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May 30, 2017

Dan Hull, Chairman  
North Pacific Fisheries Management Council  
605 W 4<sup>th</sup> Ave, Suite 306  
Anchorage, Alaska 99501

Re: Agenda Item C4, BSAI Trawl Limited Access Yellowfin Sole

Dear Chairmen Hull and Members of the North Pacific Fishery Management Council,

Thank you in advance for your consideration of my concerns relative to your possible final action on the Yellowfin Sole Trawl Limited Assess (YFS TLAS) effort limitation issue. This is the third correspondence I've submitted to the North Pacific Fishery Management Council (Council) regarding this issue and the third Council meeting I have attended. My family and I own the *F/V Aleutian Challenger* (AC), one of the smallest AFA catcher vessels in the Bering Sea CV trawl fleet. We have owned and operated our vessel for the past 34 years. Your action this week regarding limiting who can participate in the YFL TLAS trawl fishery will have a major impact on our fishing company and our operations as we are quite dependant on the Bering Sea YFS TLAS fishery.

If the Council acts it should be to address the future situation of more MS capacity entering the fishery as more Amendment 80 participants bring new highly efficient vessels online as the analysis points out. Limiting or partially limiting CV participation could lead to "voluntary cooperative management, which could be crucial to a fully utilized fishery". Considering this, action is warranted and consistent with the Council's focus on reducing halibut PSC in Groundfish fisheries.

In saying this though, we can live with any of the Alternatives the Council is considering other than **Option 1.1, Suboption 1.1.2.**

My correspondence of January 23, 2017, (attached) is still relevant illustrating relative dependency and how this if there ever was is a David vs. Goliath situation this is it with some of the largest fishing companies in Alaska targeting, in the *F/V Aleutian Challenger's*, case one an ever-shrinking number of family owned and operated CV's.

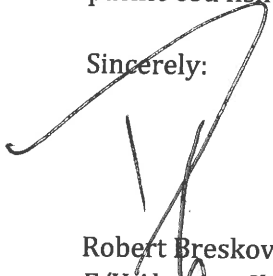
In public testimony, I'll present to you the AC's Halibut PSC information since 2015. What the AC's performance shows and the analysis illustrate is that there is not a Halibut PSC issue currently in the fishery. All present participants in the YFS TLAS fishery are extremely aware of the NPFMC's concern about halibut PSC usage in the federal groundfish fisheries. For my company's YFS operation we take this issue of Halibut PSC management and avoidance very seriously and it takes a concerted effort to avoid halibut bycatch. It's worth noting the author of the EA/RIR analysis points

out any differences between CP & CV PSC rates are “likely a factor of the timing of the CP Fishery”. “Most CPs tend to focus their effort immediately following the January 20 opener which likely has less halibut on the yellowfin sole grounds, while the CVs tend to fish throughout the entire BSAI TLAS yellowfin sole season when halibut are most often on the yellowfin sole grounds”.

The analysis also discussed potential “spillover effects in the BSAI Pacific cod fishery”. I believe any effects will be minimal at best considering the relatively low number of CVs that participate in TLAS yellowfin sole compared to the 40 plus CVs that participated in the BSAI pacific cod fishery last winter. Most importantly, every CV that currently participates in TLAS yellowfin sole fishery are already full-time participants in the BSAI pacific cod fishery.

In summary, whatever you do please don't pick **Option 1.1, Suboption 1.1.2** that excludes the AC from continuing to fish TLAS yellowfin sole. Who's in and who's out is the question before you, though our common goal, that everyone with an interest in this issue should share is to avoid what happened in 2014 when the fishery shut down early when halibut PSC was exhausted and the participants had to petition the Council for 60MT of halibut PSC to be moved from the CV BSAI pacific cod fishery to TLAS.

Sincerely:



Robert Breskovich  
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January 23, 2017

Dan Hull, Chairman  
North Pacific Fisheries Management Council  
605 W 4<sup>th</sup> Ave, Suite 306  
Anchorage, Alaska 99501

Regarding Item: C6 BSAI Trawl Limited Access Yellowfin Sole

Dear Chairman Hull,

My name is Robert Breskovich, and my family and I own and operate the *F/V ALEUTIAN CHALLENGER (AC)*, one of the smallest AFA catcher vessels in the fleet. She's going on her 34<sup>th</sup> year fishing in Alaska and has been fishing in the Trawl Limited Access Sector (TLAS) Yellowfin Sole (YFS) fishery since September of 2015. The *AC* also participated extensively for many years in the Joint Venture YFS fishery beginning in the early 1980's.

Because this issue and any subsequent Council action on this issue greatly effects my fishing company, I have been watching this issue closely. I had the pleasure of testifying before the Council last year at the February meeting on this issue and provided you with my concerns at that time. I've just reviewed the February 2017 Initial Draft Review document prepared by Council staff and ask that if the Council moves this issue forward that you chose as your preliminary preferred alternative, **Alternative 2 Sub-option 2.1 and 2.1.2**. I believe this preferred alternative strikes a fair balance limiting access in low abundance years and limits new entrants which could compress the fishery in the early part of the year when Halibut and other PSC rates are typically more problematic, while allowing more participants access to the fishery when the Yellowfin Sole TAC (abundance) is high.

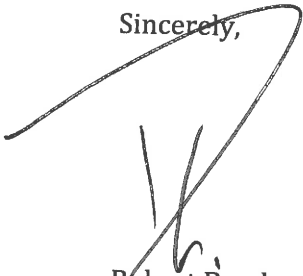
When the Council reviewed this issue at last February's meeting testimony was provided that the *AC* and the other CVs that entered the fishery in 2015 acted in a cavalier, non-cooperative manner. These allegations were proven to be misguided and uninformed and largely disproven. The *AC's* 2015 Halibut PSC mortality rate was 12.5% below the fleet average in 2015. Arguments quickly shifted stating the 2015 CV entrants caused harm to traditional business activities dependent on the TLAS YFS. It's widely known that since no markets were available to independent CVs in TLAS YFS fishery the AFA F/T's and the one vertically integrated Amendment 80 operation who own their own CVs in their own words "had been carving up the fishery for years". Dependency is a subjective issue. For example, for my vessel, 25% of her income in 2016 was derived from TLAS YFS. I'm not privy to the AFA F/T's financial information, but the revenue from a 15,000 MT TLAS YFS fishery pales in comparison to the revenue generated by the AFA F/T Pollock cooperative's allocation of 465,316, MT this year of Eastern Bering Sea Pollock (this not include the CDQ Pollock

allocations that's exclusively harvested by the AFA F/T's). The largest of those company's annual revenues in recent years was reported to be nearly \$400,000,000. To put that in perspective, assuming this company caught half the TLAS YFS allocation in 2016, the value of that production would have been roughly \$6,000,000. Again, I'm not privy to anyone else's information though it's reasonable to assume their revenues from TLAS YFS represent less 1.5% of their annual income. In this light if there was ever a David v Goliath story before the Council it's here with a couple of the largest AFA F/T companies ganging up against, in the AC's case, a small family owned operation.

For years, I have tried to secure a market for my trawl vessel with an AFA F/T or Amendment 80 Mothership in the TLAS fishery but was never successful until 2015. As previously mentioned in my testimony to you in February of last year, in 2015, knowing our mothership P. Cod opportunities in the Aleutian Islands were coming to an end due to action by the Council that impacts available Aleutian Island P. Cod offshore markets (Amendment 113), we were finally able to establish a TLAS YFS market with Fishermen's Finest (FF) and began making offshore deliveries of YFS in September 2015. At that time, there was no discussion of limiting entry into TLAS YFS. This year will be the AC's third consecutive year fishing TLAS YFS and we've grown dependent on the fishery.

In summary, I ask that the Council take no action that prohibits my vessel's ability to fish YFS in future years.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Breskovich', with a large, sweeping flourish above the name.

Robert Breskovich  
F/V Aleutian Challenger  
2324 NW 90<sup>th</sup> St  
Seattle, WA 98117

Mr. Dan Hull, Chairman  
North Pacific Fishery Management Council  
605 W 4<sup>th</sup> Avenue, Suite 306  
Anchorage, AK 99501-2252

May 30, 2017

**RE: Agenda item C4: BSAI YFS TLAS. The Council Effort to Retroactively Disenfranchise 125 small catcher vessels<sup>1</sup> in favor increasing the AFA Pollock Catcher Processor monopoly is bad policy that may increase halibut bycatch.**

Dear Chairman Hull,

This issue boils down to a dispute about who will harvest the portion of Yellowfin Sole TAC available for the Trawl Limited Access Fishery Yellowfin Sole (YFS TLAS). This fish will either be harvested by the large AFA catcher processors, or by the large AFA catcher processors AND the small AFA and non-AFA catcher vessels. The 2007 Federal Register demonstrates that NMFS' original intent in establishing the Yellowfin Sole TLAS under Amendment 80 was to provide harvesting opportunities to all three of these harvester groups, and that this would bring long term benefits to the fishery and achieve objectives sought by the FMP. The proposed action seeks to eliminate some or all of the AFA catcher vessel group from harvesting this pool of fish. That means the elimination of a very good market for the small CV's, in favor of further consolidation among the AFA-CP class which violates AFA section 211.

