



Central Bering Sea Fishermen's Association

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Submitted Electronically

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Re: Central Bering Sea Fishermen's Association Comments on Amendment 123;
NMFS Proposed Implementing Regulations; and final Environmental Impact
Statement/Regulatory Impact Review, NOAA-NMFS-2022-0088

Dear Mr. Keaton and Ms. Harrington:

The Central Bering Sea Fishermen's Association ("CBSFA") submits these comments on Proposed Amendment 123 to the Bering Sea/Aleutian Islands (BSAI) Groundfish FMP; NMFS's proposed regulations implementing Amendment 123; and the final Environmental Impact Statement/Regulatory Impact Review (the "Analysis") related to this action.¹

¹ NMFS, Notice of Availability; Request for Comments; Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Halibut Abundance-Based Management of Amendment 80 Prohibited Species Catch Limit, 87 Fed. Reg. 67,665 (Nov. 9, 2022); NMFS, Extension of Public Comment Period for Amendment 123 to the Fishery Management Plan for Groundfish of the Bering

Amendment 123 marks the culmination of a six-year process to develop, analyze, and adopt an abundance-based management plan to balance and address both the needs of the Amendment 80 sector and the undisputed, crippling effects of halibut bycatch on the directed halibut fishery and halibut-dependent communities, especially at low levels of halibut abundance. During this process, North Pacific Fisheries Management Council (“NPFMC” or “Council”) received extensive and often divergent written comments and testimony from affected parties across various sectors of the fishing economy. It received unprecedented levels of public input. It considered and weighed the information included in the Analysis, along with the uncertainties it identified. And, ultimately, the Council crafted an innovative solution that, in its view, best balanced the varied fishing interests, the need for conservation, and the MSA’s National Standards.

While CBSFA and many others advocated a more restrictive alternative that would have gone further in reducing bottom trawl bycatch,² the careful fact-finding and balancing of interests underlying Amendment 123 is precisely what the Council was created to do. Councils “are the primary bodies charged with developing FMPs in the first instance, a process that generally involves years of research [and] the weighing of various alternatives.”³ As NMFS explains, they “have the initial authority to ascertain factual circumstances, to establish management objectives, and to propose management measures that will achieve the objectives.”⁴ No one involved in the process of developing Amendment 123 could doubt either the extraordinary challenge of the Council’s task or the careful and considered way the Council conducted its work.

With Amendment 123 now proposed and the Council’s work completed, the task before NMFS is both more straightforward and more limited — to review the Council’s proposed amendment and confirm that it is consistent with the MSA and other applicable laws.⁵ In this respect, NMFS should not substitute its judgment for that of Council regarding the conservation measures that best satisfy the Council’s management objectives, or how best to weigh the information and uncertainties the Council considered in crafting Amendment 123, which balances numerous and often

Sea and Aleutian Islands Management Area (BSAI FMP); Bering Sea and Aleutian Islands Halibut Abundance-Based Management of Amendment 80 Prohibited Species Catch Limit, 87 Fed. Reg. 75,569 (Dec. 9, 2022).

² As discussed below, the Council initially analyzed three action alternatives. In its final action, the Council constructed a fourth and final Preferred Alternative that was within the bounds of the analysis but, in the Council’s view, better balanced fishing and conservation needs, consistent with the National Standards.

³ Conservation L. Found. v. Ross, 374 F. Supp. 3d 77, 116–17 (D.D.C. 2019).

⁴ 50 C.F.R. § 600.305(a)(2).

⁵ 16 U.S.C. § 1854(a).

conflicting interests.⁶ Rather, so long as NMFS determines that Amendment 123 is consistent with the MSA and other applicable laws — which it is — NMFS should approve the Council’s proposed amendment and promulgate regulations to implement it.

We appreciate NMFS’s initial review and determination that Amendment 123 is consistent with the MSA and other applicable laws.⁷ As NMFS explains in its proposal to issue implementing regulations, Amendment 123 readily satisfies these requirements:

[T]he proposed amendment would link the halibut PSC limit to halibut abundance for the Amendment 80 commercial groundfish trawl fleet in the BSAI groundfish fisheries. This action responds to the obligation in section 303(a)(11) of the [MSA] to minimize bycatch to the extent practicable, and is consistent with the MSA national standards. This action: minimizes halibut PSC to the extent practicable under National Standard 9; ensures that the FMP will continue to achieve optimum yield in the BSAI groundfish fisheries on a continuing basis under National Standard 1; is based upon the best scientific information available under National Standard 2; to the extent it involves an allocation of fishing privileges, is fair and equitable, reasonably promotes conservation by reducing incidental halibut mortality caused by the Amendment 80 trawl fleet, and does not result in any excessive shares of fishing privileges under National Standard 4; and takes into account the importance of fishery resources to fishing communities under National Standard 8.⁸

We urge NMFS to confirm this determination; reduce the ongoing and needless waste of increasingly important halibut resources; and bring the years-long process of crafting an equitable and scientifically supported abundance-based management plan to conclusion. In this way, NMFS will further the conservation and management objectives of the MSA and, for the first time, deliver some measure of equity and environmental justice to the Bering Sea fishermen and communities who depend on halibut for their livelihoods and very existence.

⁶ Oceana, Inc. v. Evans, 2005 WL 555416, at *2 (D.D.C. Mar. 9, 2005) (“Only under exceptional circumstances, such as emergencies or where a council fails to act, may the Secretary bypass the council process and devise management measures on his own.”).

⁷ NMFS, Procedures for Initiating Secretarial Review of Fisheries Management Plans and Amendments, NMFS Procedure 01-101-01, at 2-3 (Mar. 1, 1991).

⁸ 87 Fed. Reg. at 75570.

I. Background

A. Background on CBSFA and the Saint Paul Community

CBSFA represents Saint Paul Island as the Community Development Quota (CDQ) organization for the community. As such, CBSFA holds fishing quotas in the major North Pacific groundfish and crab fisheries managed by the NPFMC and quota in the Pacific Halibut fishery managed by the International Pacific Halibut Commission. The harvesting quota (and processing quota in the case of crab) is collectively referred to as CDQ. Fulfilling the statutory responsibility of the CDQ program to manage fisheries resources for the economic and social benefit of the communities in Western Alaska, CBSFA harvests and markets its CDQ halibut and buys and markets halibut Individual Fishing Quota (IFQ) owned and caught by fishermen in Saint Paul.

As detailed in our comments on the Draft EIS, the small-boat halibut fishery is the cultural and economic lifeblood of Saint Paul. It is a critical source of employment (both direct and indirect). It is also an important and historically significant subsistence fishery that is key to Saint Paul Island's cultural heritage and well-being. Saint Paul identifies with this ancient resource: the halibut harvest — and sharing the bounty with the community — is an irreplaceable cultural touchstone.

B. The Council and NMFS Have Long Recognized that Bycatch Limits Should Reflect Halibut Abundance

Given the community's extreme dependence on halibut, and the devastating effects that halibut bycatch have had on the halibut fishery, CBSFA has been working with the Council and NMFS to establish meaningful limits on halibut bycatch for more than a decade. In 2015, after five years of analysis, the Council reduced the static halibut bycatch caps by 23% across all sectors. CBSFA and the halibut industry had asked for a 50% reduction; trawl stakeholders opposed any reduction in bycatch limits, telling the Council and NMFS that further reductions in halibut bycatch were not practicable and that any reduction in the PSC limits would devastate the fishery — assertions that both proved incorrect.

At the time of the 2015 action, Council members made two things clear that relate to the adoption of Amendment 123.

- First, Council members acknowledged that “*steeper reductions were warranted*” and that the lower PSC limits set in 2015 were “*only a first step* in addressing BSAI halibut needs among the different user groups.”
- Second, the Council emphasized that further action to reduce halibut bycatch limits should reflect the basic principles — both of sound fisheries management and fairness — that PSC limits should reflect halibut abundance.

As the Council foresaw, the need for further bycatch reductions became clear before the ink was dry on the 2015 action. On the grounds, low halibut abundance persisted and worsened in the Bering Sea and coastwide, resulting in halibut catch limits that sank to levels that were not sustainable. At peak bycatch levels in 2014, halibut bycatch in the Bering Sea was nearly 5 million pounds — greater than four times the 1.2 million pounds allowed for the directed fishery. Predictably, Saint Paul and other halibut-dependent communities suffered as a result: the number of vessels and employment in the halibut fishery dropped substantially in Saint Paul, and some communities in Western Alaska lost their small-boat halibut fisheries entirely.

Work began right after the 2015 action to build an innovative bycatch management program to more equitably share the burden of conservation in times of low abundance. CBSFA led that effort along with other community-based fishermen's associations. The initiative resulted in the Council action of December 2021, after six years of work.

C. Excessive Bycatch Continues to Disproportionately Harm Directed Fishery Participants

For too long, local fishermen — and all halibut harvesters in the Bering Sea — have seen their fishery catch limits reduced dramatically as the halibut resource declined, while the trawl bycatch limits remained at excessive levels that neither constrained the trawl fisheries nor incentivized halibut avoidance. This resulted in profound inequities, where bycatch users like Amendment 80 took an ever-increasing proportion of the available halibut, while the directed halibut fishermen alone bore the burden of conservation of the halibut resource.

This imbalance is well-documented in the Analysis and CBSFA's past comments. As the Analysis recognizes, the IPHC's management regime subtracts halibut removals from bycatch from the Total Constant Exploitation Yield (TCEY) to determine the Fishery Constant Exploitation Yield (FCEY), which is then used to calculate a recommendation for each management area's catch limit. As a result, halibut mortality from bycatch directly reduces the halibut available to the directed fishery.

Moreover, as the Analysis describes, impacts from Amendment 80 bycatch are overwhelmingly and disproportionately concentrated in Area 4CDE. This trend has increased steadily over the past decade, with nearly 90% of Amendment 80's bycatch mortality now occurring in Area 4CDE and the halibut-rich waters off Saint Paul (Figure 1).

