



Central Bering Sea Fishermen's Association

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January 28, 2022

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

Dear Chairman Kinneen:

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

CBSFA is requesting the support of the North Pacific Fishery Management Council for an Emergency Action, pursuant to Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). **CBSFA asks that the Council recommend that the Secretary of Commerce take emergency action to allow for halibut/sablefish IFQ transfer flexibility, thereby waiving owner on board requirements in the halibut/sablefish Individual Fishing Quota (IFQ) fisheries under 50 CFR Section 679.41 for the 2022 season.**

In addition, CBSFA asks that the Council recommend that emergency action be taken to waive for 2022 the Vessel Cap regulations under 50 CFR Section 679.42(h)(1) for halibut in IPHC Regulatory Areas 4A, 4B, 4C, 4D and 4E.

I. **Background:**

In the summers of 2020 and 2021, CBSFA members would normally have harvested 325,550 and 313,650 pounds of CDQ halibut out of St. Paul, respectively. In addition, CBSFA members held a total of 126,806 pounds of 4C halibut IFQ in 2021. The St. Paul local small boat fleet consists of 14 vessels and employs up to 20% of its residents. Commercial halibut fishing is the lifeblood of St. Paul and is the main economic engine in a community that has few small boat fishing opportunities.

The problems CBSFA and its members faced in 2020 and 2021, which resulted from the unforeseen COVID-19 pandemic, would have been unsurmountable. However, emergency

actions by the Council in 2020 and 2021 to permit the waiver of owner on board requirements, and vessel caps in the Bering Sea, allowed for successful 2020 and 2021 seasons for St. Paul. In 2021, CBSFA's halibut CDQ was 99% harvested, and CBSFA member-owned halibut IFQ in 4CDE was 100% harvested.

The health concerns faced in 2021 and 2022 are the same, as the pandemic continues to take an awful toll on Alaska communities and on the fishing industry. Although the first responders, elders and most others at St. Paul have received COVID vaccinations, the community is currently experiencing a surge of the Omicron Covid variant, with 28 positive cases. The town has thus far successfully avoided community spread through strict protocols, but there is clearly a renewed danger of community members being infected off-island, and bringing the infection home.

It is difficult to predict what Covid conditions will be in early June when the local fishery starts. If the virus is still omni-present at that time, the community would need a fallback plan that would allow quick IFQ transfers and exemption from vessel caps so the local IFQ and CDQ could be harvested and delivered elsewhere with a few larger boats as in 2020 and 2021.

A critical consideration is Saint Paul's inability to handle an outbreak of COVID-19 cases locally. About 75% of Saint Paul's population of almost 400 suffers underlying conditions, and about 1 in 4 residents is over 55, making Saint Paul particularly vulnerable to the deadly COVID-19 virus. With only two ICU beds and no resident medical doctors, the St. Paul Health Clinic does not have the medical equipment or personnel necessary to treat individuals with COVID who may require hospitalization.

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

Given the potential health, financial and demographic costs to Saint Paul Island, CBSFA's fishermen have determined that the 2020 and 2021 fishing plan should be made available again for the halibut fishery in 2022. As in prior years, this plan involves using the CBSFA 58' F/Vs Saint Peter and Saint Paul to harvest CBSFA's halibut CDQ as well as its members' halibut IFQ for delivery to plants elsewhere in Alaska. The CBSFA 58' boats and perhaps other vessels would be hired to harvest CBSFA's 390,700 pounds of CDQ halibut, instead of operating the 14 small local vessels.

In addition, these small boat fishermen who own 4C IFQ, as well as other IFQ holders in the Bering Sea, would need the ability to transfer their IFQ to larger vessels capable of fishing in remote areas and traveling to Akutan or Unalaska to deliver halibut. To enable the largest number of IFQ holders to efficiently transfer quota, CBSFA supports an emergency rule to waive owner on board requirements in the halibut/sablefish Individual Fishing Quota (IFQ) fisheries under 50 CFR Section 679.41 for the 2021 season.

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

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

However, the current vessel cap of approximately 80,000 pounds will clearly be insufficient to respond to the needs of the fishery this coming season; the second requested action would lift the vessel cap in the Bering Sea Aleutian Island halibut regulatory areas 4A, 4B, 4C, 4D, and 4E.

Absent timely emergency regulatory relief, CBSFA members and other halibut IFQ holders in the Bering Sea will essentially be prohibited from harvesting the full amount of halibut available to them in 2022.

After reviewing the similar situation in 2020 and 2021, the Council recommended emergency action to remove vessel use caps for the halibut IFQ fishery in Areas 4B, 4C, and 4D. NMFS implemented the Council's recommendation with a final rule, waiving some of the normal process because of the need for swift action. Although the emergency action in 2020 was not ultimately taken under the MSA, the MSA standards for emergency relief are still applicable.