The council should deny the action. There is no National Standard or any legal authority which justifies creating a closed class of vessels solely to protect a favored few who don't like competition. The law requires just the opposite- to promote competition and protect the smaller fishing companies and their markets from AFA CP predation. It is not the Council's legal or moral role to eliminate the competition that the large AFA CP companies don't like- and that's exactly what they are asking the Council to do with this action.

If this action proceeds it will eliminate the following new, good developments that have been discovered as a result of unrestricted CV participation in the TLAS:

**Halibut Bycatch has been reduced with CV competition in the TLAS:** The entrance of new catcher vessels into the fishery- as intended by NMFS in 2007- has created a new tool promoting bycatch reduction- competition between harvesters for the lowest halibut bycatch rates. Both the CV fleet and the CP fleet are reducing halibut bycatch rates to dramatically low levels since new harvesters entered the fishery, and then keeping their bycatch rates at that low level. Before this, the favored tool to address bycatch reduction was always the rationalization tool, which brings along with it all the problems of privatization of a public resource. The "competitive halibut bycatch reduction" tool has none of these privatization problems, and it has been successful in limiting halibut mortality in the YFS TLAS fishery over the last three years. Harvesters in the YFS TLAS fishery are now using all of the available halibut avoidance methods developed by the Amendment 80 fleet: deck sorting, cooperative fleet halibut avoidance, night fishing avoidance when appropriate, excluders, as well as many others. The competitive halibut bycatch reduction tool puts continued pressure on harvesters to push and hold the bycatch rates down, without privatizing the resource.

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<sup>1</sup> NPFMC June 2017 BSAI YFS TLAS Public Review Draft Table 2-19.

**TLAS provides CV’s significant, predictable income that CV owners can invest into Alaska and for new halibut reduction technology. It should not be diverted to the largest fishing companies, the AFA-CP owners who already receive massive revenue from their protected pollock monopoly.**

Under Option 1 (Status Quo), Fishermen’s Finest estimates making \$30 million in delivery payments to independent CV owners over the next ten years.

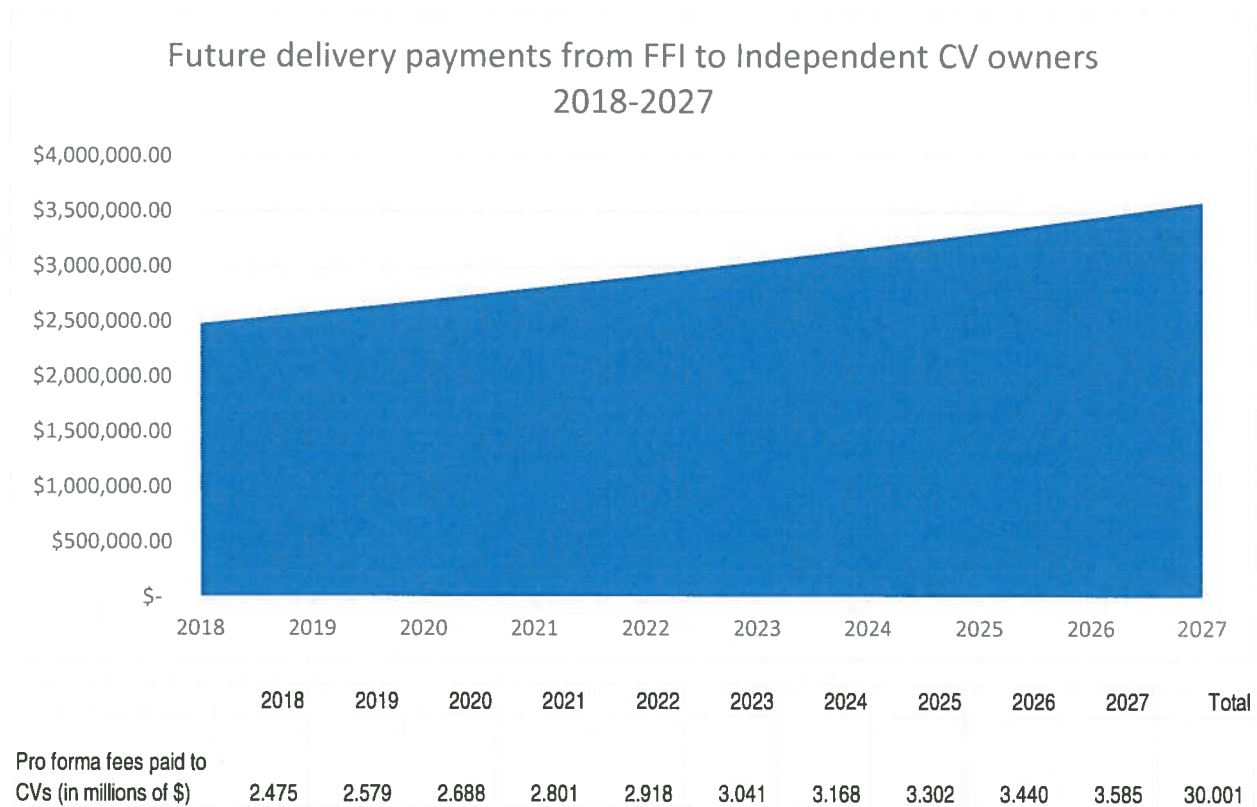


Figure 1. Pro Forma Fees paid to FFI Partner Catcher Vessels for the years 2018-2027. \$30 million is estimated to be paid by FFI to independent catcher vessels over the coming decade for 6,000 MT delivered TLAS YFS annually.

**A. The 2007 Federal Record shows that NMFS originally intended to create small CV-A80 Mothership operations as an intended part of a “competitive” TLAS from the beginning- it is the redeployed AFA CP’s which are the unintended “new entrants,” not the CV fleet, and this action is an effort to use regulation to eliminate their competition by disenfranchising the intended beneficiaries of the 2007 Action.**

From the very beginning of TLAS in 2007, NMFS intended it be used by the CV fleet for mothership operations. This was a full three years before the Katie Ann strategically concentrated its effort in TLAS YFS and the Northern Glacier was redeployed into TLAS from their directed pollock fishery in 2010 (See figures 2 and 3, below). The NMFS discussion in the 2007 Federal Register makes it clear that TLAS was structured to recognize and protect the historic rights of the Amendment 80 fleet to conduct mother shipping operations as well as recognize and protect the historic rights of both the AFA and non-AFA catcher vessel fleet to participate in competitive mother shipping with the Amendment 80

fleet.<sup>2</sup> This reasoning is reflected in the NMFS response/rejection to AFA-CP's request to write a final rule that eliminated A80-CV mothershiping in TLAS.

**“Comment 5: .....**

+ Neither the preamble nor the regulations should suggest or add a prohibition that would limit an Amendment 80 vessel to operating as either a mothership, stationary floating processor, or as a fishing vessel on a week-by-week basis (see, for example, 72 FR 30073).

**Amendment 80 vessels have historically received and processed Amendment 80 species caught by catcher vessels in the BSAI and they have done so in conjunction with their own fishing during the same weekly reporting period. Prohibiting this activity will not only impact the Amendment 80 sector, but will severely limit catcher vessels within the BSAI limited access sector from harvesting certain Amendment 80 species. For species such as Pacific cod, catcher vessels have existing shoreside business relationships that will continue, but for the remaining Amendment 80 species, such as yellowfin sole, there is limited or no shoreside capacity for processing. The proposed prohibition is consistent with the goal of improving the accuracy of the catch accounting system and reducing discards as catcher vessels will be forced to delivery Amendment 80 species to facilities with less than 200 percent observer coverage and no GRS requirements.**

**The distance of Amendment 80 species fisheries in relation to shoreside processors may limit catcher vessels' ability to deliver quality product. Amendment 80 cooperative vessels have the flexibility to act as motherships and travel to locations where the fisheries occur. Amendment 80 vessels also have existing markets and capacity for producing high quality products from Amendment 80 species. The proposed prohibition against delivering BSAI limited access and Amendment 80 limited access fish to Amendment 80 vessels in cooperatives has significant impacts on small business entities, AFA and non-AFA catcher vessels, and Amendment 80 vessels that may choose to act as catcher vessels in the future.”**

....