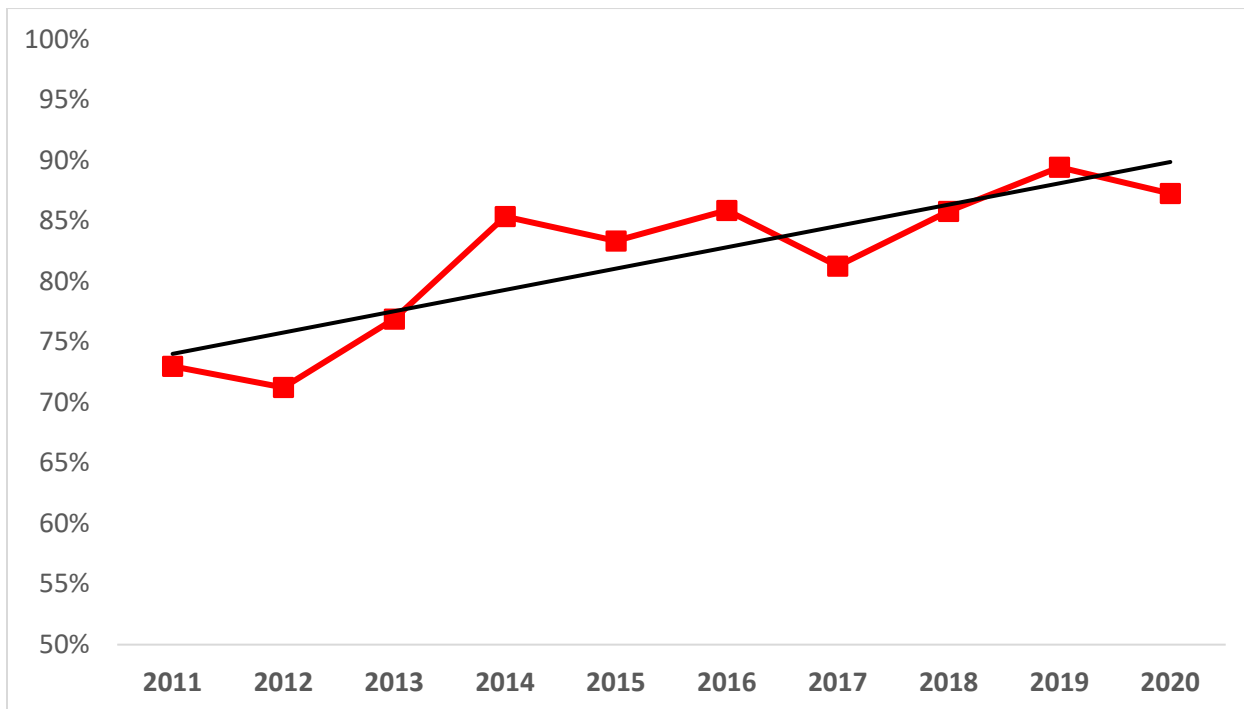


Figure 1. Trend in Amendment 80 Mortality in Area 4CDE as Proportion of BSAI

These impacts have only been exacerbated as halibut abundance declines. From 2002 to 2011, directed halibut fishery removals averaged 43% of total halibut removals in the Bering Sea (Table 1). From 2012 to 2022, however, the directed fishery proportion of total removals declined markedly, ranging from 20% to 39% as halibut bycatch took a larger share of total halibut removals. Indeed, at its peak in 2014, *bycatch mortality accounted for more than 80% of all halibut removals*. Unfortunately, 2022 was not much better, with bycatch removals accounting for about 68% of all halibut mortality in Area 4CDE (Figure 3). In fact, from 2012–2022 total removals have declined by 36%. In other words, the directed fishery has had a shrinking slice of a shrinking pie.

Table 1. Area 4CDE Average Removals (M lbs, net wt)			
	Bycatch	Directed	Total
2002–2011	4.401	3.415	7.948
2012–2022	3.428	1.563	5.084
Change	-22%	-54%	-36%

The period from 2011 to present is particularly telling, because 2011 was the first year that the IPHC began reducing catch limits to address retrospective bias in its analysis and conserve the halibut resource. Yet the directed fishery has borne that

entire burden. As [Figure 1](#) shows, the directed fishery harvest fell in 2022 by 54% compared to 2011 levels. In contrast to this precipitous decline in directed fishery harvest, bycatch removals actually increased by 5% over the same period. There can be no clearer demonstration that the directed fishery has borne — and continues to bear — the entire burden of conserving the halibut resource.

Table 2. Area 4CDE Removals (M lbs, net wt)			
	2011	2022	Difference
Bycatch	3.024	3.189	+5%
Directed Fishery	3.414	1.567	-54%

II. Recent Events Show the Need for Abundance-Based Reductions on Halibut Bycatch

Unfortunately, events occurring since the Council took final action in December 2021 have only emphasized the need for further reductions in halibut PSC and the significance of Amendment 123 to halibut-dependent communities. Action is needed now more than ever.

A. Halibut Abundance Remains at Low Levels

In the year since the Council’s final action, halibut abundance continued to drop. In January 2023, the IPHC reduced halibut allocations to the directed fishery coastwide by 10.1%. As the Council action is not yet implemented in the Bering Sea, the halibut bycatch numbers expected under the current management regime have been subtracted from the harvestable halibut, further reducing the fish available to the halibut fishermen in Saint Paul and across Western Alaska.

B. Bycatch Has Increased Under the Current PSC Limits

At the same time, the current PSC limits are demonstrably inadequate. As recent events show, the current limits (the no-action alternative advocated by Amendment 80) do not constrain halibut bycatch in the Amendment 80 sector. And they provide no incentive for Amendment 80 to reduce its bycatch, either to share in the conservation of the halibut resource during periods of low abundance or to mitigate its devastating effects on the halibut directed fishery and small halibut-dependent communities like Saint Paul.

The Council took final action in 2021. During 2022 — as finalization of the action lay stalled while agency staff worked to respond to burdensome document requests filed by Amendment 80 — *bycatch in the Amendment 80 sector soared by a shocking 45.5%*

to 1,519 mt (3.35 million pounds). Moreover, Amendment 80 was responsible for the overwhelming share of the trawl-sector bycatch mortality in the BSAI. Indeed, according to the most recent data from NOAA, **Amendment 80 accounted for almost 74% of the total trawl bycatch mortality** in 2022 (Table 3).⁹

Table 3. Halibut PSC Use in the BSAI by Sector (mt)

BSAI Sector	2015	2016	2017	2018	2019	2020	2021	2022
Non-Pelagic Trawl (A80 C/P)	1,638	1,412	1,167	1,343	1,461	1,097	1,044	1,519
Non-Pelagic Trawl (AFA C/P)	71	78	57	105	39	34	38	67
Non-Pelagic Trawl (Catcher Vessels)	310	410	337	309	499	262	155	257
Non-Pelagic Trawl (CDQ)	100	140	129	137	168	90	80	90
Pelagic Trawl (AFA C/P)	74	64	57	32	66	56	78	93
Pelagic Trawl (AFA C/V)	30	19	17	10	16	19	18	17
Pelagic Trawl (CDQ)	8	9	6	7	17	10	13	13
Trawl Total	2,231	2,132	1,770	1,943	2,266	1,568	1,426	2,056
Amendment 80 Share of Halibut PSC Use	73.4%	66.2%	65.9%	69.1%	64.5%	70.0%	73.2%	73.9%

What is more, data from the IPHC suggest that this bycatch overwhelmingly consisted of small U26 fish. According to the IPHC, non-directed U26 bycatch mortality in Area 4CDE climbed to 1.134 million pounds in 2022 — comprising 35.6% of the total bycatch mortality by weight. Given the relatively low weight of U26 fish, this represents an enormous number of smaller, juvenile halibut that have been removed from the population as bycatch.

Sadly, this marked increase in halibut bycatch mortality was entirely permissible under the current regulatory regime. As Figure 2 shows, the current limits let Amendment 80 continue with business as usual, even as halibut abundance remains low and directed fishery catches are reduced. Indeed, the current limits supported by Amendment 80 would allow **substantially more** halibut to be taken as bycatch than has occurred at any point since the 2015 limits were adopted. Such waste of an economically valuable and culturally significant fishery resource is unconscionable.

⁹ NOAA, Personal Communication (Exhibit 1).

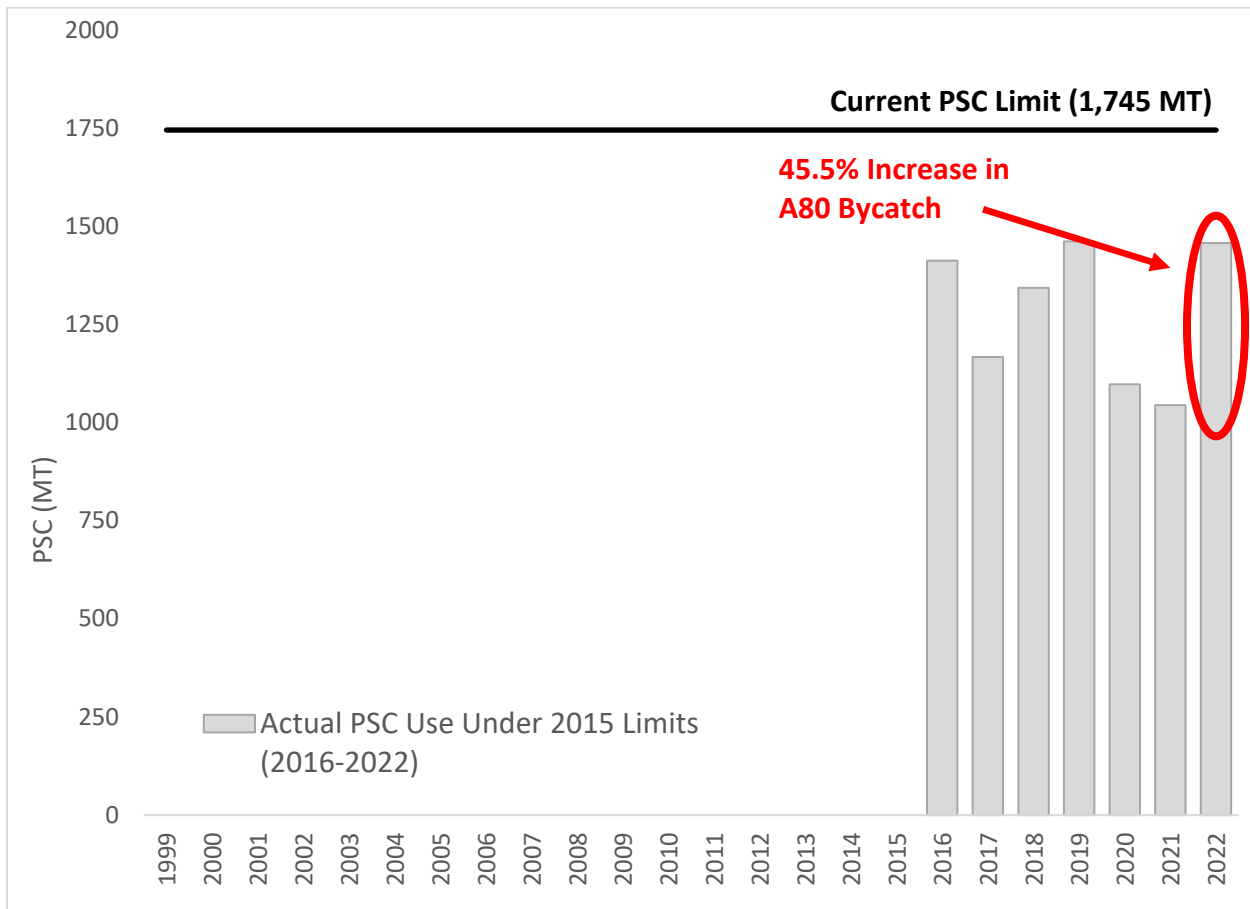


Figure 2. No Constraint Imposed by PSC Limits Adopted in 2015

Ongoing excessive bycatch by Amendment 80 occurring since the Council’s action has exacerbated the “imbalance” highlighted in the Analysis and CBSFA’s comments. Figure 3 below shows the relative fraction of bycatch and directed fishery removals in Area 4CDE. As can be seen, the directed fishery’s catch accounted for just 32% of halibut removals in 2022.

