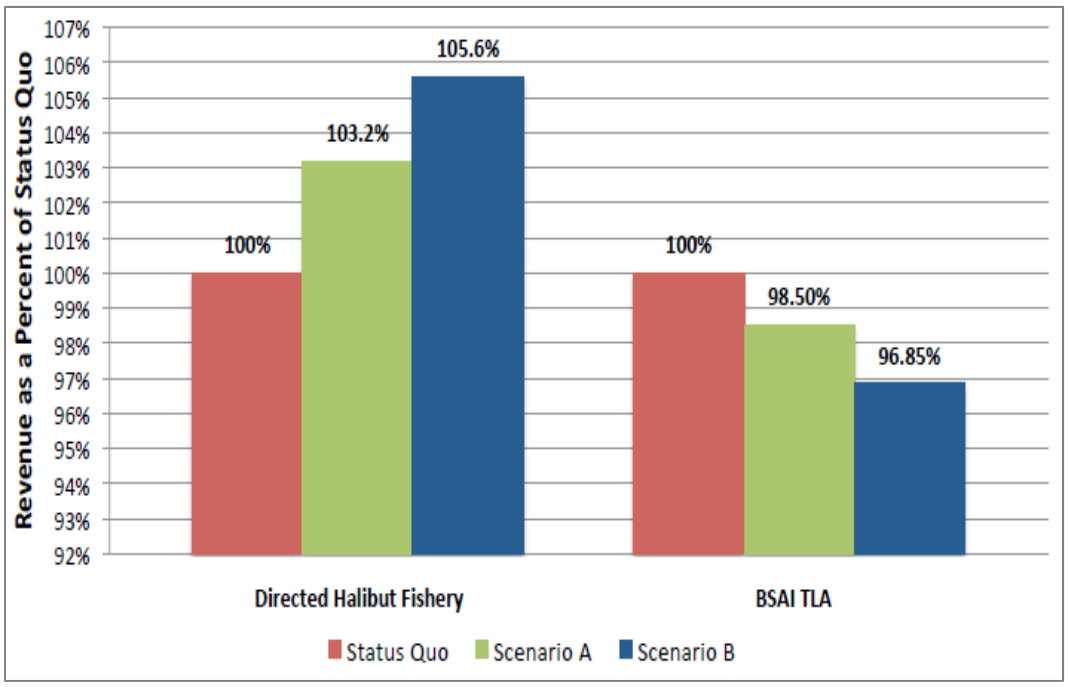

Figure 6. Relative Benefits of 50-Percent Reduction in Directed Halibut Fishery Compared to BSAI TLAS.

Reducing the Halibut PSC caps by 50 percent also harnesses efficiency as a tool to create positive incentives for the bycatch fisheries. Indeed, in the MSA

regulations, NOAA cautions that plans "should avoid creating strong incentives for excessive investment in private sector fishing capital and labor."[92] Failure to adjust the Halibut PSC caps by 50 percent encourages further investments by the Amendment 80 and BSAI TLAS fisheries that are inherently "excessive" because they are uneconomic unless these fisheries are allowed to continue their wasteful bycatch practices.

F. Assumed Closures of the Amendment 80 and BSAI Trawl Fishery Ignore Less Costly Alternatives and Are Inconsistent with National Standard 2

National Standard 2 requires the Council to base its fishery management decisions on the "best scientific information available."

As explained above, the Draft EA/RIR/IRFA improperly assumes that halibut PSC reductions will result in costly fishery closures. It reaches this conclusion by failing to adequately consider well-established and scientifically proven technologies and alternatives that would reduce halibut PSC while allowing other target fisheries to continue. As such, the Council's analysis substantially overstates these economic and fishery impacts that would result from adopting stringent limits on halibut PSC. The Council's analysis is accordingly inconsistent with National Standard 2.

V. NEPA

A. The Draft EA/RIR/IRFA Does Not Support PSC Reductions Below 50 Percent

While the Draft EA/RIR/IRFA undoubtedly justifies a PSC reduction of 50 percent in the BSAI, the same cannot be said for any reduction *below* 50 percent. This is because impacts to the directed fishery from a lesser PSC reduction are vastly understated.

As noted above, Area 4CDE has tolerated tremendous reductions in FCEY the last few years. The average Area 4CDE FCEY from 1998 to 2012 was 3.89 million pounds, yet the 2013 FCEY was less than half of that average (49.6%). At the same time, removals of halibut taken as incidental catch have

[92] 50 C.F.R. § 600.330(b)(2)(ii).

remained relatively unchanged. The economic impact of this trend in St. Paul is best summed up in Table 2 below:

Year	# Vessels	# People Employed	Local Vessel Landings (lbs)	Income	Ex-vessel Price
2005	14	66	441,398	$1,946,565	$4.41
2006	15	75	512,268	$2,515,236	$4.91
2007	15	85	562,264	$3,261,131	$5.80
2008	16	95	847,724	$2,967,034	$3.50
2009	17	100	783,714	$2,280,608	$2.91
2010	18	98	863,359	$4,144,123	$4.80
2011	20	110	860,958	$5,510,131	$6.40
2012	18	100	559,227	$3,003,049	$5.37
2013	16	89	446,968	$2,002,417	$4.48
2014	16	80	334,826	$1,965,429	$5.87
5-yr Average	18	95	613,068	$3,325,030	$5.38

Table 2: Economic Impact to the St. Paul Island Local Halibut Fishery

As the table illustrates, all the metrics indicative of a healthy fishing economy are trending downward in St. Paul (with the exception of ex-vessel value). Put more succinctly, fewer vessels are employing less people and catching less halibut.