**“[Department of Commerce] Response: NMFS agrees in part and has modified the regulations at 679.7(o) to allow Amendment 80 vessels to receive unsorted catch in limited circumstances. This revision will allow the one entity that NMFS has identified as currently receiving unsorted catch from a catcher vessel in the BSAI trawl limited access fishery to continue to do so. **This revision will accommodate the potential future growth in the use of Amendment 80 vessels as****

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<sup>2</sup> 52678-52680 Federal Register, Vo. 72, No. 178 Friday, September 14, 2007, Exhibit 1.

**mothership vessels for vessels in the BSAI trawl limited access fishery.”<sup>3</sup>**

As originally intended by NMFS, the partnership between CVs and A80 mothership operations is lucrative for the CV fleet, their crews and the State of Alaska. A robust, competitive market has developed between catcher vessels and processing platforms which allows CV's the opportunity to fish YFS and earn revenue during time they wouldn't otherwise be fishing. This increases overall CPUE and puts Alaska small ships and crew to work during times that they would otherwise be sitting idle and collecting unemployment.

**B. The proposed action should not proceed based on “Dependency” because a) there is no legal “dependency” by Glacier and American on the TLAS, and b) mere “dependency” of a favored set of companies is not legally sufficient under the MSA to exclude their competitors from a fishery.**

**1. History of alleged “Dependency”:** In 2010, three years after NMFS published its intention to structure TLAS to include A80-CV mother shipping, two large AFA CP companies changed their business plan and created new, dedicated yellowfin sole factory ships and entered the YFS TLAS fishery with those vessels. These dedicated vessels, the F/V Northern Glacier and the F/V Katie Ann, were turned into YFS CP's by stacking pollock quota onto other vessels owned by each company, and then redeploying into the Yellowfin Sole TLAS fishery.

Figures 2 and 3 show this transition. They show the stacking and increased total YFS harvest pre-2010 and post-2010 for each of these vessels. These figures also show what can be fairly described as the “lack of dependence” on the TLAS for those companies, because the pollock stacking combined with the re-tasking of Northern Glacier and Katie Ann likely enabled both Glacier and American to increase both harvest tons and profit margins from both operations.

Figures 2 and 3 show that after the 2010 retasking of those ships, these two companies have continued to harvest large amounts of the TLAS yellowfin sole quota, *in addition to increasing* their companies directed pollock harvests each and every year. Thus their 2010 new entry resulted in two main benefits to these companies- increased revenue from TLAS without any reduction in pollock harvest revenue, and higher CPUE on the pollock harvest due to the efficiencies of quota stacking.

Figures 2 and 3 show the huge difference in scale between the total harvest of Pollock and YFS for each of these companies in question, and the additional TLAS revenue (orange line, left axis) is extremely small in comparison to their existing and continuing revenue stream from directed pollock harvest (gray line, right axis). Nevertheless, it is these fishing companies who claim that the meager competition from two to six catcher vessels somehow threatens them so greatly that they need Council protection from fair competition,<sup>4</sup> especially competition that has brings halibut bycatch rates *down*.

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<sup>3</sup> 52678-52680 Federal Register, Vo. 72, No. 178 Friday, September 14, 2007, Exhibit 1.

<sup>4</sup> Previous testimony has explained that it is not feasible for there to be any more than 1 CV working with 1 A80 vessel at a time- some of the time, and even that can be a high ratio. That's because the CV-A80 mother shipping combination only works financially where an A80 vessel's factory is operating far below maximum capacity because of slow fishing. If fishing is hot, then the A80 vessel can keep its factory at full capacity with its own fish, or with leased fish, at a far lower cost point than paying a CV to deliver fish to it. However, when fishing is slow to the point that the A80 factory is underutilized, the addition of a single CV providing bags allows the A80 factory to increase its production but only to its maximum, at which point it is useless to have any more CV bags deliver



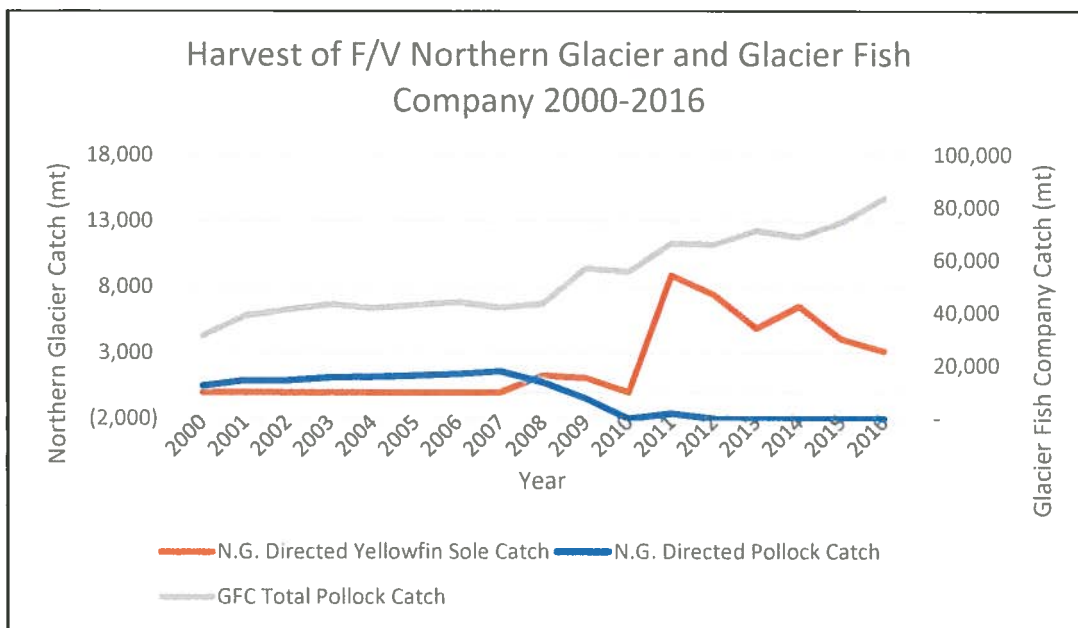


Figure 2. Total Pollock harvest of Glacier Fish Company and Total Pollock and Yellowfin Sole harvest by the F/V Northern Glacier, 2000-2016. Source: NMFS Cooperative Reports, available at <https://alaskafisheries.noaa.gov/fisheries-data-reports>

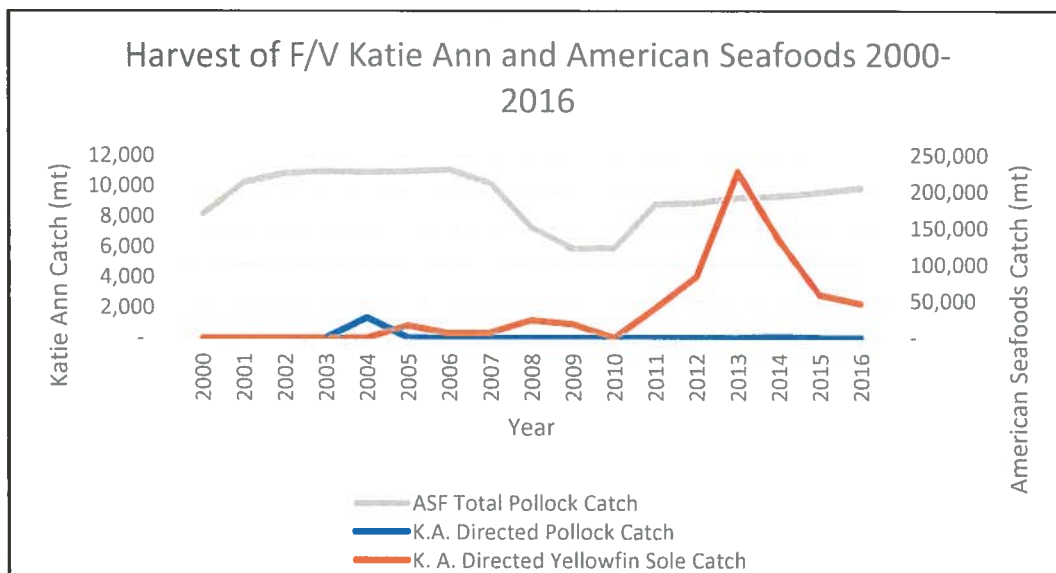


Figure 3. Total Pollock harvest of American Seafoods and Total Pollock and Yellowfin Sole harvest by the F/V Katie Ann, 2000-2016. Source: NMFS Cooperative Reports, available at <https://alaskafisheries.noaa.gov/fisheries-data-reports>

because they simply cannot be processed. Therefore, because of the narrow window of time in which it makes financial sense for an A80-CV mother shipping operation, and the fact that it will likely never make sense for any A80 vessel to take fish from more than 1 CV at a time, it will never make sense to have more than 2-6 CV's at a time participating in the TLAS and delivering to A80 vessels.