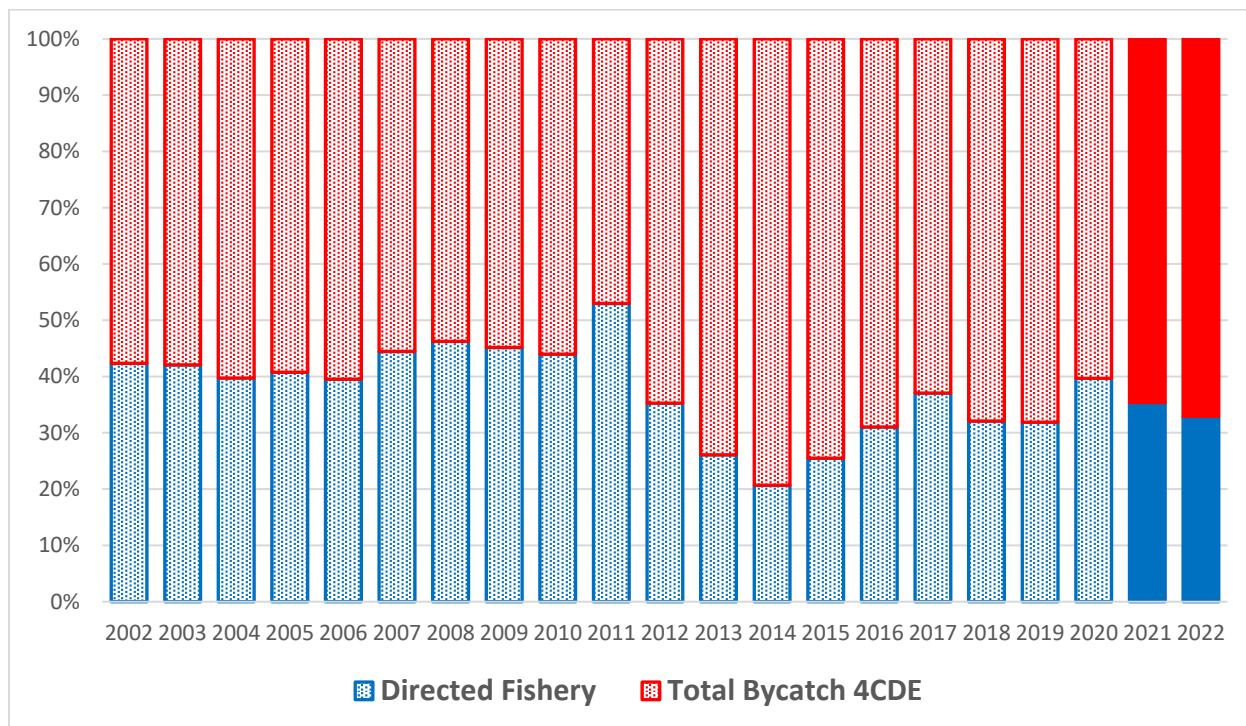


Figure 3. Area 4CDE Halibut Removals, Directed Fishery vs. Bycatch Mortality

Moreover, more recent data not included in the Analysis shows that the cumulative imbalance between directed and bycatch removals has continued to grow. By 2022, trawl-sector bycatch removals in Area 4CDE were *nearly double (180%) of removals by the directed fishery* by weight (Figure 4). And, because bycatch consists overwhelmingly of small juvenile halibut, bycatch users have killed and discarded *more than 4.14 million halibut* over the same period. This is *nearly 8 times more halibut* than the directed fishery landed, based on mean weight (Figure 5). Based on historical halibut prices, this amounts to *\$110 million in ex-vessel revenue* to the directed fishery in Area 4CDE alone.

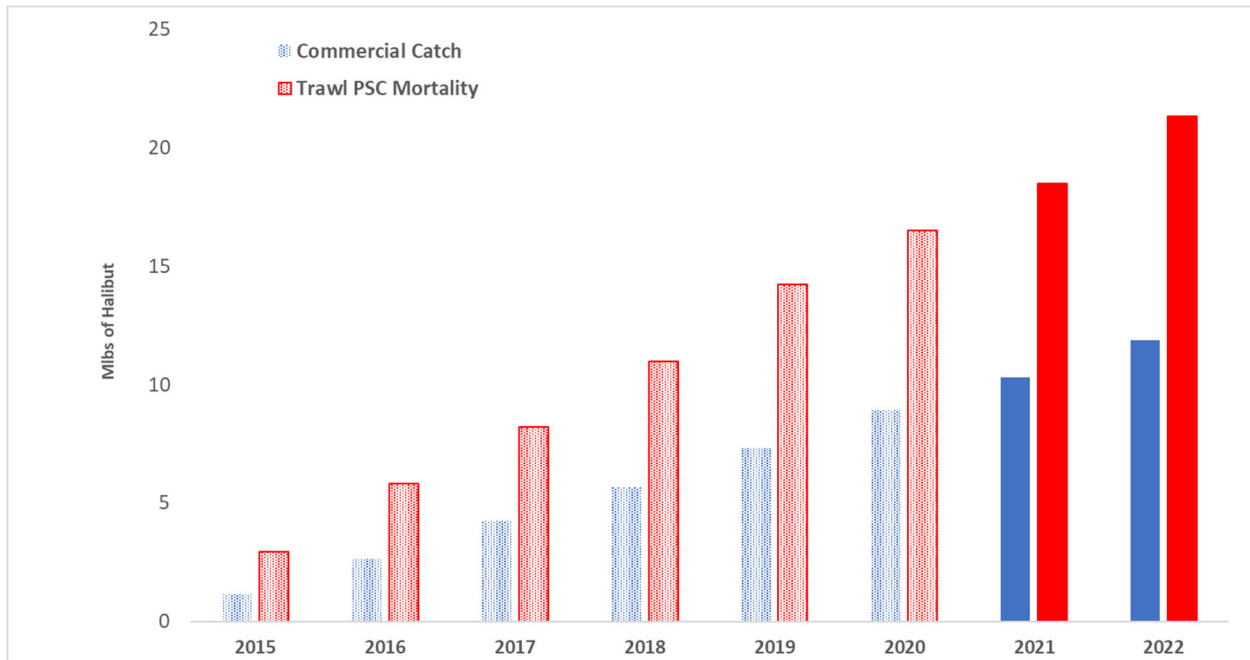


Figure 4. Cumulative Removals in Area 4CDE (lbs)

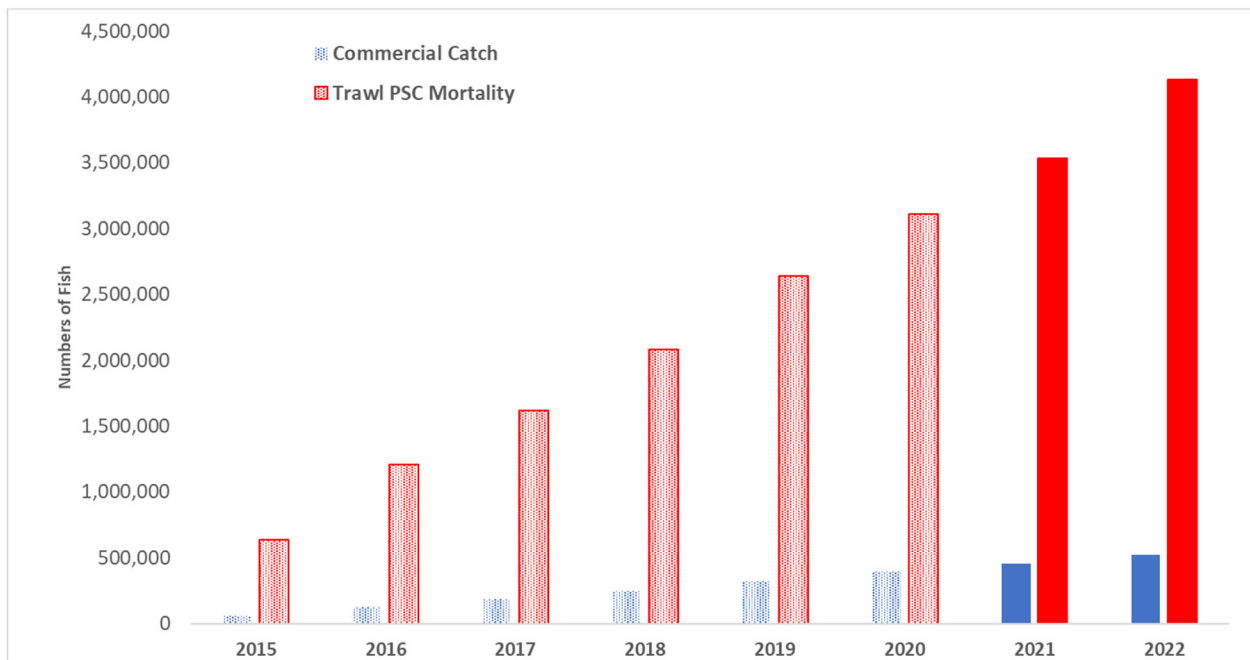


Figure 5. Cumulative Removals in Area 4CDE (Number of Fish)

To be sure, some in the Amendment 80 sector may claim the marked increase in halibut bycatch that occurred in 2022 was unavoidable. They may suggest this increase was due to factors beyond their control, like climate-driven changes in water temperature and comingling of halibut and target species, or perhaps changes in markets for trawl-caught species. And they may assert that their excessive rates of

halibut bycatch in 2022 reflect both the limits of what is practicable and indicate the high costs to Amendment 80 that will result from Amendment 123 and the behavioral changes it will force them to adopt.

Of course, this is not the first time that Amendment 80 has made such claims. While CBSFA acknowledges the sector has made substantial progress in avoiding halibut and reducing bycatch mortality in recent years, many in the Amendment 80 sector claimed the current PSC limits — set in the 2015 action — were themselves impracticable and would devastate the Amendment 80 fishery. For example, in response to the proposal to adopt the current limits, Amendment 80 participants in 2015 claimed:

Trawler bycatch was “*not the source of any problem*”; reductions would result in “*devastation to employees in our sector and the support industries that depend on it.*”

— United States Seafoods

Even a 10% reduction would “*significantly impact our ability to continue to harvest our groundfish in the Bering Sea.*”

— Groundfish Forum and Alaska Seafood Cooperative

Member companies were *already “using all available means to reduce bycatch to the extent practicable”* and that the reductions being considered “*would be disastrous to Amendment 80 fisheries.*”

— Groundfish Forum

The “cooperative is *currently using all available means to reduce bycatch to the extent practicable*” and additional reductions cannot be achieved.

— Alaska Seafood Cooperative

Yet none of these predictions proved true and, consistent with long experience in other fisheries, the current limits have been met in every year with no significant disruption of the Amendment 80 fisheries. Indeed, average revenues to Amendment 80 have increased under the new limits (Figure 6).

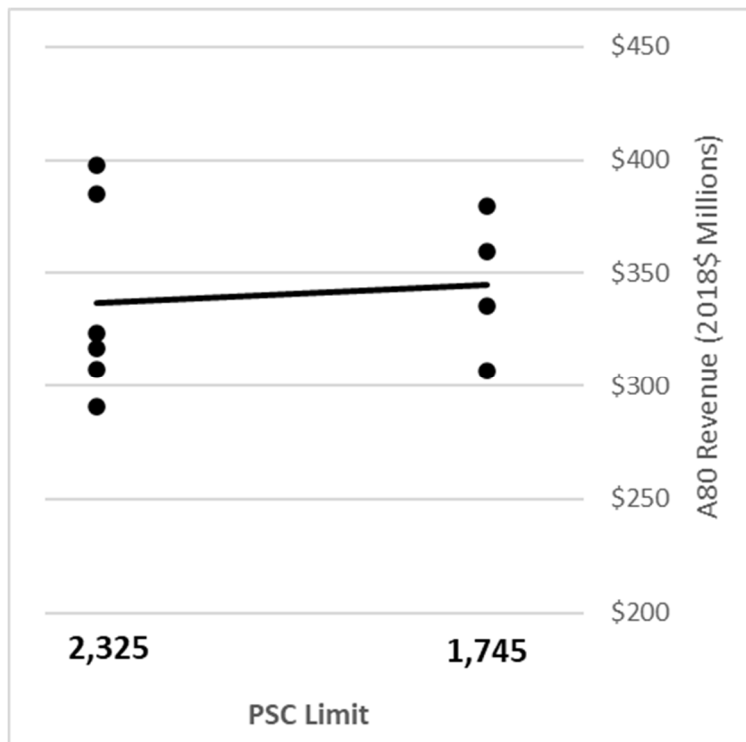


Figure 6. Trend in Average Annual Amendment 80 Revenues Following Imposition of Reduced Bycatch Limits

More to the point, the regulated sector should not be permitted to drive the impacts analysis by electing to utilize halibut lawfully available to them under the existing regulatory regime. As the Council heard repeatedly, and as the Analysis recognizes, existing halibut avoidance tools are not fully utilized within the Amendment 80 sector. And, especially given the discretion inherent in their application, available data cannot establish the extent to which existing tools may, or may not, have been fully utilized in 2022 — potentially one of the last years of “business as usual” fishing and one in which higher halibut encounter rates could be deployed to attack the new limits, which the sector opposes as infeasible and impracticable.