The situation regarding the initial IPHC blue line recommendation for the directed halibut fishery has been well discussed.[93] In substantive terms, in order to achieve the current maintenance FCEY of 1,285,000 pounds in 2016, *a minimum 45 percent reduction in halibut PSC limits would be necessary in the BSAI under current conditions*. The preferred 50-percent reduction to PSC limits, which would more adequately resolve the problems of limited commercial opportunity and elevated bycatch rates, would equate to only a 37 percent reduction from 2014 bycatch numbers (see Table 3). This reduction lies in stark contrast to the Area 4CDE FCEY, which has been reduced 65 percent since 2011.

Clearly, the status quo no action alternative is unsustainable and will impact halibut-dependent communities (such as St. Paul) more heavily than other groups that participate in the directed fishery. St. Paul itself is particularly dependent on gross revenues in the halibut fishery for community stability.[94] By establishing the maintenance fishery level for 2015, the IPHC acknowledged that FCEY allowances below a certain threshold are simply

[93] See Section II.

[94] Draft EA/RIR/IRFA at 367. See also Sections I & IV.D.

unworkable and will have severe economic consequences in the directed fishery, particularly in heavily dependent communities like St. Paul. Based on the minimum PSC reduction required to meet the need for a maintenance level fishery, which itself is only a temporary fix, *it is clear that any reduction of PSC below 50 percent is unjustifiable and should not be considered as a reasonable alternative in light of the purposes of the amendment*.

B. The Draft EA/RIR/IRFA Provides a Robust Analysis of the 50-Percent PSC Reduction Proposal, Which is Best Suited to Combat the Problems Faced by the Directed Halibut Fishery in Area 4CDE

As has been stated previously, decades of decline in the exploitable halibut biomass in the BSAI groundfish fisheries, particularly in Area 4CDE, have led to sharp reductions in the number of directed fishery landings in the last several years (as illustrated by Figure 3).

Due to these biomass declines, the halibut directed fisheries have incurred major reductions in harvest limits since 2003. While these catch reductions have been particularly devastating on the small communities like St. Paul that subsist primarily from the directed halibut fishery, the halibut PSC in non-directed fisheries has not declined at a proportional rate (see Figure 4).

In light of the above-stated problems, the proposed PSC reduction amendment has two purposes: to minimize halibut PSC mortality in the commercial groundfish fisheries while also providing additional harvest opportunities to the directed halibut fishery.[95]

C. Economic & Environmental Impacts

It is first important to note that the percentage reduction applies to the current PSC *limit*. Since the various groundfish fisheries do not attain their full PSC quota, the *actual reduction* is less than the proposed percentage as demonstrated by Table 3 below:

[95] Draft EA/RIR/IRFA at 36.

Sector	Current PSC Limit	Average Use (2008-2013)	2014 Use	% Reduction to Sector PSC Limit & Effective PSC Limit 10%	20%	30%	35%	40%	45%	50%	60%
Trawl Limited Access	**875**	**709**	**717**	**788**	**700**	**613**	**569**	**525**	**481**	**438**	-
% Change from 2014 Use	22%			10%	-2%	-15%	-21%	-27%	-33%	-39%	-
% Change from Average Use	23%			11%	-1%	-14%	-20%	-26%	-32%	-38%	-
Amendment 80	**2,325**	**2,037**	**2,106**	**2,093**	**1,860**	**1,628**	**1,511**	**1,395**	**1,279**	**1,163**	**930**
% Change from 2014 Use	10%			-1%	-12%	-23%	-28%	-34%	-39%	-45%	-56%
% Change from Average Use	14%			3%	-9%	-20%	-26%	-32%	-37%	-43%	-54%
Longline Pcod CVs	**15**	**3**	**7**	**14**	**12**	**11**	**10**	**9**	**8**	**8**	-
% Change from 2014 Use	114%			93%	71%	50%	39%	29%	18%	7%	-
% Change from Average Use	463%			406%	350%	294%	266%	238%	209%	181%	
Longline Pcod CPs	**760**	**515**	**412**	**684**	**608**	**532**	**494**	**456**	**418**	**380**	-
% Change from 2014 Use	84%			66%	48%	29%	20%	11%	1%	-8%	-
% Change from Average Use	47%			33%	18%	3%	-4%	-12%	-19%	-26%	
CDQ	**393**	**211**	**244**	**354**	**314**	**275**	**255**	**236**	**216**	**197**	-
% Change from 2014 Use	61%			45%	29%	13%	5%	-3%	-11%	-19%	-
% Change from Average Use	87%			68%	49%	31%	21%	12%	3%	-7%	
Other Non-trawl	**58**	**5**	**1**	**52**	**46**	**41**	**38**	**35**	**32**	**29**	-
% Change from 2014* Use	5700%			5120%	4540%	3960%	3670%	3380%	3090%	2800%	-
% Change from Average Use	1100%			980%	860%	740%	680%	620%	560%	500%	
Total	**4,426**	**3,479**	**3,487**	3,983	3,541	**3,098**	**2,877**	**2,656**	**2,434**	**2,213**	
% Change from 2014 Use	27%			14%	2%	-11%	-17%	-24%	-30%	-37%	
% Change from Average Use	23%			14%	2%	-11%	-17%	-24%	-30%	-36%	