**2. There is no legal basis for pure “Dependency” based allocation that disenfranchises a small group of competitors in order to protect a statutorily created monopoly.<sup>1</sup>**

There is simply no reasonable set of facts that support a claim of *dependency* on the TLAS fishery by the large AFA pollock CP companies, let alone one that is honestly threatened by the presence of between 2 and 6 catcher vessels fishing at scattered times though the year, between directed cod and directed pollock fishing. Even if “dependency” alone were a basis for council action, there is no statute, regulation, case law or public policy that is rationally related to an administrative rule protecting the giant AFA CP fishing companies from periodic competition against two to six small catcher vessels, on the basis of the giant companies’ “dependency.”

**3. AFA Section 211 prohibits this proposed action.**

Moreover, this AFA CP effort to eliminate its smaller competitors flies in the face of the AFA, Section 211 mandate to protect smaller fishing operations against exactly that kind of anti-competitive conduct that Congress feared the AFA-CP fleet would use its monopoly for:

***AMERICAN FISHERIES ACT SEC. 211. PROTECTIONS FOR OTHER FISHERIES; CONSERVATION MEASURES.***

(a) *General.- The North Pacific Council shall recommend approval by the Secretary such conservation and management measures as it determines necessary to protect other fisheries, including processors, from adverse impacts caused by this Act or fishery cooperatives in the directed pollock fishery.*

Congress saw the danger of a predatory AFA companies stacking their quota on their protected AFA CP's and using their vessels and monopoly pollock income to subsidize their entry into competitive markets (like TLAS) against competitors who are not in the pollock monopoly and Congress wrote Section 211 to prevent this from happening.

“The American Fisheries Act of 1998 (AFA”) granted a lucrative monopoly in pollock fishing rights to 20 vessels operating in the BSAI (described as “AFA trawl CP vessels). The AFA compensated fishing vessels not favored by the pollock monopoly (“non-AFA vessels”) by charging the North Pacific Council with protecting them from the monopoly’s adverse effects. **Specifically, the Council’s Fishery Management Plans (“FMP’s) must “protect other fisheries under its jurisdiction and the participants in those fisheries, including processors, from the adverse impacts caused by this Act or fishery cooperatives in the directed pollock fishery.”** 16 USC§ 1851, note, AFA §211.”<sup>5</sup>

This is precisely what confronts this Council: The effort by the pollock monopoly to eliminate competitors from a competitive market by the passage of regulations claiming to protect the “dependency” of those monopolists on their historical share of a competitive market, the TLAS. AFA Section 211 mandates the Council and Department reject this effort.

**C. This action should not proceed in the guise of a Halibut bycatch management program: There is no data to support the creation of a closed class of participants on the basis of halibut**

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<sup>5</sup> Fishermen’s Finest v. Locke, 593 F.3d 886, 900 (9<sup>th</sup> Cir. 2010) (Clifton, J. Dissenting.).

**bycatch concerns in the current fishery. The proposed action may actually reverse the bycatch reduction gains achieved by the competition between CP's and CV's.**

The Council's purpose and need statement for this action states that limiting access will "help to maintain the consistently low rates of halibut bycatch in this fishery."<sup>6</sup> The data presented in the June 2017 analysis does not show a halibut bycatch problem in the current fishery, with the fishery closing on TAC and solidly under the 150 mt halibut PSC cap for each year with new participants (2015-2017). In terms of halibut bycatch rates, the fishery data presented does not show any difference between the bycatch rates of the historic CVs and the new CVs, with one group having higher total mortality one year and the other group of CVs having higher total mortality the following year. Any slight differences in the rates between the CP sector and the CV sector can be attributed to the CPs early effort in the YFS fishery, with many CPs focusing their fishing in the period after the January 20<sup>th</sup> trawl opening while they wait for pollock roe to mature. Finally, the analysis states that under status quo, halibut PSC usage in the fishery will continue at similar levels. In short, there is no data presented to support a halibut bycatch concern- Status Quo is working.

However, previous to the competition brought by the CV's in 2015, the AFA-CP participants exceeded halibut PSC allocation in both 2013 and 2014. If there ever was a halibut overfishing emergency- the impetuous AFA-CP TLAS fishing of 2013-2015 was it. But rather than ring the alarm bell and eliminate the bad performers from the fleet, AFA-CP interests came to the June 2014 meeting in Nome *asking, on an emergency basis, for the Council to reward their wasteful fishing practices with a grant of an additional 60MT of halibut- unconditionally.*

*The council summarily granted an additional halibut allocation to these AFA-CP TLAS participants- unconditionally. Then 12 months later these same AFA-CP TLAS participants came to this council to complain about CV's entering the TLAS, CV's who intended to prove that they could harvest TLAS at lower bycatch rates than the complacent AFA-CP operations. It was this event, the entry of CV's who wanted to do it better, that triggered the Northern Glacier's captain, sitting on the North Pacific Council, to cynically declare a "halibut emergency."*

Following the AFA-CP halibut debacles of 2013 and 2014, several smaller CV's who thought they could do better, got together with A80 interests and decided show it. In October of 2015, several CVs started delivering TLAS bags to Amendment 80 motherships, and in doing so, these CVs demonstrated prosecution of the fishery at successful bycatch rates and the effectiveness of the partnership model between A80 and CVs.

In fact, these CV's are precisely the reason that there is not a bycatch problem in the Status Quo fishery, as they created a new competition for halibut bycatch reduction between all the harvesters in the YFS TLAS fishery. The new dynamic is a culture of competitive halibut bycatch reduction, which has resulted in significant reductions in total halibut mortality and consistently good bycatch rates of the participants from the years 2015 on. The CV's have created this additional pressure for bycatch avoidance so now all harvesters are innovating and using more effective methods of halibut reduction to achieve the best rates possible. The FMP mandate and Council's goal to minimize halibut bycatch has been achieved through true competitive incentives and *these competitive incentives are precisely what this action will eliminate.*

More importantly from a legal standpoint, however, is the fact that there is absolutely no evidence showing that eliminating these CV's from the fishery will reduce halibut bycatch rates. *Therefore, there*

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<sup>6</sup> NPFMC June 2017 BSAI YFS TLAS Public Review Draft Purpose and Need

*is no rational relationship between the legitimate government purpose- reducing halibut bycatch- and the elimination of CV fishing and A80 mothership rights, through this proposed action.* There may be a rational relationship between eliminating the AFA-CP's competitors by eliminating them from the fishery, but, and this may come as a surprise to some in the AFA-CP ownership class, *eliminating the AFA-CP's competitors is not a legitimate government purpose.*

The Status Quo works. CVs who cannot consistently perform to the ever-tightening fleet wide standards of bycatch can be, *and are*, replaced with other vessels that can do a better job of keeping bycatch down and yield up. If you create a closed class of CVs, the qualifying CVs will remain in the fishery even if they can't perform competitively, meaning that *creating a closed class of a few CVs may create a halibut bycatch concern.* Closing access to a select few destroys the competitive halibut reduction tool and awarding access rights in perpetuity erases incentives for new investment and innovation, removing the motivation for both CVs and CPs to continually improve, or even maintain, bycatch performance.

### Conclusion

The council should deny the action. There is no National Standard or any legal authority which justifies creating a closed class of vessels solely to protect a favored few who don't like competition. The law requires just the opposite- to promote competition and protect the smaller fishing companies and their markets from AFA CP predation. It is not the Council's legal or moral role to eliminate the competition that the large AFA CP companies don't like- and that's exactly what they are asking the Council to do with this action.

Respectfully Submitted, by



Dennis Moran, President,  
Fishermen's Finest, Inc.  
US Fishing, LLC.  
North Pacific Fishing, Inc.  
FFI Defender, LLC.

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<sup>1</sup> The recent analysis by council staff includes a reference to a legal opinion by NMFS to the effect that this proposed action is not a LAPP. We respectfully disagree on several grounds. Among them are the fact that the AFA-CP companies have previously operated the TLAS subject to a voluntary cooperative agreement that these companies have refused to produce to NMFS or any of the other participants. It is believed that this coop agreement included allocation of harvest among its members. Thus, this action likely will have the effect of allocating species to the participants who may revert to their previously agreed and undisclosed allocation agreement.