C. The Halibut Fishery Has Become Increasingly Important as Other Bering Sea Fisheries Experience Catastrophic Declines

Even as halibut abundance remains low and bycatch has increased over the last year, other Bering Sea fisheries have experienced catastrophic declines. As a result, the halibut fishery — and directed fishery gains from reduced bycatch mortality — are now more important than ever to Saint Paul and other Bering Sea communities.

As NMFS is aware, Bering Sea snow crab and red king crab populations have crashed in the last two years.¹⁰ Snow crab total allowable catch (TAC) was reduced by 87% in 2021, falling from 45 million pounds down to just 5.6 million pounds.¹¹ This was followed in October 2022 by the total closure of the snow crab fishery for 2023, something that has never previously occurred.¹² At the same time, Bristol Bay red king crab populations remain at very low levels, with the fishery closed in 2023 for the second consecutive year.¹³ Other crab species and fisheries have also experienced significant declines.¹⁴ Based on recent stock assessment and surveys, the historic decline in crab populations is expected to persist for some time.

These declines have substantially affected CBSFA's revenues and will affect its ability to fulfill CDQ program objectives for Saint Paul, including funding many community-infrastructure, educational, research, and social programs. In addition, because of its dependence on crab processing, the City of Saint Paul's revenues declined by about 87% in 2022. The city also expects to see another enormous drop in 2023 from lost landing taxes, likely requiring budget cuts for critical services the city government provides to the community. Further, without snow crab and red king crab, there is insufficient crab poundage to keep existing crab processing capacity engaged in various locations, which causes additional hardship. For example, the lone processing plant in Saint Paul recently announced it will mothball the facility until sufficient crab are available to reopen, forcing halibut fishermen to bear the added burden and expense of tendering halibut to Akutan or Unalaska.¹⁵

¹⁰ Due in part to Saint Paul's proximity to the Bering Sea's crab resources, CBSFA is allocated 20% of the total Bering Sea snow crab and 10% of the Bristol Bay red king crab that is set aside for the CDQ program, and it has made substantial additional investments in snow crab harvesting and processing quota. CBSFA also owns Eastern Aleutians golden king crab and Bairdi crab quota, and it harvests all its crab assets on wholly-owned and partner crab vessels. As it does with halibut and groundfish, CBSFA manages crab vessels and quota in the service of the community, to promote social and economic development in Saint Paul.

¹¹ Alaska Department of Fish and Game, Bering Sea Snow Crab – Total Allowable Catch Announced (Oct. 8, 2021) (Exhibit 2).

¹² Alaska Department of Fish and Game, 2022/2023 Bering Sea Snow Crab Season Closed (Oct. 10, 2022) (Exhibit 3).

¹³ Alaska Department of Fish and Game, 2021/22 Bristol Bay Red King Crab Season Closed (Sept. 3, 2021) (Exhibit 4); Alaska Department of Fish and Game, 2021/22 Bristol Bay Red King Crab Season Closed (Oct. 10, 2022) (Exhibit 5).

¹⁴ Alaska Department of Fish and Game, Bering Sea Tanner Crab Season - Total Allowable Catch Announced (Oct. 8, 2021); Alaska Department of Fish and Game, Saint Matthew Island Section Blue King Crab Season Closed (Oct. 8, 2021); Alaska Department of Fish and Game, Pribilof District Red and Blue King Crab Seasons Closed, Emergency Order # 4-SF-09-21 (Oct. 8, 2021) (Exhibit 6).

¹⁵ Saint Paul does not have a salmon resource or commercial fishery, but many other Bering Sea communities depend heavily on both subsistence and commercial fisheries for Chinook and chum salmon. Both species are undergoing drastic declines in their abundance, with empty smokehouses and freezers across Western Alaska.

Given this, the commercial halibut fishery is one of a shrinking number of fisheries available to provide income and economic opportunities to communities like Saint Paul. Moreover, the added burdens associated with prosecuting the halibut fishery resulting from declines in other fisheries make it even more important to minimize burdens resulting from excessive bycatch.

In short, Alaska Native communities and cultures across the Bering Sea are threatened by resource scarcity and struggling to survive. Supporting the halibut fishery — and ensuring its continued viability through implementation of Amendment 123 — is even more badly needed today than it was at the end of 2021, when the Council first took action. .

III. NMFS Should Approve and Implement Amendment 123

Upon receipt of a proposed amendment from the Council, NMFS must review it to determine whether it is consistent with the National Standards and other applicable laws.¹⁶ The publication of the Notice of Availability and proposed implementing regulations reflect an initial determination by NMFS that Amendment 123 meets these requirements.¹⁷ NMFS should now finalize that determination.

As the Analysis explains, Amendment 123 reflects a carefully considered balance by the Council of competing considerations under the National Standards. In reaching its conclusion, the Council carefully weighed all the information before it, including the benefits to the directed fishery; the need for conservation of the halibut resource; the practicability of bycatch reductions; and the potential impacts to Amendment 80 if halibut PSC limits were, at some point, to constrain the fishery. And, based on the sum total of that information, the Council struck a middle ground — rejecting both the deeper cuts included in Alternative 4 that were advocated by CBSFA, the tribes, and many others, as well as the status quo alternative supported by Amendment 80.

In the words of the Analysis, Amendment 123 “reflects the Council’s efforts to balance several factors when establishing PSC limits, including the likely impacts on the halibut stock and affected participants in the Amendment 80 and directed halibut fisheries.”¹⁸ It seeks to remedy the obvious “imbalance among users” that exists today, where Amendment 80 takes an overwhelming share of the available halibut resource, correctly recognizing that “greater conservation of the halibut resource is warranted and required.”¹⁹ To that end, Amendment 123 “balances the interests of the two largest halibut user groups in the BSAI” by setting abundance-based limits

¹⁶ 16 U.S.C. § 1854(a)(1).

¹⁷ NMFS, Procedures for Initiating Secretarial Review of Fisheries Management Plans and Amendments, NMFS Procedure 01-101-01, at 2-3 (Mar. 1, 1991).

¹⁸ Analysis at 78.

¹⁹ Analysis at 78.

for Amendment 80 that mirror “the management approach for the directed commercial halibut fisheries off Alaska, which establishes annual catch limits that vary with established measures of halibut abundance.”²⁰ In this way, Amendment 123 “will ensure that halibut PSC in Amendment 80 fisheries does not become a greater share of overall halibut removals in the BSAI, particularly in Area 4CDE.”²¹ Summarizing, the Analysis explains:

In short, it would promote conservation of the halibut resource, improve its management, and create a more equitable distribution process between the directed and non-directed fisheries. And the Council recognized that, in addition to supporting prosecution of groundfish fisheries, halibut is a highly valued fish species that supports directed subsistence, recreational, and commercial halibut fisheries coastwide. Managing PSC limits according to abundance promotes conservation of the halibut resource and equality and fairness among competing users.²²

NMFS should uphold and approve the careful balance the Council struck. As the proposed rule correctly recognizes, Amendment 123 is consistent with all the National Standards, but, most relevantly, National Standards 1, 4, 8, and 9. It is also consistent with long-neglected principles of environmental justice, Administration guidance, and other relevant legal and statutory principles. That being so, NMFS should approve Amendment 123 and see that it is implemented.

A. Alternative 5 is within the Range of Analyzed Alternatives

In striking what it saw as the appropriate balance, the Council settled on a “hybrid” alternative that included reduced PSC limits between those of other alternatives under consideration. This choice was reasonable and fully supported by the record.

Figure 7 below shows the back-calculated PSC limits that would have applied if Amendment 123 had been in effect during the period from 1999 to 2022, as halibut abundance declined. As can be seen, the Council’s selected balance (Alternative 5) lies squarely between the limits studied under Alternatives 2, 3, and 4. Thus, while CBSFA believes the Analysis continues to understate potential gains to the directed fishery and to overstate potential impacts to Amendment 80, it fully satisfies NEPA’s requirements by disclosing potential effects that could result from adopting Amendment 123.

²⁰ Analysis at 78.

²¹ Analysis at 78.

²² Analysis at 79.

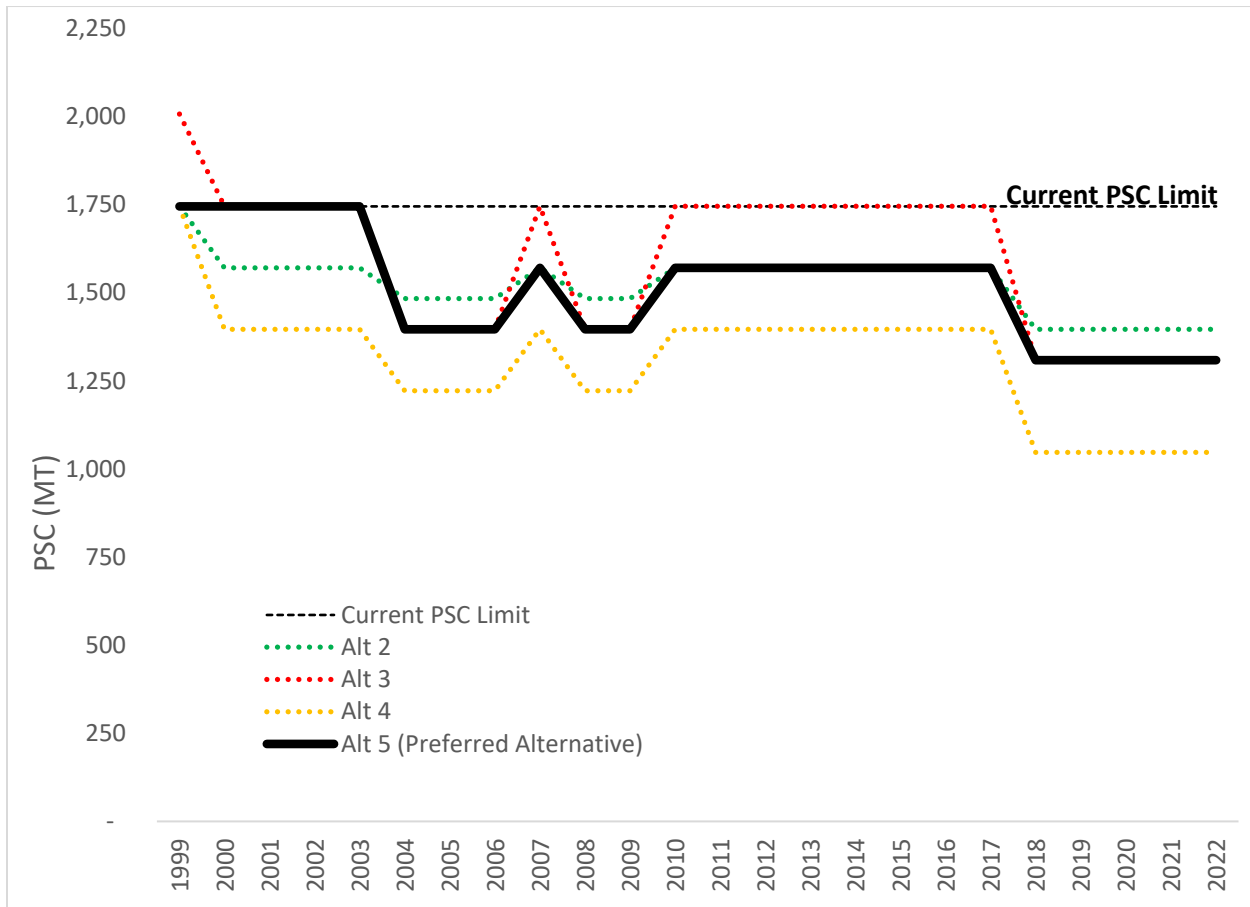


Figure 7. Back-Calculated PSC Limits Under Amendment 123

B. Alternative 5 Accounts for Key Dynamics of the Halibut Population, Abundance Surveys, and Actual PSC Use

There are sound reasons for the Council to draw the line where it did. Figure 8. below shows the back-calculated PSC limits overlaid with the historical survey states (trawl and set-line) and the actual PSC use by Amendment 80. Collectively, these factors provide a thoroughly well-reasoned basis for the Council’s decision to adopt an intermediate alternative.