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

St. Paul's fishermen remain committed to getting the fish out of the water in the safest and most economical way possible. If all the fish are not harvested, significant revenue will be lost, at a time when fishermen and their communities most need them. Halibut fishermen are already hurting badly from reduced allocations, Maximum flexibility, including an emergency transfer and vessel cap exemption, for the 2022 season may help BSAI small boat fishers, IFQ holders, and communities stay afloat during this difficult time, as illustrated by the local results of the 2020 and 2021 emergency actions.

II. Standard for Emergency Relief:

Section 305(c) of the MSA allows the Secretary of Commerce to promulgate emergency regulations when the Secretary finds that an emergency exists involving any fishery. National Marine Fisheries Service (NMFS) policy guidance provides that such use "should be limited to extremely urgent, special circumstances where substantial harm to or disruption of the resource, fishery, or community would be caused in the time it would take to follow standard rulemaking procedures." The phrase "an emergency exists involving any fishery" has been defined in NMFS policy guidance as a situation that results from "recent, unforeseen events or recently discovered

circumstances” that present “serious conservation or management problems in the fishery” and can be addressed through emergency regulations for which “the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process.”¹

III. An Emergency Exists:

CBSFA, all other CDQ groups, and various IFQ holders believe that an emergency exists. For the reasons described above, under the existing owner on board requirements in the halibut/sablefish IFQ fisheries, IFQ holders will be unable to safely harvest halibut/sablefish IFQ without the risk of further spreading the coronavirus among harvesters, crewmembers and communities.

Also, under the existing vessel caps, IFQ holders will be unable to harvest much of the halibut IFQ in the Bering Sea. As a result, a substantial percentage of the halibut IFQ in areas 4A, 4B and 4CDE may be stranded. The halibut fishery opens in March; there is insufficient time to pursue regulatory relief through standard rulemaking procedures.

If 50% of the halibut in the Bering Sea is stranded, at an ex-vessel value of approximately \$5.90 pound (based on current pricing), this is a substantial amount of revenue for the halibut fleet and dependent communities at a time when these revenues are critically needed. CBSFA has considered options that would not require emergency action, but does not believe there is a viable alternative that minimizes health risks to the community and mitigates the financial loss to CBSFA and other Bering Sea halibut fishermen.

IV. The Criteria for Emergency Action Have Been Met:

CBSFA submits that each of the three criteria for emergency action are met.

(1) The situation results from recent, unforeseen events or recently discovered circumstances.

The present situation meets the “recent, unforeseen events or recently discovered circumstances” requirement. Neither the coronavirus pandemic nor its impacts on the fisheries and global economy were anticipated and more importantly the pandemic and the public health emergency continues. In response to the pandemic and the need to limit the spread of contagion, the fishing industry has kept in place a number of measures to allow for pursuit of the various commercial fisheries while minimizing the risks to crew, plant workers, quota holders, and communities.

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

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

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

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

While the coronavirus public health emergency does not present a clear conservation problem in the fishery, the current situation is a serious management problem. The risk of COVID-19 spreading to harvesters, crews, and communities, remains significant as a recent surge of COVID-related deaths nationwide and in Alaska confirms. The consequences of COVID surge remain serious from a public health and economic perspective. By allowing IFQ transfer flexibility, and waiving vessel caps, the IFQ fisheries would be pursued to the benefit of harvesters, quota-holders, crews, and communities, while minimizing the risks of contributing to the spread of the disease.

(3) The situation can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts to the same extent as would be expected under the normal rulemaking process.

The situation described above can be addressed through emergency regulations to waive restrictions on the transfers of IFQ under Section 679.41 on a temporary basis for the halibut and sablefish IFQ fisheries, and to waive the regulatory cap on the number of pounds of halibut that can be harvested by an individual vessel.

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

- (a) the Council would have to produce a thorough analysis with a range of alternatives, and take action.
- (b) NMFS would need to issue a proposed rule, provide a public comment period, assess those comments, and publish a final rule. NMFS typically requires at least a year to complete a final rule after the Council has taken final action. These regulatory steps certainly could not be completed in the above time frame, even if the Council were able to take action at the June meeting.

CBSFA, other CDQ groups, and other IFQ holders believe there is simply not enough time for the normal process to be followed without incurring the risks and losses identified above. Moreover, CBSFA notes that the requested emergency action is limited in duration by statute to 180 days. CBSFA submits that the immediate benefits of emergency action outweigh the value of the normal process.

V. Emergency Relief is Justified:

NMFS Policy finds that emergency action can be justified under one or more of the following situations: (1) ecological (to prevent serious damage to the fishery resource); (2) economic (to prevent significant direct economic loss or preserve a significant economic opportunity that otherwise might be foregone); (3) social (prevent significant community impacts or conflicts); or (4) public health. CBSFA and other stakeholders believes that there are economic, social, and public health justifications for the requested emergency actions.