LLP license originally assigned to the F/V ENTERPRISE. Although the example provided in the preamble describes the potential of QS being extinguished in the event that the F/V ENTERPRISE suffered an actual total loss, constructive total loss, or became permanently ineligible, the example is relevant to all other Amendment 80 vessels. It reads, "Because the F/V ENTERPRISE did not give rise to an LLP license, if NMFS were to permit a QS permit to be transferred only to the LLP license originally issued to an Amendment 80 vessel, the QS permit issued to the owner of the F/V ENTERPRISE could not be assigned to any LLP license. If the F/V ENTERPRISE was lost or became permanently ineligible to fish in U.S. waters, the QS issued to the owner of the F/V ENTERPRISE could be extinguished" (72 FR 30078).

The changes made in § 679.7(o)(3)(iii) meet the clear intent of the Program and are consistent with the proposed rule. The regulations at § 679.4(o)(1)(ii) and (iii) do not need to be modified. The regulations at § 679.4(o)(1)(ii) and (iii) refer to permitting requirements and do not address limitations on holding QS.

*Comment 5:* Remove the prohibition at § 679.7(o)(1)(ii), (o)(4)(i), and (o)(5)(i) limiting the receiving and processing Amendment 80 species from the BSAI trawl limited access fishery or the Amendment 80 limited access fishery. The following are the primary concerns with the prohibition:

- The prohibition on the processing or receiving of Amendment 80 species from the BSAI trawl limited access sector or the Amendment 80 limited access sector was not recommended by the industry and was not part of the Council's recommendation to NMFS.
- These prohibitions are contrary to the FMP and the overall goals of the Program to promote bycatch reduction and improved utilization. NMFS cannot add regulations that contravene the FMP unless the Secretary of Commerce disapproves the action.
- The prohibition was not analyzed in the EA/RIR/IRFA, nor by the Council and therefore should be removed. Specifically, this prohibition could adversely affect small entities as defined under the Regulatory Flexibility Act.
- The prohibition violates National Standard 9 and Executive Order 12866.
- NMFS has sufficient observation, recordkeeping and reporting requirements, and auditing systems in place to independently account for cooperative catch and deliveries from the BSAI limited access sector or Amendment 80 limited access sector.

- NMFS also has the tools necessary to monitor the GRS without limiting vessel activity during a weekly reporting period.

- Neither the preamble nor the regulations should suggest or add a prohibition that would limit an Amendment 80 vessel to operating as either a mothership, stationary floating processor, or as a fishing vessel on a week-by-week basis (see, for example, 72 FR 30073).

Amendment 80 vessels have historically received and processed Amendment 80 species caught by catcher vessels in the BSAI and they have done so in conjunction with their own fishing during the same weekly reporting period. Prohibiting this activity will not only impact the Amendment 80 sector, but it will severely limit catcher vessels within the BSAI limited access sector from harvesting certain Amendment 80 species. For species such as Pacific cod, catcher vessels have existing shoreside business relationships that will continue, but for the remaining Amendment 80 species, such as yellowfin sole, there is limited or no shoreside capacity for processing. The proposed prohibition is inconsistent with the goal of improving the accuracy of the catch accounting system and reducing discards as catcher vessels will be forced to deliver Amendment 80 species to facilities with less than 200 percent observer coverage and no GRS requirements.

The distance of Amendment 80 species fisheries in relation to shoreside processors may limit catcher vessels' ability to deliver a quality product. Amendment 80 cooperative vessels have the flexibility to act as motherships and travel to locations where the fisheries occur. Amendment 80 vessels also have existing markets and capacity for producing high quality products from Amendment 80 species. The proposed prohibition against delivering BSAI limited access and Amendment 80 limited access fish to Amendment 80 vessels in cooperatives has significant impacts on small business entities, AFA and non-AFA catcher vessels, and Amendment 80 vessels that may choose to act as catcher vessels in the future.

Each Amendment 80 vessel will carry two NMFS-certified observers who will sample 100 percent of the hauls and deliveries made to the vessel. In addition, each haul and delivery will be independently weighed on a certified flow scale. Recordkeeping and reporting regulations require that hauls made by a vessel be recorded separately from deliveries made to the vessel in the Daily Cumulative Production Logbook

(DCPL) and in the Weekly Production Report (WPR) submitted to NMFS. The proposed regulations actually provide monitoring and enforcement requirements for vessels that receive "unsorted catch" (See § 679.27(j)(7)).

Corroborating the vessel logbook information should not be difficult. Two observers will be onboard and there will always be one observer on shift to independently witness a catcher vessel delivery. Observers record unsorted codend deliveries differently than catch the vessel made itself. Observers record a delivering vessel's name and ADF&G number that NMFS can use to verify a delivery was made from the BSAI limited access sector or Amendment 80 limited access sector. Observer data are reported daily to the Observer Program and the Regional Office and, in conjunction with vessel logbook information, this should be sufficient for determining on a haul by haul basis whether catch should be debited against a cooperative's CQ, the BSAI limited access sector, or the Amendment 80 limited access sector.

For vessels in a cooperative, the GRS will be monitored at the cooperative level and it does not need to be met until the end of the year, therefore in-season audits of product would serve little value for enforcement with respect to monitoring the GRS. Observer data and vessel logbook data are adequate for GRS monitoring and enforcement and there is no reason to separate product in the hold or to limit a vessel's activity by weekly reporting period.

*Response:* NMFS agrees in part and has modified the regulations at 679.7(o) to allow Amendment 80 vessels to receive unsorted catch in limited circumstances. This revision will allow the one entity that NMFS has identified as currently receiving unsorted catch from a catcher vessel in the BSAI trawl limited access fishery to continue to do so. This revision will accommodate potential future growth in the use of Amendment 80 vessels as mothership vessels for vessels in the BSAI trawl limited access fishery.

NMFS made the following modifications:

- Modified § 679.7(o)(1)(i) to prohibit the use of any vessel other than an Amendment 80 vessel to catch any amount of Amendment 80 species, crab PSC, or halibut PSC assigned to the Amendment 80 sector. This removed the reference to processing and receiving catch.
- Modified § 679.7(o)(1)(ii) to prohibit the use an Amendment 80 vessel to catch any amount of Amendment 80 species, crab PSC, or halibut PSC assigned to the BSAI trawl limited

access sector. This removed the proposed references to processing and receiving catch.

- Deleted the prohibition at § 679.7(o)(1)(iii). This removes limitations on using an Amendment 80 vessel to catch, process, or receive catch of Amendment 80 species assigned to other fisheries.

- Modified § 679.7(o)(4)(i) to prohibit the use an Amendment 80 vessel, Amendment 80 LLP license, or Amendment 80 QS permit not assigned to an Amendment 80 cooperative for a calendar year to catch any Amendment 80 species, crab PSC, or halibut PSC assigned to that Amendment 80 cooperative during that calendar year. This rephrasing removes proposed references to receiving and processing catch and makes it clear that only vessels assigned to a cooperative can be used to catch CQ assigned to that cooperative.

- Add a new prohibition at § 679.7(o)(4)(ii) to prohibit the use of an Amendment 80 vessel assigned to an Amendment 80 cooperative for a calendar year to receive or process catch from any Amendment 80 vessel not assigned to that Amendment 80 cooperative for that calendar year. This provision prohibits an Amendment 80 vessel from receiving or processing catch from Amendment 80 vessels in

other Amendment 80 cooperatives or in the Amendment 80 limited access fishery, but it does not limit the ability of Amendment 80 vessels to receive and process catch from other fisheries, such as the BSAI trawl limited access fishery.

- Renumber § 679.7 paragraphs (o)(4)(ii), (iii), and (iv) as § 679.7(o)(4)(iii), (iv), and (v) respectively.

- Modify § 679.7(o)(5)(i) to prohibit the use of an Amendment 80 vessel, Amendment 80 LLP license, or Amendment 80 QS permit not assigned to the Amendment 80 limited access fishery for a calendar year to catch any Amendment 80 species, crab PSC, or halibut PSC assigned to the Amendment 80 limited access sector during that calendar year. This rephrasing removes proposed references to receiving and processing catch and makes it clear that only vessels assigned to the Amendment 80 limited access fishery can be used to catch Amendment 80 species ITAC assigned to the Amendment 80 limited access fishery.

- Add a new prohibition at § 679.7(o)(5)(ii) to prohibit the use of an Amendment 80 vessel assigned to the Amendment 80 limited access fishery for a calendar year to receive or process catch from any Amendment 80 vessel not assigned to the Amendment 80 limited access fishery for that calendar

year. This provision prohibits an Amendment 80 vessel assigned to the Amendment 80 limited access fishery from receiving or processing catch from Amendment 80 vessels in Amendment 80 cooperatives, but it does not limit the ability of such vessels to receive and process catch from other fisheries, such as the BSAI trawl limited access fishery.