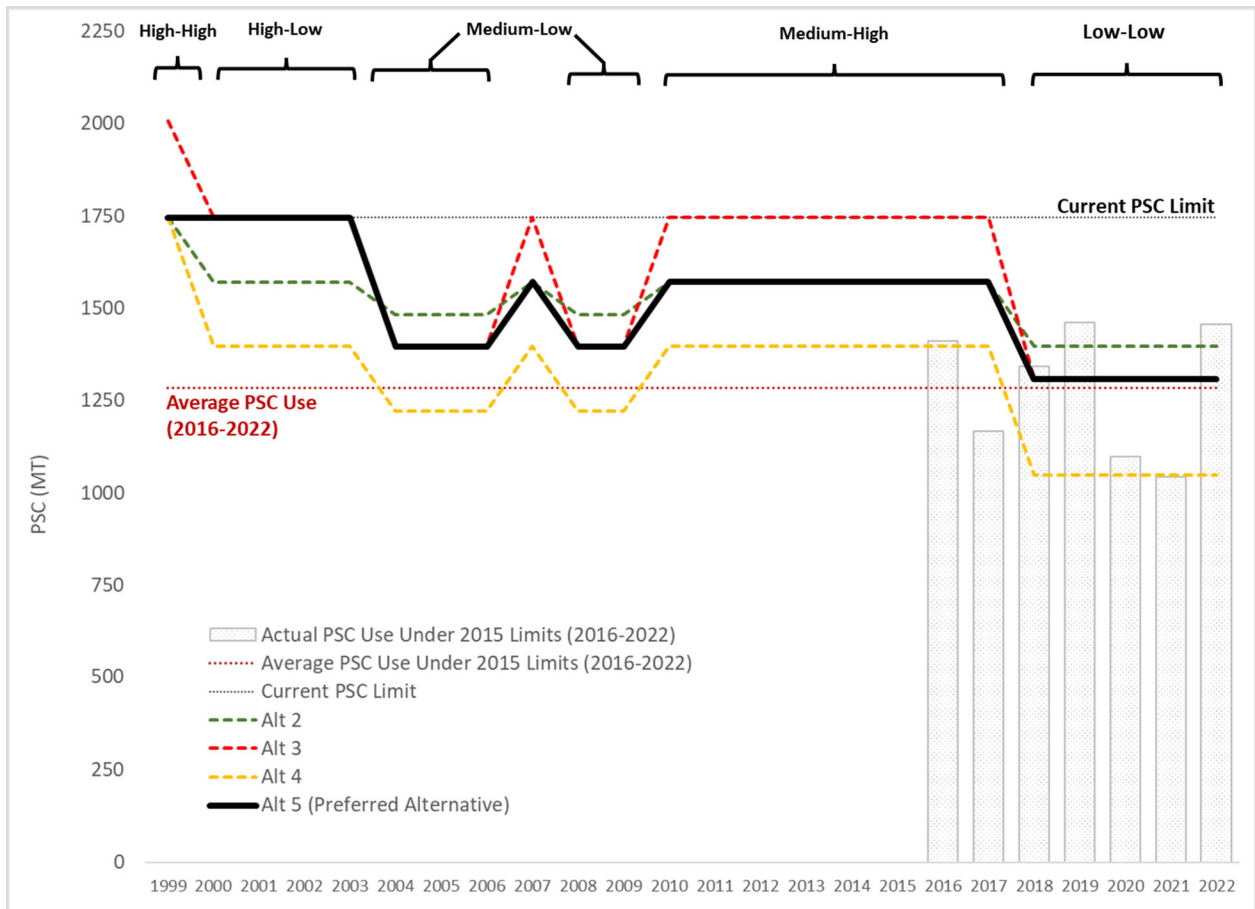


Figure 8. Back-Calculated PSC Limits, Historical Survey States and Amendment 80 PSC Use

As an initial matter, the Council rejected both extremes under consideration. It considered and rejected the status quo alternative advocated by Amendment 80, recognizing that limits are not meaningful and that “greater conservation” of the halibut resource is “warranted and required.” It also declined to adopt the lower limits under Alternative 4, explaining that it “chose an alternative with less economic impact” on Amendment 80.”²³ As CBSFA explained in its comments to the Council, the evaluation of economic impacts grossly overstates the likely effects on Amendment 80 revenues, and CBSFA continues to believe Alternative 4 was a viable and appropriate alternative. CBSFA respects the Council’s determination, however, which was reasonable and supported by the information before the Council at the time the decision was made.

For its part, Alternative 2 provided insufficient relief during low abundance conditions. As Figure 8 shows, the Alternative 2 limits were well above Amendment 80’s average PSC use since the current limit (1,745 mt) was adopted. The Alternative 2 limits also would provide only miniscule reductions in PSC use, resulting in very

²³ Analysis at 80.

small constraints only in two years when PSC use was the very highest. This would not provide the additional halibut conservation the Council recognized is required, nor would it meet the purpose and need of the action.

Alternative 3 was also plainly inadequate. Under this alternative, high trawl survey values would result in increased PSC limits, even under low abundance conditions. But halibut spawning stock biomass (SSB) and directed fishery limits are driven by large fish captured in the setline survey; and high trawl survey numbers do not necessarily result in increased numbers of large fish. Figure 9 below shows the results of the setline and trawl surveys from 1999–2019, along with the corresponding survey state. As can be seen, large numbers of small fish were observed in the trawl survey between 2009 and 2015. The number of halibut in the setline survey continued to fall, however, and the small fish from the trawl survey never matriculated into the setline catch.

Survey year	Setline		Trawl	
	Index	State	Index	State
1998	18,577	High	161,256	High
1999	16,155	High	129,116	Low
2000	16,207	High	118,677	Low
2001	13,681	High	141,219	Low
2002	12,037	High	101,706	Low
2003	10,862	Medium	132,151	Low
2004	10,128	Medium	130,075	Low
2005	9,856	Medium	132,518	Low
2006	9,932	Medium	155,964	High
2007	9,922	Medium	143,903	Low
2008	10,714	Medium	140,247	Low
2009	9,989	Medium	168,102	High
2010	9,271	Medium	195,535	High
2011	8,896	Medium	186,666	High
2012	8,539	Medium	189,000	High
2013	8,133	Medium	183,989	High
2014	8,173	Medium	171,427	High
2015	8,385	Medium	172,237	High
2016	8,134	Medium	153,704	High
2017	7,583	Low	126,684	Low
2018	7,228	Low	125,957	Low
2019	7,104	Low	113,855	Low

Figure 9. Setline and Trawl Survey Values with Corresponding Survey States (1998-2019)²⁴

Under Alternative 3, the high trawl survey state would have resulted in status quo PSC limits (1,745 mt) under low abundance conditions. Indeed, there would have been no change in PSC limits from 2010 to 2017, even though SSB was low, setline

²⁴ Data from Analysis, Table 2-6.

survey was consistently declining, and the directed fishery faced preemption in multiple years.

Moreover, under Alternative 3, the high trawl survey state would have resulted in *increased* PSC limits during “low-high” conditions — a time when the directed fishery would almost certainly face low catch limits due to low numbers of large fish. Further, the limits would remain flat even when the setline survey is in the “very low” state. This would occur even though the Alternative 3 limits were well above the average PSC use in the period since the current limits were adopted, and even though they would provide only minimal constraints on Amendment 80 in only a few years.

Finally, Alternative 3 would have allowed bycatch mortality to increase when both indices are in the high state. This would allow bycatch mortality well in excess of existing limits and far above the levels Amendment 80 has demonstrated to be practicable under the current regime. This is inconsistent with the concerns over bycatch that drove the Sustainable Fisheries Act amendments and with National Standard 9’s mandate that bycatch be minimized to the extent practicable.

The Council’s selected alternative (Alternative 5) addresses each of these concerns. It provides more meaningful mortality reductions than Alternative 2 during periods of low abundance. It guards against potential effects on Amendment 80 by adopting a limit close to Amendment 80’s average PSC use, avoiding the steeper cuts set out under Alternative 4. And it addresses the problems with Alternative 3, which failed to provide reductions under high trawl survey states, even when big fish are scarce and halibut SSB is low. NMFS should approve the Council’s tailored approach.

C. Reducing Bycatch will Substantially Benefit the Directed Fishery

As CBSFA explained in its comments, the Draft EIS substantially understated the benefits to the directed fishery that will accrue when bycatch mortality is reduced. This was true for multiple reasons, including that the Draft EIS understated both the near-term and long-term gains to the directed fishery resulting from reduced bycatch mortality and failed to appropriately capture the benefits of reducing bycatch mortality of smaller U26 fish.

Although directed fishery benefits continue to be underestimated, the final Analysis and NFMS’s proposed regulations do much to correct these shortcomings. The Analysis correctly recognizes that reducing bycatch mortality would provide near-term benefits to the directed fishery. This is because the IPHC subtracts O26 bycatch mortality in each area from the allowable TCEY. Consequently, reducing O26 halibut mortality from Amendment 80 will allow more fish to be available to the commercial halibut fishery. These increases will provide meaningful relief to directed fishery participants struggling under the burdens of low abundance and excessive bycatch mortality.

In the longer term, the Analysis recognizes that benefits will accrue to the directed fishery from reducing the number of small U26 fish killed by Amendment 80, thus allowing these fish to recruit to legal size. Consistent with the purpose and need of the action, the Analysis recognizes that these benefits will primarily accrue in Area 4CDE, where the overwhelming majority of Amendment 80's bycatch occurs.

The Analysis also explains, correctly, that the benefits will not be confined to Area 4CDE. In its comments to the Council, CBSFA explained that the Draft EIS failed to account for benefits resulting from downstream migration. The Bering Sea — and Area 4CDE specifically — is a critical halibut nursery habitat. Thus, juvenile bycatch mortality occurring there directly affects the halibut resource in other areas, because removing young fish eliminates future outward migration and growth in biomass downstream. The Analysis acknowledges this reality, explaining that bycatch reductions “could lead to longer term benefits to the commercial halibut fisheries throughout the distribution of the halibut stock” and that “[b]enefits from reduced mortality of these smaller halibut could occur both in the Bering Sea and elsewhere as these halibut migrate and recruit into the commercial halibut fisheries.”²⁵ We commend the Council and NMFS for incorporating these additional gains into the Analysis and considering them in evaluating the benefits of this action.

To be sure, the final Analysis continues to underestimate directed fishery benefits and benefits to the broader halibut stock. As CBSFA explained, the best available science demonstrates that reducing halibut PSC mortality produces gains in the directed fishery yield well in excess of 1:1. As such, each pound of PSC mortality that is eliminated through more stringent limits on the Amendment 80 sector will produce substantially more than 1 pound of halibut for the directed fishery. While the Analysis acknowledges some of this research — and recognizes that IPHC science has found yield gains as high as 139% from bycatch reductions — it declined to quantify these yield gains and downstream effects, saying that the rates are likely to be “variable over time” and “quantify[ing] potential impacts ... to downstream fishermen ... would be speculative.”²⁶

Regardless of whether these benefits are quantified, they are real and supported by the best available science. This suggests the actual directed fishery gains will exceed those described in the Analysis. Even at a qualitative level, they deserve consideration in any evaluation of Amendment 123's benefits.