Table 3: BSAI Halibut PSC Limit Reduction, by Sector, in metric tons (grayed text indicates that the reduced Sector PSC Limit is higher than average use and 2014 use, and would not have been constraining).

This table highlights the fact that a reduction in PSC would not be quite as dramatic as it appears on its face. Looking at the Amendment 80 sector for example, a 50-percent PSC reduction would, in reality, represent only a 45-percent decrease from the level of PSC actually caught in 2014.

According to the IMS Model, a 50-percent PSC reduction provides the best option for meeting the objectives of the FMP amendment. According to the model, under this option annual halibut harvest volumes in the entirety of Area 4 would increase by up to 42 percent.[96] In Area 4CDE alone, the halibut harvest volumes would increase between 275 percent and 348 percent, or close to one million pounds of fish over and above the current regime.[97] Over the ten-year period, this would result in an increase in value between $81,000,000 and $105,000,000.[98] Overall, halibut PSC would be reduced in

[96] Draft EA/RIR/IRFA at 361.

[97] Draft EA/RIR/IRFA at 362.

[98] Draft EA/RIR/IRFA at 364.

Area 4 by up to 2,112,302 pounds in 2016, 36 percent of which are U26[99] individuals which otherwise would not have an opportunity to grow, reproduce, and recruit into the directed fishery.[100]

Environmentally, the impacts of a 50 percent reduction in Halibut PSC limits are minimal. Fishing practices would undoubtedly change amongst those groups affected by the reduction, likely leading to more concentrated effort in acquiring higher-value fish species. For instance, the Draft EA/RIR/IRFA predicts that Amendment 80 groups will target Atka mackerel and rockfish, followed by other species, to obtain the greatest economic benefit from their trips.[101] Additionally, vessels may employ seasonal changes in the timing of their fishing to further avoid halibut encounters.[102] There is historical precedent to suggest that these assumptions are correct.[103] The change in fishing pattern is not expected to result in adverse effects to other groundfish stocks.[104] Furthermore, changes in fishing patterns or increased biomass of halibut are not predicted to adversely affect marine mammals or the larger fishery habitat.[105]

The current Draft EA/RIR/IRFA considers a total of ten alternatives (including options and sub-options) which are designed to address the problem of halibut bycatch in the BSAI. As was illustrated by Figure 4, addressing halibut bycatch is important because it now accounts for the majority of halibut removals, thereby putting pressure on halibut biomass and substantially decreasing the halibut yield available to the directed fishery. Given that several of the National Standards under the Magnuson-Stevens Act are also implicated by the present imbalance in this fishery (as discussed above in Section IV), the alternatives to the current situation analyzed within the 400+ page Draft EA/RIR/IRFA easily pass the test of reasonableness.

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99 Draft EA/RIR/IRFA at 101.

100 Draft EA/RIR/IRFA at 228, 364.

101 Draft EA/RIR/IRFA at 105-06.

102 Draft EA/RIR/IRFA at 106.

103 Draft EA/RIR/IRFA at 423. See also NPFMC, Stock Assessment and Fishery Evaluation Report for the Groundfish Resources of the Bering Sea/Aleutian Islands Area: Economic Status of the Groundfish Fisheries off Alaska, 2013, at 348.

104 Draft EA/RIR/IRFA at 106.

105 Draft EA/RIR/IRFA at 112, 119.

VI. Conclusion

In light of the above points, the CBSFA respectfully requests that the Council adopt a halibut PSC reduction of 50 percent in the BSAI fisheries. This level of reduction satisfies all the statutory requirements of the Magnuson-Stevens Act and NEPA, starts the process of preserving and restoring the halibut fishery, and is the best (and only) alternative that preserves a viable and economically sound directed halibut fishery. Given the rapidly dwindling halibut biomass and the near-collapse of the directed halibut fishery (and the communities that depend on it), addressing these problems now through a 50 percent PSC reductions is not just the most reasonable alternative, it is the only alternative.

Sincerely,

Phillip Lestenkof
President
Central Bering Sea Fishermen's Association

cc: Eileen Sobeck, Assistant Administrator for Fisheries
Samuel D. Rauch III, Deputy Assistant Administrator for Regulatory Programs
Paul Ryall, Chairman, IPHC