- Renumber § 679.7 paragraphs (o)(5)(ii) and (iii) as § 679.7(o)(5)(iii) and (iv) respectively.

These modifications narrow the focus of these prohibitions so that limitations on the harvesting activities of Amendment 80 vessels are distinct from the limitations on receiving and processing catch. A direct result of these restructured prohibitions is that NMFS is no longer indirectly prohibiting an Amendment 80 vessel from catching, processing, or receiving fish allocated to the CDQ Program (see response to comment 6 for additional detail). These more narrowly defined prohibitions will permit the delivery of catch from the BSAI trawl limited access fishery to the Amendment 80 sector, accommodate existing delivery and processing patterns, and ensure adequate catch accounting. The following table summarizes the limitations on the delivery of unsorted catch that the suite of revised prohibitions will impose on Amendment 80 vessels.

Can unsorted catch (codends) from . . .	be received and processed by an Amendment 80 vessel assigned to . . .	Yes	No
An Amendment 80 vessel in a cooperative .....	Another Amendment 80 cooperative .....	.....	X
An Amendment 80 vessel in a cooperative .....	The same Amendment 80 cooperative .....	X	.....
An Amendment 80 vessel in the Amendment 80 limited access fishery.	An Amendment 80 cooperative .....	.....	X
An Amendment 80 vessel in the Amendment 80 limited access fishery.	The Amendment 80 limited access fishery .....	X	.....
The BSAI trawl limited access sector .....	An Amendment 80 cooperative or the Amendment 80 limited access fishery.	X	.....
Non-Amendment 80 non-trawl fisheries (e.g., longline Pacific cod).	An Amendment 80 cooperative or the Amendment 80 limited access fishery.	X	.....

The preamble to the proposed rule stated the following reasons for the proposed prohibitions on receiving and processing unsorted catch from the BSAI trawl limited access sector onboard an Amendment 80 vessel: (1) Uncertainty over whether the Council intended to allow unrestricted delivery of unsorted catch; (2) concern over the unintended consequences of allowing Amendment 80 vessels to receive catch from non-Amendment 80 vessels; (3) concern for GRS compliance; and (4) concern over ensuring proper catch accounting.

In light of comment 5, NMFS reviewed the rationale for the proposed prohibitions, examined the

administrative record, and developed additional analysis on the economic impacts of these proposed prohibitions. NMFS has included that analysis in the FRFA, and the RIR incorporates by reference the information and analyses contained in the FRFA.

NMFS analyzed observer data from 2003 through 2006, a time frame chosen for analysis because it represents recent processing patterns. During each year of the 2003 through 2006 time period, only one Amendment 80 vessel received catch from a non-Amendment 80 vessel. The Amendment 80 vessel received unsorted catch from the same non-Amendment 80 catcher vessel in each year. The specific amounts of unsorted

catch delivered cannot be provided due to limitations on the release of confidential data. Based on information available to NMFS, including information provided by a public comment, it appears that the non-Amendment 80 vessel and the Amendment 80 vessel are owned by the same entity.

The entity that is engaged in delivering and processing unsorted catch onboard an Amendment 80 vessel would not be defined as a small entity under Small Business Administration (SBA) standards based on the information available to NMFS concerning the predicted annual ex-vessel revenue from this entity, and the

definition of a small entity in the harvesting sector used by NMFS. It does appear that the proposed prohibitions would have limited the ability of this one non-small entity to continue to deliver and process unsorted catch from its non-Amendment 80 catcher vessel onboard its Amendment 80 vessel.

This analysis indicates that the practice of delivering unsorted catch from non-Amendment 80 vessels to Amendment 80 vessels is not as widespread as suggested by some commenters. Although industry participants may wish to engage in such practices in the future, the proposed prohibitions do not appear to adversely affect any known small entities as that term is currently defined under SBA standards. Although the specific amount of catch being delivered from catcher vessels to Amendment 80 vessels cannot be released, that catch represents a small proportion of the overall catch in the BSAI. Based on the above, previous concerns that permitting this practice would create a significant shift in processing patterns away from existing shore-based processors do not appear to be supported, particularly if current rates of delivery of unsorted catch from the BSAI trawl limited access sector to the Amendment 80 sector continue.

NMFS also re-examined its ability to track catch for purposes of GRS compliance if unsorted catch from numerous sources were delivered to Amendment 80 vessels. The preamble to the proposed rule specifically requested public comment to assist NMFS in determining if there were measures that could provide adequate catch accounting and permit this practice. Subsequent review of the GRS program in consultation with the NOAA Office of Law Enforcement (OLE) and industry participants indicates that current monitoring and enforcement practices for GRS compliance are not adversely affected by the receipt and processing of unsorted catch from multiple vessels aboard the same vessel, provided the weight of each codend (i.e., delivery of unsorted catch) is adequately reported when delivered and vessel operators comply with DCPL and WPR requirements. NMFS anticipates that GRS compliance will be monitored by reviewing annual groundfish catch and retention for each Amendment 80 cooperative or for each Amendment 80 vessel that is assigned to the Amendment 80 limited access fishery. Therefore, combining unsorted catch from multiple sources onboard a single Amendment 80 vessel would not undermine GRS M&E requirements.

Finally, NMFS determined that, although Council intent is not clear

regarding the regulation of catch assigned to one group of fishery participants to be received and processed by another group of fishery participants, the Council did not expressly indicate its intent to limit the delivery of unsorted catch. NMFS indicated that Council intent was not clear in the preamble to the proposed rule (72 FR 30052; May 30, 2007), and again at two public workshops on May 23, 2007 (72 FR 27798), and on June 18, 2007 (72 FR 31548), both of which were attended by numerous participants in the Amendment 80 and BSAI trawl limited access sectors, and a member of the Council. Further, NMFS provided a review of the proposed rule to the Council at its June 2007 meeting, specifically highlighting this issue and requesting that the Council provide comments if the proposed rule contravened Council intent. At the June 2007 Council meeting, the Council did not indicate that it either intended or did not intend to allow catch from the BSAI trawl limited access sector to be delivered to the Amendment 80 sector. The Council did not provide any comments during the public comment period for either the proposed rule or Amendment 80 to indicate that limitations on the receipt and processing of unsorted catch contained in the proposed rule contravened Council intent.

Based on the additional analysis NMFS conducted as a result of this comment and the lack of Council intent to the contrary as explained above, NMFS determined that most of the proposed prohibitions on the delivery of catch from the BSAI trawl limited access fishery to the Amendment 80 sector should not be included in this final rule. Therefore, NMFS modified the regulations at 679.7(o) to allow Amendment 80 vessels to receive unsorted catch in limited circumstances.

However, NMFS did not change the proposed rule to allow Amendment 80 vessels to deliver to other Amendment 80 vessels in specific circumstances described below because it would significantly complicate M&E of the Program and the analysis indicates that this prohibition will not affect any current fishing practices. As explained above, NMFS determined that maintaining this prohibition in the final rule is not contrary to Council intent. This prohibition is consistent with the language of Amendment 80, and the Council provided no indication that any of the proposed prohibitions were inconsistent with their intent.

NMFS also determined that this prohibition is necessary to adequately

monitor and enforce the Program and meet the agency's obligations under the MSA. Properly accounting for and tracking catch may be complicated if: (1) Catch from a vessel assigned to an Amendment 80 cooperative is processed on an Amendment 80 vessel not assigned to that cooperative; or (2) catch from a vessel assigned to the Amendment 80 limited access fishery is processed on an Amendment 80 vessel not assigned to the Amendment 80 limited access fishery. Although NMFS will require two observers aboard each Amendment 80 vessel while fishing in the BSAI, as well as other M&E reporting standards, NMFS currently has limited mechanisms to review observer reports of catch weight and sample composition received and processed onboard an Amendment 80 vessel and the assignment of that catch to a specific cooperative or the Amendment 80 limited access fishery while an observer is at sea. Observer debriefing can resolve most questions and concerns that may arise, but observer debriefings typically take place several weeks after an observer has disembarked from a given vessel. Such corrections would occur well after catch has been attributed to a specific source, and would not be timely.