²⁵ Analysis at 335–36.

²⁶ Analysis at 336.

D. The Analysis Correctly Recognizes that Limiting Amendment 80's Bycatch Provides Meaningful Conservation Benefits

We commend the Council and NMFS for recognizing in the final Analysis and proposed regulations the important halibut conservation benefits that will result from limiting Amendment 80's bycatch mortality. In its comments to the Council, CBSFA expressed concern that the Draft EIS failed to acknowledge significant conservation benefits to the halibut stock. As CBSFA explained, this suggestion was contrary to the Council and NMFS's prior findings, which support adoption of the current PSC limits. It also ignored the obvious conservation incentives the action creates, under which Amendment 80 — like every other user group — shares in both the burdens of low halibut abundance and the rewards of higher abundance.

The final Analysis and NMFS's proposed regulations correct this oversight. As the Analysis recognizes, reducing PSC limits provides a strong “incentive for the [Amendment 80] fleet to minimize halibut mortality at all times through reduced PSC limits at lower halibut abundance levels.”²⁷ It also “promotes conservation (in the sense of wise use) by optimizing yield in terms of the economic and social benefit” provided by the halibut resource. Both benefits are consistent with the common meaning of the word “conservation,” which the Oxford Dictionary defines as the “prevention of wasteful use of a resource.”²⁸

Before the Council, much was made of the fact that simulation models suggested halibut Spawning Stock Biomass (SSB) would not be substantially different under any of the alternatives. As CBSFA explained, however, the results of this model are highly suspect, as the SSC identified numerous flaws in the simulation model and recommended against its use. That said, as the final Analysis and proposed regulations recognize, major changes in halibut SSB would not be expected given that the halibut stock is fully utilized. This is because the IPHC's management approach is designed to conserve halibut spawning biomass regardless of the level of halibut use by different fisheries — indeed, this is precisely why Amendment 80's bycatch is taken off the top and reduces the amount of halibut available to the directed fishery.

But this does not mean the action does not provide conservation benefits, as Amendment 80 has claimed. To the contrary, creating incentives to reduce halibut bycatch, reducing waste and promoting the wise use of precious halibut resources, and increasing the number of fish available for the directed fishery are all conservation benefits that support adoption of Amendment 123. The Analysis recognizes as much, explaining that reducing bycatch mortality is “by definition” a conservation measure, and that the action will result in “the reduction of halibut PSC

²⁷ *E.g.*, Analysis at 14.

²⁸ *See, e.g.*, FTC v. Tarriff, 584 F.3d 1088, 1090 (D.C. Cir. 2009) (“It is fixed law that words of statutes or regulations must be given their ordinary, contemporary, common meaning.”).

from fish that are less than 26 inches (U26).”²⁹ And, as the Analysis explains, “reducing mortality of these young smaller fish” will provide benefits “in the Bering Sea and elsewhere as these halibut migrate and recruit into the commercial halibut fisheries.”³⁰

E. The Analysis Can be Used to Overstate the Likely Economic Impacts on Amendment 80

CBSFA remains deeply concerned about the analysis of economic impacts included in the final Analysis. The Council used an economic impact analysis which predicted possible impacts to Amendment 80 revenues using various groups of years, and assuming either random draws or historic monthly effort. The analysis states, “the choice of which dataset to use in the revenue analysis has the largest impact of any other variations between the scenarios.”

As CBSFA and its expert Dr. Sutherland, a natural resources economist from Duke University, pointed out in their comments to the Council, the economic impacts analysis in the Draft EIS grossly overstated the potential effects on Amendment 80. This was true for multiple reasons:

- First, the Draft EIS skewed the analysis by utilizing outdated fishing behavior to model potential future revenue impacts. Specifically, by using haul data from 2010 to 2016 — periods when PSC limits and PSC use were both much higher — the economic model failed to reflect dramatic changes in fishing behavior that occurred in recent years due to increasingly stringent regulatory limits. The earlier years also include fishing data from an outlier Amendment 80 fishing company that is no longer operating. As such, data from years prior to the full implementation of deck sorting and other behavioral changes adopted in response to Amendment 111 simply do not provide useful estimates of future behavior by the sector, and their use in the Analysis drastically inflates apparent revenue declines by artificially projecting Amendment 80 will be constrained when it will not.
- Second, the economic impacts model failed to reconcile its results with reality. By relying on unrepresentative hauls from historical periods with high PSC use (e.g., 2010–2014, 2013–2014, and 2010–2019), the model predicts the fishery would frequently exceed even the current PSC limit of 1,745 mt. And yet, actual data from the period from 2016–2022 shows the fishery has never once been constrained by the 1,745 mt limit. This conclusively demonstrates both the problems with using unrepresentative years with high PSC to model

²⁹ Analysis at 313–14.

³⁰ Analysis at 314.

future effects and that estimated economic impacts shown in the draft bear no resemblance to what is likely to occur.

- Third, the economic impacts model failed to account for rational behaviors that will be adopted to mitigate any revenue impacts that might occur. Amendment 80 participants are smart, rational, and adaptable. There are multiple avenues available today that would limit the economic effects of lower limits. (For example, a rational response to lower PSC limits would be to ensure the full harvest of species with a high-value-to-bycatch ratio such as Pacific ocean perch and Atka mackerel.) Yet, despite recognizing these behaviors will occur, the Draft EIS failed to consider them in modeling potential economic effects, instead assuming Amendment 80 would continue with business as usual until all fishing was halted.
- Fourth, the economic impacts model skewed the potential revenue impacts (and the potential risks to employment and benefits to CDQ communities) by analyzing economic effects only at the sector level. As the Draft EIS recognized, different species have different rates of bycatch, and the Amendment 80 companies have different portfolios. Under lower PSC limits, firms with lower PSC use would still be able to prosecute their fishery to the full extent, thus limiting potential economic effects to specific affected firms and only then if PSC were actually constraining. By framing the analysis in a way that forces the entire Amendment 80 sector to shut down, the model necessarily predicts large economic impacts that are not realistic.

Unfortunately, many of these flaws remain in the final Analysis, which continues to utilize unrepresentative data from high-PSC use periods and to overstate potential economic effects as a result. For example, the Analysis still uses data from unrepresentative periods going back as far as 2010. Likewise, the Analysis continues to utilize data that assumes no changes in fishing behavior.

Take for instance the model's "stratified" approach, which uses stratified hauls by month, so that historic monthly effort levels are maintained and "effort is constrained from the end of a fishing year backward rather than proportionally across the whole year." But stratifying haul selection by month and maintaining historic monthly effort levels does not yield realistic estimates of future impact to Amendment 80 revenues — simply put, they are going to change their behavior. It is not reasonable to assume Amendment 80 companies will fish under a lower PSC limit as they did in the past. Rather, as CBSFA pointed out, Amendment 80 vessels will optimize PSC use by doing an analysis on groundfish value/PSC use and develop a fishing plan accordingly. Again, the EIS recognizes as much, stating: "Harvesters are expected to make strategic choices that are different from the ... stratified random selection of

hauls used in this analysis.”³¹ Moreover, additional value could also be had with intra-cooperative intra-season transfers of halibut PSC between Amendment 80 companies — a tool the Analysis recognizes is available to Amendment 80 today but is rarely if ever utilized.

Perhaps more unfortunately, however, opponents of Amendment 123 have seized upon these models and their inflated economic impacts to suggest — wrongly — that Amendment 123 will cause massive economic losses within Amendment 80 and large-scale disruption. We therefore appreciate the clear, repeated acknowledgments in the final Analysis concerning the limitations of the economic impact models, including that future behavior will be different from what previously occurred; that data from more recent years should be considered more representative; and that Amendment 80 will alter its behavior to minimize economic effects.

For example, the Analysis recognizes:

- “Given reductions in PSC limits and operational changes such as increased deck sorting, it is most likely that future PSC use will be similar to what has been seen in the years since 2015 – i.e., estimates using 2016-19 or 2017-18 data.”³²
- “Given recent mortality patterns and substantial changes in fleet operation, including widespread adoption of deck sorting, it seems unlikely that future years will be similar to those before 2015. Overall, the analysts presume that results from more recent years are likely to be better representative of future outcomes.”³³

Not surprisingly, when these more recent data are utilized, the modeled economic impacts from lower PSC limits dwindle or disappear entirely. For example:

- Table ES-1-8 shows that the random draw method using years 2017–2018 produced the most revenue across all PSC limits and allowed unconstrained harvest at the 1309 PSC limit level.
- Table ES-1-11, Comparison of A80 Status Quo Revenues & PSC Limits, shows that using years 2017–2018 and using Random Draw methodology, the impact is just 0% to -4% at the current level of halibut abundance and the associated PSC limit.

³¹ Analysis at 211.

³² Analysis at 36.

³³ Analysis at 220.

- Even if fishermen do not change their behavior (2016–2019, stratified) the modeled impact is just -2% to -8%.

For the same reasons, we appreciate the clear acknowledgments in the final Analysis that the *modeled revenue estimates from Amendment 80 are extremely conservative and represent an upper bound of revenue impacts*. As the Analysis acknowledges:

- “The lack of substantial difference in estimates by sampling methods indicates that *results from both the stratified and random sampling method likely represent a lower bound of possible revenue estimates (and an upper bound of revenue impacts)*. This is not unexpected, as any changes in fleet behavior to adapt to changing PSC limits are likely to be more efficient than a proportional reduction in effort throughout a fishing year as estimated by the random sampling method, or a repeat of previous effort that is prematurely truncated as estimated by the stratified sampling method.”³⁴
- While both sampling methods may accurately reflect fishing in that harvesters have a limited amount of control over the species composition in each haul, neither method captures behavioral adjustments such as changes in targeting, fishing location, or other halibut avoidance strategies that might be employed depending on the emphasis being placed on PSC at the time. **As such, the resulting estimates likely represent an upper bound for impacts, in that adaptive behaviors could mitigate the impact of PSC limit reductions more than random or stratified random sampling methods reflect.**³⁵

Finally, to the extent the Analysis may have tried to capture encounter rate variability over time by including “high PSC use years,” that is not reasonable. The responses (individual fishing behavior, communication across vessels, transfers, etc.) and effective mortality will simply be different if the Amendment 80 sector experiences higher encounter rates in the future. A qualitative statement about increased costs of avoidance or reduced potential revenues should have been the extent of the discussion since, again, the Amendment 80 sector is much different now than it was in those earlier years.

F. Amendment 123 is Consistent with the National Standards and the Halibut Act

To begin, we applaud the Council and NMFS for expanding the final Analysis to consider National Standards 4 and 8, which are highly relevant to this action. As CBSFA explained in its comments, the Draft EIS focused its evaluation far too narrowly, incorrectly describing the “objectives” of the action as “minimiz[ing] halibut

³⁴ Analysis at 218.

³⁵ Analysis at 219.

PSC to the extent practicable under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) National Standard 9 and to continue achieving optimum yield in the BSAI groundfish fisheries on a continuing basis under MSA National Standard 1.”³⁶ This framing, CBSFA explained, gave short shrift to critical considerations under other National Standards — most notably National Standard 4 and National Standard 8 — which must be considered.