Clearly, several of the abovementioned economic, social, and public health considerations are applicable to CBSFA's request. In particular, though 305(c)(3)(C) states an emergency regulation "that responds to a public health emergency or an oil spill may remain in effect until the circumstances that created the emergency no longer exist." As noted earlier, St. Paul is experiencing a surge in COVID-19 cases that threatens the ability of the local health infrastructure to respond to life-threatening situations. A normally operating summer halibut fishery with a large, for St. Paul, influx of crewmembers and other support workers would compound this problem.

The COVID-19 health mandates, travel restrictions, quarantine requirements, and potential health risks have continued to create management problems in the IFQ fisheries. As in previous seasons, if there is no additional flexibility to transfer IFQ, and temporarily exceed vessel caps, some IFQ holders may forego harvesting due to the additional costs and logistical obstacles created by these mandates and requirements. If harvesters forego participating in the IFQ fisheries, this could result in stranded resource in excess of the 10% that can be rolled over to the following year for those unable to participate. Under existing regulations, only 10% of an IFQ holder's remaining balance can be rolled over to the following year. Anyone unwilling or unable to harvest or transfer their IFQ would therefore forego 90% of COVID-19 is likely to spread more rapidly to harvesters, processors, and communities. The result would be a worsening of the economic, social, and public health impacts of the pandemic on fishery participants, with possibly devastating consequences.

VI. Compliance with National Standards:

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

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

The requested emergency actions will allow as much of the halibut and sablefish IFQ for 2022 to be harvested, processed and marketed to achieve optimum yield at a time when the nation's food supplies are under stress due to the pandemic. If the emergency actions are not taken, it is likely that a substantial percentage of the IFQ resources will be stranded.

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

The abovementioned request respects NMFS' and the IPHC's biological assessments for the IFQ fisheries 2022 season.

National Standard 3: To the extent practicable an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

These actions do not alter management of the IFQ fisheries as stocks.

National Standard 4: Conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various U.S. fishermen, such allocations shall be: (1) fair and equitable to all such fishermen; (2) reasonably calculated to promote conservation; (3) carried out in such a manner that no individual, corporation, or other entity acquires an excessive share of such privileges

No direct allocation of any fishing privileges is being made through this action. On the contrary, these actions allow IFQ fishermen to preserve and benefit from their allocations in a manner consistent with the conservation of the resource. It could be argued that the temporary reduction of owners on board and participating vessels along with the use of fuel and other supplies could have a salutary effect on ecosystem and thus indirectly on the IFQ fisheries.

National Standard 5: Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

Allowing for IFQ transfer flexibility and waiving the owner on board requirements, and waiving vessel caps, to avoid forgoing IFQ catch promotes the efficient utilization of the IFQ resources. This action is not allocative. On the contrary, it allows every IFQ holder to have its allocation harvested under extenuating circumstances.

National Standard 6: Conservation and management measures shall take into account and allow for variations among and contingencies in fisheries, fishery resources, and catches.

The requested emergency actions are responsive to a global and national fishery contingency with widespread impacts on the harvesting, processing, and marketing of the fisheries.

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

The requested actions will not impose greater costs on IFQ fishery participants. On the contrary, the benefits of these actions outweigh the risks resulting from the further spread of COVID-19 and will minimize costs and avoid unnecessary duplication in the deployment of harvesters and crews.

National Standard 8: Conservation and management measures shall, consistent with the conservation requirements of the Magnuson-Stevens Act (including the prevention of overfishing and rebuilding of overfished stocks) take into account the importance of fisheries resources to fishing communities in order to: (1) provide for the sustained participation of such communities; and (2) to the extent practicable, minimize adverse economic impacts on such communities

CBSFA and the other stakeholders are supporting the above actions in order to protect vulnerable communities from the dangerous spread of COVID-19 thus ensuring the long-term, sustained, participation of these communities in the IFQ fisheries and minimizing the adverse impacts of the pandemic on their residents. Moreover, the substantial amount of foregone IFQ that would result if these actions are not adopted, would clearly be harmful to fishermen and the communities in which they reside. These actions comply with National Standard 8.

National Standard 9: Conservation and management measures shall, to the extent practicable: (1) minimize bycatch; and (2) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch

Bycatch or bycatch mortality will not be increased beyond the levels currently contemplated. On the contrary, these actions should have positive effects in reducing bycatch and mortality.

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

The requested emergency actions should help reduce the spread of the coronavirus, thereby promoting the safety of human life on board vessels, as well as in communities.

VII. Specific Request for Emergency Action:

For the reasons provided above, CBSFA requests that the Council support an emergency rule to allow IFQ transfer flexibility under 50 CFR Section 679.41 for the halibut and sablefish IFQ fisheries.

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

Thank you for your consideration.

Sincerely,



Phillip Lestenkof, President
Central Bering Sea Fishermen's Association