As an example, observer reports corrected after observer debriefings could indicate that unsorted catch from an Amendment 80 cooperative was incorrectly attributed to a specific cooperative and CQ was incorrectly debited from a CQ account. Not only does this affect the total CQ account balances, but if an amount of CQ has been transferred to another cooperative between the time of a given delivery of an unsorted catch and the receipt of a corrected observer report, NMFS would have limited means to correct the CQ account. This could result in debiting the CQ account of a third party that received the CQ that was transferred. Without significant and potentially costly programming changes to the catch accounting system used to track and assign catch and changes to observer reporting protocols, NMFS remains concerned about its ability to ensure that catch from various Amendment 80 allocations (i.e., CQ accounts for each Amendment 80 cooperative, and the ITAC of the Amendment 80 limited access fishery) received onboard an Amendment 80 vessel can be tracked with the degree of accuracy necessary to ensure that catch is properly debited in a timely and correct manner without potentially adversely affecting other Amendment 80 sector participants.

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# Green Hope LLC

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4201 21st Avenue West  
Seattle, WA 98199

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May 30, 2017

North Pacific Fishery Management Council  
605 West 4<sup>th</sup> Avenue  
Anchorage, AK 99501

Re: Agenda Item C4, yellowfin sole limited access fishery

Dear Chairman Hull,

Please accept the following comments on limiting participation of offshore trawl catcher vessels in the Bering Sea trawl limited access sector (TLAS) yellowfin sole fishery. This action has the potential to eliminate or substantially reduce the ability of the *Green Hope* to continue participating in a fishery that it is heavily dependent on. We urge the Council to not take away the ability of our catcher vessel to fish and deliver TLAS yellowfin sole offshore.

The *Green Hope* is a 98' non-AFA, trawl catcher vessel that has participated in the TLAS yellowfin sole fishery since 2015. The vessel was built in 1979 and fished out of Kodiak for 22 years until major engine issues forced operations to cease in 2001. In 2013, we began the process of rebuilding the *Green Hope* in order to participate in several BSAI limited access fisheries, including the TLAS yellowfin sole fishery. We invested multiple millions of dollars to bring the vessel back into service and TLAS yellowfin sole has been the vessel's primary fishery both in terms of revenue and volume.

While the *Green Hope* qualified for a small amount of rockfish under the Gulf of Alaska Rockfish Program, it participates solely in the BSAI limited access yellowfin, Atka mackerel, Pacific Ocean perch (POP), Pacific cod, and CDQ fisheries. Atka mackerel and POP have relatively small quotas and with the exception of cod, no shoreside markets exist for these fisheries. The *Green Hope* lacks functional refrigerated seawater tanks so it must deliver to motherships to process its catch.

When the *Green Hope* and several other catcher vessels entered the TLAS yellowfin sole fishery in 2015, the self-dubbed 'historic participants' requested that the Council initiate an action to limit participation in the fishery. Most of their arguments centered around halibut bycatch concerns that have not materialized and are simply not supported by the analysis. The only years that halibut bycatch has been an issue were 2013 when the 'historic participants' exceeded the halibut limit by 18 mt and in 2014 when the 'historic participants' exhausted the halibut mortality limit by mid-May and had to ask the Council for an additional 60 mt (see Tables 2-15 and 2-16). Both of these instances happened prior to our entry to the fishery.



*Green Hope's* entry into the fishery coincided with a reduction in available quota (due primarily to high pollock and cod TACs) that had nothing to do with the new entrants. Prior to our participation, the TLAS yellowfin sole quota averaged 33,294 mt ('08-'14) and it was fully utilized in only one year when the fishery closed in November. Since our entry into the fishery, the quota has averaged 16,432 mt or roughly half of what it had been (see Table 2-2). Choosing to limit participation in the fishery when the quota is low seems short-sighted especially when the quota was previously underutilized.

Based on the information in the analysis and the complete absence of a demonstrable issue with halibut bycatch, management of the fishery, or conservation benefits that this action will bring; I do not see any reason to limit entry into the TLAS yellowfin sole fishery. That said, should the Council feel compelled to limit participation, all Alternative 2 Options and Sub-options allow the *Green Hope* to continue fishing except Alternative 2, Option 1, Sub-option 1.1.2, which we do not support. Sub-option 1.1.2 only qualifies catcher vessels from one company and that raises concerns under National Standard 4 as identified in the analysis and would not allow the *Green Hope* to continue in the fishery. Neither the *Green Hope* nor any of the new entrants have done anything wrong and they should not be excluded.

If the no action alternative is not selected, we support any of the following:

Alternative 2:

Option 1.1: 2008 – 2015

Sub-option 1.1.1: in any year (qualifies 8 CVs) or

Option 1.2: 2008 – 2016

Sub-option 1.2.1: in any year (qualifies 10 CVs) or

Sub-option 1.2.2: In any two years (qualifies 7 CVs)

Additionally, under Alternative 2, Option 2.2 provides access to a pool of fish if even the most restrictive of Option 1 above is chosen. Option 2.2, however, is not likely to work in reality as the extra pool of fish can only exist if 1) the TAC is set high enough and 2) industry TAC setting negotiations work in favor of the non-TLAS qualifying catcher vessels. *Neither of these scenarios are likely so we therefore we ask that the Council not include Option 2.2 in its final motion.*

The Alternative and Options chosen by the Council need to be fair and equitable and should recognize the substantial investments that some have made to enter the fishery. The TLAS yellowfin sole fishery was underutilized when we made the decision to rebuild the *Green Hope* and it would be unfair of the Council to exclude us from the fishery when no rationale to do so has come from an in-depth analysis of the issue. Furthermore, the ability to continue participation in the TLAS fishery should not be predicated on conditions that may or may not happen in the future (such as TAC setting and negotiations that would allow participation under Option 2).

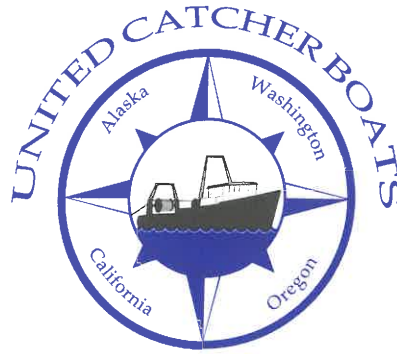
The analysis has debunked the higher halibut rate of the newer entrants by stating that the historic and recent participants in the TLAS fishery have alternately had higher and lower rates each year (see pg. 37). The analysis also states that the CPs slightly lower rate is likely an artifact of their early timing in the fishery compared to the CVs who participate throughout the year. The *Green Hope's* halibut rates are similar to other CVs in the fishery and have consistently dropped since 2015 with their yellowfin rate coming in at 3.607 kg/mt in 2017.

Thank you for the opportunity to comment.

Sincerely,



Todd M. Loomis



May 30, 2017

Dan Hull, Chairman  
North Pacific Fisheries Management Council  
605 W 4<sup>th</sup> Ave, Suite 306  
Anchorage, Alaska 99501

RE: C.4, BSAI TLAS YFS Limited Access

Dear Chairman Hull and NPFMC Members,

Thank you for your consideration of United Catcher Boats' (UCB) comments on the Yellowfin Sole Trawl Limited Access (YFS TLAS) agenda item. United Catcher Boats represents the interests of the owners of 68 trawl catcher vessels (CVs) that participate in the BSAI catcher vessel trawl fisheries.

Though the Bering Sea Pollock and Pacific Cod trawl fisheries are our two primary fisheries, eight UCB members have participated in the BSAI YFS TLAS fishery in 2015, 2016 or 2017 (*F/V Aleutian Challenger, F/V Arctic Wind, F/V Alaska Endeavor, F/V Alaska Knight, F/V Alaska Provider, F/V Green Hope, F/V Half Moon Bay, F/V Sunset Bay*). One of our members, the *F/V Ocean Hunter*, last participated in the YFS fishery in 2008. Thus, UCB represents the majority of trawl catcher vessels that are currently participating in the YFS TLAS fishery in recent years.

At this time, UCB asks that you to not take action on the YFS TLAS issue and support the Status Quo option (Alternative 1). We believe the updated EA/RIR analysis provides information to support your taking no action at this time.

What follows are seven reasons we urge you to support the Status Quo alternative.

1. Establishing limitation on participation in the YFS TLAS fishery goes counter to the original intent for establishing the TLAS fishery when the NPFMC established the AM 80 sector fisheries. As noted by the author of the RIR portion of the analysis on page 18, the Council's intent of establishing the TLAS sector was to provide harvesting opportunities for AFA CPs, AFA CVs, and Non-AFA CVs. The intent was to set aside a portion of the species targeted primarily by the non-AFA CP sector at the time (now referred to at the Amendment 80 sector) for all Non-Amendment 80 trawl vessels. In fact, in years of high YFS TACs, the

Council's action increases the percentage of YFS that goes to the non-Amendment 80 vessels to allow for more harvesting opportunities for the Non-Amendment 80 vessels. Most importantly though, the NPFMC did not establish the TLAS fishery for just the AFA CP sector. Rather, it was a set-aside from the Amendment 80 sector for access to all non-Amendment 80 vessels: Non-AFA CVs, AFA CVs and AFA CPs.