The final Analysis addresses this shortcoming, explaining that “the Council considered all National Standards in Section 301(a) of the MSA and other requirements of the Act” and sought to balance among their various considerations.³⁷ As the Analysis states:

Council members discussed the tension between National Standard 1, and allowing for optimum yield, and National Standard 9, minimizing bycatch to the extent practicable. Steeper reductions were considered under Alternative 4, but the Council chose an alternative with less economic impact. Two other National Standards were particularly relevant to the Council in recommending the Preferred Alternative, National Standard 8 (provide for the sustained participation of fishing communities and to the extent practicable, minimize adverse economic impacts on such communities); and National Standard 4 (allocation of fishing privileges shall be fair and equitable). Council members rationalized their recommendation of the PA based on all the National Standards and balancing their conflicting dictates.³⁸

NMFS’s proposed rule also correctly recognizes that the objective of the action is not simply to balance between National Standards 1 and 9. Rather, as NMFS explains, the proposed amendment is not only consistent with National Standards 1 and 9, but also appropriately balances National Standards 4 and 8, which seek to ensure that the action results in the fair and equitable distribution of fishing privileges and provide for the sustained participation of fishing communities.³⁹

1. National Standard 1 — Optimum Yield

National Standard 1 directs the Council to achieve “on a continuing basis, the optimum yield from each fishery for the United States fishing industry.” As the Analysis makes clear, the PSC reductions under Amendment 123 (Alternative 5) have

³⁶ DEIS at 14.

³⁷ Analysis at 80.

³⁸ Analysis at 80.

³⁹ 87 FR 75570, 75570, 75579-80.

no effect on optimum yield in the groundfish fishery, because *optimum yield would still be achieved even if the Amendment 80 sector landed no fish at all*.

In the same vein, PSC reductions under the Council's action would result in optimum yields for the directed halibut fishery. Although halibut is managed under a bilateral convention, and thus not directly managed under the MSA framework, the text of National Standard 1 does not limit its directive to those fisheries that happen to be managed directly by regional councils. The plain text of National Standard 1 directs the regional councils and NMFS to achieve "optimum yield from each fishery for the United States fishing industry." The directed halibut fishery is prosecuted by fishermen from Saint Paul and other fishing communities and falls within the National Standard 1 mandate.

But, in the end, it does not matter whether or not National Standard 1 is directly applicable to the halibut fishery. An amendment that expressly preserves optimum yield in the groundfish fishery — and that increases yield in the halibut fishery — is, by definition, consistent with National Standard 1. Accordingly, National Standard 1 supports approval of Amendment 123.

2. National Standard 9 — Minimizing Bycatch

National Standard 9 requires that conservation and management measures implemented through FMPs first "minimize bycatch"; then, "to the extent bycatch cannot be avoided," FMPs must "minimize the mortality of such bycatch" to the "extent practicable." Amendment 123 meets these requirements.

To begin, the Council and NMFS have substantial discretion to determine what level of bycatch reduction is practicable and to balance the objectives of National Standard 9. In using the phrase "to the extent practicable," Congress specifically "delegated to the agency the discretion to weigh the relevant factors"⁴⁰ and to "balanc[e] among the conflicting national standards in section 1851."⁴¹

Given this, courts have approved plan amendments even when they "will undoubtedly have an adverse impact" on one or more interest groups.⁴² In fact,

⁴⁰ Oceana, Inc. v. Pritzker, 24 F. Supp. 3d 49, 67 (D.D.C. 2014); Conservation L. Found. v. Evans, 360 F.3d 21, 28 (1st Cir. 2004) ("We think by using the term 'practicable' Congress intended rather to allow for the application of agency expertise and discretion in determining how best to manage fishery resources."); Nat'l Coal. for Marine Conservation v. Evans, 231 F. Supp. 2d 119, 141 (D.D.C. 2002) ("Congress, while aware of the potential conflicts among the [MSA]'s provisions, nevertheless required the Secretary to exercise discretion and judgment in balancing among the conflicting national standards.").

⁴¹ Alliance Against IFQS v. Brown, 84 F.3d 343, 350 (9th Cir. 1996).

⁴² *Id.*; Alaska Factory Trawler Assoc. v. Baldridge, 831 F.2d 1456, 1460 (9th Cir. 1987) ("The Secretary could reasonably have concluded from the record that pot and trawl fishing should be curtailed in

“courts have consistently rejected challenges” under the National Standards “where the administrative record reveals that the Secretary was aware of potentially devastating economic consequences, considered significant alternatives, and ultimately concluded that the benefits of the challenged regulation outweighed the identified harms.”⁴³ While that is not the case here — and impacts to Amendment 80 will be at most minimal for the reasons we have discussed — these precedents emphasize the scope of the Council’s and NMFS’s discretion to balance competing interests under the National Standards and develop the plan that best balances costs and benefits, as the Council has with Amendment 123.

The Council and NMFS have a continuing duty under the MSA to determine whether bycatch in a fishery is being minimized to the extent practicable and to take action when it is not. Under the MSA, the “Councils and NMFS must review all existing FMPs and all future FMPs and FMP amendments for compliance with national standard 9.”⁴⁴ Thus, the Council is “required to re-examine the conservation and management measures contained in their FMPs for ways to reduce bycatch below current levels. In addition, the Councils must revisit the measures periodically to ensure that bycatch is reduced as much as practicable.”⁴⁵ As NMFS has explained: this “requirement is clearly not discretionary.”⁴⁶

The Analysis correctly recognizes — and Amendment 123 appropriately reflects — this responsibility. As the Analysis explains, “the practicability of measures that address bycatch can evolve over time, and the Council and NMFS are required to revisit them to bring bycatch levels to the minimum level that a sector is capable of achieving.”⁴⁷ Here, Amendment 80 has uniformly achieved bycatch mortality well below current regulatory limits. More, the Analysis recognizes that presently available tools to minimize halibut bycatch and mortality are not fully utilized within the Amendment 80 sector. That being so, the existing rules — by definition — do not ensure that bycatch is minimized to the extent practicable. The MSA requires more, as the Council recognized.

We commend the Council and NMFS for the many revisions made to the practicability discussion in the final Analysis. We wish to amplify several aspects of that analysis here:

Alaska for both sociological and environmental reasons, and that the amendment would be beneficial to the nation as a whole, even though some interest groups might be harmed.”).

⁴³ N.C. Fisheries Ass’n v. Gutierrez, 518 F. Supp. 2d 62, 70 (D.D.C. 2007).

⁴⁴ NOAA, Magnuson-Stevens Act Provisions; National Standards Guidelines, 63 Fed. Reg. 24212, 24224 (May 1, 1998).

⁴⁵ 36 Fed. Reg. at 24224.

⁴⁶ 36 Fed. Reg. at 24224.

⁴⁷ Analysis at 319.

i. Reductions are not impracticable because they are expensive

We thank the Council and NMFS for their recognition that bycatch reductions are not impracticable just because they are expensive. As discussed, CBSFA strongly disagrees that the modeled economic effects on Amendment 80 are realistic. But even if they were, those effects would not mean the bycatch reductions required by Amendment 123 are impracticable. To the contrary, as Council and NMFS recognize, much more expensive and burdensome measures (up to and including area closures) have been upheld as practicable and consistent with the mandates of National Standard 9.

ii. The Analysis correctly considers social and cultural impacts in the practicability determination

We commend the Council and NMFS for thoroughly considering and evaluating the range of factors that must be weighed in determining whether reductions are practicable. As CBSFA noted in its comments to the Council, the Draft EIS focused its practicability analysis far too narrowly on considerations of cost and potential economic effects on Amendment 80, while failing to address numerous other factors identified in the National Standard 9 guidelines.

The final Analysis rectifies this oversight. As it explains, when evaluating the practicability of a measure, the Council and NMFS should consider a wide array of non-economic factors, including potential biological, social, and cultural effects of a given alternative. The Analysis then weighed these factors, which overwhelmingly support the determination that Amendment 123 is practicable.

For instance, the Analysis recognizes Amendment 123 would provide “greater opportunity to directed fisheries.” It “takes into consideration social and cultural importance of halibut to directed fishery-dependent communities, as well as supporting higher levels of subsistence use,”⁴⁸ and it explains that “changes in the economic, social, or cultural value of fishing activities and social effects” were highly relevant to its analysis.⁴⁹ Examples include:

- The Analysis recognizes that “sustained participation in a range of commercial fisheries by residents of small communities in the BSAI/Area 4 region has become more challenging in recent years,” and that these communities have

⁴⁸ Analysis at 377.

⁴⁹ Analysis at 380.

“less inherent flexibility to adjust to both short- and long-term fluctuations in resource availability (as well as to changing markets for seafood products).”⁵⁰

- It recognizes that providing increased "opportunities for success of small-scale commercial halibut fisheries during periods of low abundance" will make "overall sustained participation in a range of local fisheries by residents of the smaller communities ... more secure."⁵¹
- It recognizes the "cultural significance of halibut for fishermen and their associated communities," which "includes but exceeds the economic value of the fishery."⁵² It explains that the halibut fishery provides badly needed employment and economic opportunity; allows fishermen "to remain in their community," to "spend time with their family," to "build social networks," and to "engage in broader, culturally meaningful practices like subsistence."⁵³
- And it correctly recognizes that for fishermen and communities like Saint Paul, halibut fishing is both "a meaningful vocation and way of life."⁵⁴

These factors are required to be considered under the guidelines,⁵⁵ and each supports a finding that Amendment 123 is consistent with National Standard 9.

**iii. The Analysis correctly recognizes the availability of
bycatch-reduction tools and the adaptability of
Amendment 80**

We commend the Council and NMFS for their recognition that (1) available tools exist today for Amendment 80 to further reduce halibut bycatch mortality, and (2) that Amendment 80 will adapt and innovate in response to any PSC constraints, enabling future reductions bycatch mortality.

In developing Amendment 123, the Council heard extensive testimony regarding the current use, or not, of all available tools to minimize bycatch and bycatch mortality. While Amendment 80 suggested, predictably, that nothing more can be done and that the sector had reached the limits of the technologies available to it, the Analysis itself recognized that was not the case and that Amendment 80 was not fully utilizing the tools available today. The Council heard about available technologies and the likelihood of further advancements in bycatch reductions. It considered historical

⁵⁰ Analysis at 380.

⁵¹ Analysis at 380.

⁵² Analysis at 381.

⁵³ Analysis at 381.

⁵⁴ Analysis at 381.

⁵⁵ 50 C.F.R. § 600.350(d)(3).

reductions and adaptations to increasingly stringent regulations, including by Amendment 80 itself. And, exercising its primary responsibility to “ascertain factual circumstances, to establish management objectives, and to propose management measures that will achieve the objectives,”⁵⁶ the Council determined that Amendment 123 is practicable and “demonstrates a balanced approach that meets the directive of National Standard 9.”⁵⁷

Consistent with the information before the Council, the Analysis finds that “[e]fforts already undertaken by the sector have shown that halibut avoidance or reductions in mortality from the current PSC limit are possible with the tools that are currently available to the fleet.”⁵⁸ And, while the Analysis acknowledges that “compliance with PSC limits will be challenging at lower levels,”⁵⁹ it also correctly finds that “[a]dditional improvements are anticipated to continue to be realized, especially if halibut limits are further reduced and the fleet forgoes some amount of profitability to reduce halibut mortality further.”⁶⁰ Each of these findings is amply supported by the record and supports NMFS’s determination that Amendment 123 is consistent with National Standard 9.

iv. The Analysis corrects and clarifies prior misstatements regarding “net benefits to the nation”

Finally, we commend the Council and NMFS for revising the discussion of “net benefits to the nation” included in the Draft EIS. As CBSFA explained in its comments, the Draft EIS’s statements regarding net benefits to the nation were misplaced, because they focused exclusively on modeled economic impacts and ignored the numerous other factors that must be considered.

The Analysis does much to correct this error, recharacterizing the prior statements regarding “net benefits to the nation” as an evaluation of “economic net benefits.”⁶¹ While CBSFA continues to have substantial concerns with the methods used and the results of the economic analysis, this new description is consistent with the analysis conducted.