2. Current use of Halibut PSC by TLAS participants does not constrain the fishery. Regarding Halibut prohibited species catch (PSC) in the TLAS YFS fishery, there is no data to suggest that the recent increase in participation from new catcher vessels has resulted in either a direct increase in overall halibut mortality or in a greater halibut mortality rate for these new vessels (when compared to historic participants).

Beginning in 2015, the expansion in the number of motherships participating in the TLAS YFS sole fishery has provided for increased opportunities for CV participation and deliveries of TLAS YFS. This action was initiated (based on public testimony concerned with new entrants in the fishery) in October 2015, but combined CV and CP total halibut mortality was less in 2015 and 2016 than for the previous three years (Tables 2-16 and 2-18). In general, the annual halibut mortality rate for the entire TLAS YFS fishery is similar in scope to halibut mortality rates in other BSAI groundfish fisheries (Table 2-16).

It is the recent increase in CV participation that actually allows annual halibut mortality to be disaggregated by sector on an annual basis (Table 2-18) and while the CV sector has a slightly higher halibut mortality rate than the CP sector for 2015 and 2016 (the fishery for 2017 is not yet complete), this rate is not attributable to new entrants into the fishery. The analysis states, "When comparing halibut mortality amongst new and historic CVs, rates vary across groups with one group having the highest mortality one year while the other group of CVs having the highest mortality the next year." This indicates that there is no discernable trend in halibut mortality rates amongst new and historic CV participants in the TLAS YFS fishery.

Overall, lower halibut mortality rates in the CP sector (when compared to the CV) are attributable to the timing of the CP fishery as most CPs focus their fishing effort immediately following the season opening date of January 20. Finally, it is worth noting that the development and execution of a best practices agreement for reducing halibut mortality in the fishery amongst some TLAS YFS participants will continue as has been done since 2012.

3. A 'Race for Fish' in the YFS TLAS Fishery currently does not exist thus this is not a sufficient reason to limit the class of vessels who can participate in the fishery. Information in the analysis indicates that the YFS TLAS fishery continues to provide benefits to historic participants.

Fishery closure information presented in Table 2-15 (page 34) shows that the fishery was closed due to attainment of the Halibut PSC limit in just one year

since Amendment 90 and TLAS was established in 2008 and that was in 2014. The fishery has closed due to attainment of the TAC in other years since the TLAS sector was created or there was a rollover of YFS to the Amendment 80 Sector. If you believe in the argument that there is a new 'race for fish' occurring, it does not seem to be resulting in a poorer use of Halibut PSC.

There is an inverse relationship between the size of the EBS Pollock TAC and the Bering Sea YFS TAC. When the Pollock TAC is reduced the YFS TAC increases, in order to provide benefit to the Pollock participants in the TLAS YFS fishery. An increase in YFS TAC will result in a longer season for participants.

4. Limiting Participation can result in a de-facto Catch Share limited privilege program, limited to just a very small number of companies if the limited number of participants decide to form a voluntary 'catch share' program to manage the fishery. For example, Choosing Option 1, Suboption 1.1.2 would limit CV participation in the TLAS fishery to just three CVs that are owned by the same vertically integrated trawl vessel company, and just three AFA affiliated CP companies. If the NPFMC desires to allocate a range of 15,000 to 36,000 metric tons of YFS to just four large trawl companies, then the UCB members believe the Council needs to be provided a lot more information in the analysis in terms of who are the winners and who are the losers and the explicit reason for providing benefits to just a small number of companies.
5. CV participation is a function of market availability, ex-vessel value, number of available LLPs, and vessel availability, not just new market opportunity. For example, a couple of recent CV participants in the TLAS YFS fishery that participated in either 2015 or 2016 did not participate in the 2017 fishery as they either were not afforded a market with one of the offshore Amendment 80 processor markets, or had a better opportunity to do something other than fish for YFS.
6. Option 2 alternatives (Option 2.1 and Option 2.2) are problematic in terms of vessel fishery planning and will result in very little Catcher Vessel participation in the YFS TLAS fishery even if they are allowed to participate. Trawl vessel owners do not commit to participate in a fishery or commit to a new market without first knowing what risks there are, what the time commitment is for their vessel, and what the amount of fish will be available for the fishery, and a market commitment is made well in advance. Under a scenario of either alternative of Option 2, the earliest they will know if they can participate is at the December Council meeting that precedes a winter start of the YFS season by just a few months. This lack of knowing and lack of advance time to develop a fishing plan for the vessel is problematic and lacks any stability for a vessel owner.
7. UCB supports a comprehensive approach, rather than a piece meal approach, to the establishment of a catch share program for the last remaining 'open access' trawl fisheries in the Bering Sea, namely the Yellowfin Sole and Pacific Cod fisheries. Increasing effort or time targeting P. cod for the vessels that can participate in a voluntary YFS cooperative with a small closed class of companies

benefits those trawl companies whose vessels are eligible to participate in the TLAS YFS fishery as they can make decisions to hold off fishing their YFS quota in order to maximize their participation in the remaining 'open access' fisheries. This could include Western and Central GOA trawl fisheries as well as the BSAI P. cod fishery. One measure to protect the participants in these other 'open access' fisheries is to establish 'sideboard' limits in these other fisheries for those CVs that are eligible to participate in the YFS TLAS fishery to minimize negative spill-over impacts to other fisheries.

For the above-mentioned reasons, the members of UCB request that you chose Alternative 1: No Action-Status Quo as your final action for this issue at this time. If over the next few years more and more new effort enters into the YFS TLAS fishery due to increased offshore markets and processing capacity, and the TAC is taken earlier and earlier in the year, and if rates and usage of Halibut PSC start to constrain the fishery (i.e., NMFS closes the fishery due to PSC limit taken), then we suggest the NPFMC revisit the idea of limiting participation in this fishery.

Sincerely,



Brent Paine  
Executive Director



May 30, 2017

Mr. Dan Hull, Chairman  
North Pacific Fishery Management Council  
605 W 4<sup>th</sup> Avenue, Suite 306  
Anchorage, AK 99501-2252

RE: Yellowfin Sole Trawl Limited Access Fishery - Agenda C-4

Dear Chairman Hull,

United States Seafoods, LLC (“US Seafoods”), is a long time participant in the multispecies fisheries in the Bering Sea and Aleutian Islands. A substantial part of its operations is through its catcher vessel fleet, which has been active in the offshore sector of the yellowfin sole limited access fishery since the early 2000s.

In 2008, as a part of Amendment 80, the Council developed the yellowfin sole limited access fishery. The final rule specifically noted US Seafoods catcher vessels historical participation as a part of the discussion on the creation of the fishery. Since that time, US Seafoods catcher vessels have consistently participated in the fishery relying on the available TAC as a part of their fishing plan. The company entered agreements for four consecutive years with AFA catcher processors, to control bycatch to facilitate harvest of the TAC at low halibut rates by slowing the fishery down.

In recent years, decreases in the yellowfin sole TAC, along with increasing effort in the fishery have resulted in a race for full use of the TAC. For example, this year the fishery closed May 26, instead of later in the fall as in the past. With this increasing effort, US Seafoods is concerned that its dependence will be overshadowed. Entry has also proven to be an obstacle to developing agreements for controlling bycatch in the fishery, because any of the over 100 holders of Bering Sea endorsed trawl permits, can participate at any time, for any period of fishing.

US Seafoods non-AFA and non-A80 catcher vessels rely exclusively on limited access fisheries. Most of the other vessels in the yellowfin sole limited access fishery have secure interests in other fisheries, most commonly AFA allocations, to support their operations. US Seafoods catcher vessels do not have any such allocation to fall back on. Changes in participation patterns and new effort in the yellowfin sole limited access fishery will have a profound effect on

US Seafoods catcher vessels, beyond those experienced by other vessels that are less dependent.

Historical participants' stake in the fishery is clearly disrupted by the entry of new vessels that exacerbate the race for fish, particularly as TACs have declined. Maintaining opportunities for historical participants, particularly those catcher vessels without allocations in other programs, should be a Council priority. Effectively protecting the interests of historical participants in this fishery requires that the Council adopt the most restrictive options, specifically,

**Option 1.1, Suboption 1.1.2**, which requires 2 years of participation in the fishery from 2008-2015.

These elements will ensure that historical participants retain the ability to harvest the fishery in a manner that most effectively addresses halibut bycatch concerns.

Thank you for opportunity to provide our comments.

Sincerely,



Matthew G. Upton  
Attorney  
United States Seafoods, LLC