CBSFA also appreciates the clarification in the Analysis of the relationship of “economic net benefits” to an assessment of “benefits to the nation.” The Analysis correctly explains that nothing precludes NMFS from “implement[ing] conservation measures which have negative economic consequences.” It recognizes that by

⁵⁶ 50 C.F.R. § 600.305(a)(2).

⁵⁷ Analysis at 378.

⁵⁸ Analysis at 319.

⁵⁹ Analysis at 377.

⁶⁰ Analysis at 319.

⁶¹ Analysis at 379-80.

continuing to achieve optimum yield, Amendment 123 necessarily provides overall benefits to the Nation. And, as discussed above, it recognizes that “the National Standard 9 guidelines require[el] consideration of additional factors” consistent with the net benefits to the nation, including changes in the economic, social, or cultural value of fishing activities and social effects, which the Council and NMFS found most relevant to the analysis.

G. National Standard 4, National Standard 8, and Principles of Environmental Justice Support Amendment 123

Finally, the Council and NMFS properly recognize that National Standard 4, National Standard 8, and principles of environmental justice also support adoption of Amendment 123.

Under high survey index values, the PSC limits under Amendment 123 will remain unchanged. At lower levels of halibut abundance, however, the PSC limits may be more constraining to the Amendment 80 fleet. As discussed, tools are available to mitigate these impacts. But even if that were not the case and there was some reduction in Amendment 80’s annual revenues under low abundance conditions, other considerations such as conservation of a diminished halibut resource, equitable allocations among fishery user groups including the fulfillment of government policies concerning the rights of Alaska Native populations under National Standard 4, and the sustained participation of halibut dependent communities under National Standard 8, become critical to a comprehensive and proper balancing of the MSA’s National Standards.

The Council’s action to be implemented through Amendment 123 appropriately balances these considerations. Low halibut abundance and excessive bycatch mortality have jeopardized the directed halibut fishery. This would have been devastating to the primarily Alaska Native halibut fishermen in communities such as Saint Paul. As the SIA notes, for many fishermen in the communities it profiles, the halibut fishery is their sole source of income, livelihood, and sustenance. At a community level, declining participation in the halibut fishery has affected incomes, family budgets, and subsistence, as well as the very social, psychological, and cultural well-being of the communities hosting halibut fishermen, their crews, and families. This has been the case on Saint Paul. In many instances, these trends are irreversible, as Native fishermen and their families, unable to make a living halibut fishing in their communities, are forced to migrate to the mainland. The corresponding decline in Native communities means an entire culture, a way of life, and a unique ethnic group are slowly becoming extinct. This devastating impact is certainly in contravention of the commitments made by the United States to protect and provide for the well-being of tribal nations and members.

Further, Amendment 123 helps to remedy the disproportionate and inequitable impacts of bycatch removals these groups have suffered. Consistent with National

Standard 4, Amendment 123 is more “fair and equitable” to U.S. fishermen; it is “reasonably calculated to promote conservation”; and it helps to ensure that “no particular individual corporation, or other entity acquires an excessive share of such privileges.”

National Standard 4 guidelines also require that allocations consider “judicial guidance and government policy concerning the rights of treaty Indians and aboriginal Americans...in determining whether an allocation is fair and equitable.” This language is echoed by White House Council on Environmental Quality (CEQ) guidance environmental justice guidance under NEPA and Executive Order 13175 regarding “meaningful consultations” with tribal governments, which require the consideration of disproportionately high and adverse impacts to Indian tribes resulting from agency decision-making beyond a more general consideration of adverse impacts to minority populations.

These guidelines and guidance are further rooted in U.S. constitutional principles and the federal trust doctrine which require the federal government to support tribal self-government and economic prosperity and to ensure the survival and welfare of Indian tribes and people. As was documented in the EIS and SIA, Saint Paul and other profiled halibut-dependent communities are primarily Alaska Native and are represented by tribal governments and entities. They have also been disproportionately impacted by decades of agency fisheries-management policies that have resulted in the current, harmful, status quo. Since Amendment 123 potentially benefits these communities, and their tribal governments and membership, it is responsive to the above guidance and legal doctrine. !

Finally, Amendment 123 is responsive to the requirements of National Standard 8, which require regional councils to adopt management measures that: account for the importance of fishery resources to local fishing communities; provide for their sustained participation in the fisheries; and minimize adverse economic impacts on them to the extent practicable. Communities such as Saint Paul have invested heavily over the decades in the infrastructure necessary to pursue this fishery and sustain themselves economically. Investments in small boat harbors, docks, fuel farms, and vessel repair shops as well as individual and CDQ investments in vessels, gear, and upgrades, were required to enable the participation of Saint Paul and other communities in the Bering Sea halibut fishery.

Amendment 123 responds to this history, to the investments and sacrifices made by directed halibut fishermen and dependent communities to participate in this fishery, and to criteria established in National Standard 8 and its guidelines.

IV. Comments on Text of Implementing Regulations

CBSFA has carefully reviewed the Rule and believe it accurately captures the intent of the Council as it voted to approve and submit amendment 123 to NMFS. The

preamble to the rule is well written, and we appreciate the attention given to National Standards, particularly the recognition that this action is practicable (NS9) while allowing the fishery to attain optimum yield (NS1). The preamble notes that the halibut resource in the Bering Sea is fully utilized, and this rule will prevent smaller proportions of that resource assigned to directed fisheries, subsistence users, and recreational fishers in the event that the halibut resource declines.

We appreciate the very specific language in the implementing regulation at 629 (b)(1)(i)(B) that clarifies the timing of the annual procedure that will be used to set the halibut PSC. That is, the most recent Alaska Fisheries Science Center Eastern Bering Sea shelf trawl survey index will be provided each year by October 1; the most recent International Pacific Halibut Commission setline survey index will be provided each year by December 1. Application of those indices to the PSC table will establish the Amendment 80 sector's halibut PSC limit for the following calendar year.

We look forward to continuing to work with NMFS and the Council as Amendment 123 is implemented.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'P. Lestenkof', with a large, stylized initial 'P'.

Phillip Lestenkof
President

Central Bering Sea Fishermen's Association

**CBSFA Comments on Amendment 123; NMFS Proposed Implementing Regulations; and
final Environmental Impact Statement/Regulatory Impact Review**

Exhibit 1

Begin forwarded message:

From: Mary Furuness - NOAA Federal <mary.furuness@noaa.gov>

Subject: Fwd: Information request

Date: February 1, 2023 at 10:49:06 AM AKST

To: Heather McCarty <hdmccarty@gmail.com>

Cc: Steven Whitney <Steven.Whitney@noaa.gov>, Ray Melovidov <raymelovidov@cbsfa.com>

Hi Heather, here's an update, attached.

On Tuesday, January 31, 2023, Mary Furuness - NOAA Federal <mary.furuness@noaa.gov> wrote:
Okay, we can do that.

On Tue, Jan 31, 2023 at 10:30 AM Heather McCarty <hdmccarty@gmail.com> wrote:
Mary and Steve:

Thanks again for the links to data.

We are looking specifically for a table that updates the one attached — the inseason report from the December Council meeting. We are hoping for one that goes to the end of 2022.

When Ray looked through the weekly 2022 data it didn't match with the inseason report from December. Maybe you can help us understand so we don't use the wrong numbers.

Thanks again, Heather

Sector		2021 (mt)	2022 * (mt)	% Change (mt)	2021 Rate **	2022 Rate **	% Change in Rate
Hook-and-Line	CPs	86	137	58%	1.30	1.54	19%
	CVs	0	0	67%	1.29	5.40	318%
Hook-and-Line	Total	87	137	58%	1.30	1.54	19%
Non-Pelagic Trawl	Amendment 80 CPs	1,044	1,519	46%	3.82	4.64	22%
	AFA CPs	38	67	77%	3.31	5.18	57%
	CVs	155	257	66%	4.28	6.23	46%
Non-Pelagic Trawl	Total	1,237	1,844	49%	3.85	4.83	25%
Pelagic Trawl	AFA CPs	78	93	20%	0.16	0.24	52%
	AFA CVs	18	17	-5%	0.02	0.03	20%
Pelagic Trawl	Total	96	110	15%	0.08	0.12	46%
CDQ	Hook-and-Line Vessels	11	18	65%	1.00	1.44	44%
	Non-Pelagic Trawl Vessels	80	90	12%	3.41	3.11	-9%
	Pelagic Trawl Vessels	13	13	-1%	0.09	0.12	24%
CDQ	Total	104	121	16%	0.60	0.79	32%
TOTAL	Total	1,524	2,212	45%	0.86	1.40	63%

* 2022 data through 02/01/23.

** Rate is kg of halibut / mt of groundfish

**CBSFA Comments on Amendment 123; NMFS Proposed Implementing Regulations; and
final Environmental Impact Statement/Regulatory Impact Review**

Exhibit 2

Division of Commercial Fisheries
Sam Rabung, Director

Dutch Harbor Area Office
PO Box 920587
Dutch Harbor, AK 99692



Alaska Department of Fish and Game
Doug Vincent-Lang, Commissioner

PO Box 115526
Juneau, AK 99811-5526
www.adfg.alaska.gov

Advisory Announcement
For Immediate Release: 10/08/2021

CONTACT:

Miranda Westphal, Area Management Biologist
Ethan Nichols, Asst. Area Management Biologist
907-581-1239

Bering Sea Snow Crab Season Opens October 15
Total Allowable Catch Announced

Alaska Department of Fish and Game (ADF&G) and National Marine Fisheries Service (NMFS) have completed analysis of 2021 NMFS trawl survey results for Bering Sea snow crab. The 2021/22 Bering Sea snow crab fishery will open in Bering Sea District waters west of 165° W longitude at 12:00 noon October 15, 2021 and close 11:59 pm, May 15, 2022 in the Eastern Subdistrict (east of 173° W longitude) and close 11:59 pm, May 31, 2022 in the Western Subdistrict (west of 173° W longitude) with a TAC of 5.6 million pounds.

During the directed western Bering Sea Tanner crab season west of 166° W long, snow crab IFQ or CDQ may be retained up to thirty-five percent (35%) of the weight of Tanner crab onboard a vessel. Tanner crab IFQ or CDQ may be retained up to five percent (5%) of the weight of snow crab onboard a vessel registered for the Bering Sea snow crab fishery in waters west of 166° W long. Due to the closure of 2021/22 Eastern Bering Sea Tanner crab fishery east of 166° W long, retention of Tanner crab (*C. bairdi*) during the Bering Sea snow crab (*C. opilio*) fishery between 166° W long and 165° W long is prohibited. Fishermen may not concurrently register for multiple Bering Sea crab fisheries.

The 2021/22 Bering Sea District snow crab fishery total allowable catch (TAC) is apportioned as follows:

Individual Fishing Quota (IFQ)	5,040,000 pounds
Community Development Quota (CDQ)	560,000 pounds
Total	5,600,000 pounds

To protect the Pribilof blue king crab stock, waters enclosed by connecting the following coordinates: 58° N, 171° W; 58° N, 168° W; 57° N, 168° W; 56° 30' N, 169° W; 56° 30' N, 170° W; 57° N, 171° W; 58° N, 171° W are closed to the operation of commercial king and Tanner crab pot gear and commercial groundfish pot gear for Pacific cod taken as bait during commercial IFQ/CDQ crab fisheries. The associated closed ADF&G statistical areas are: 685730, 695730, 705730, 705701, 705703, 695701, 695700, 685700, 695631, 695632, the northeast half of 705630, and the northwest half of 685630. A map of the closed area will be provided at the time of registration.

A valid United States Coast Guard (USCG) Commercial Fisheries Vessel Safety Decal is required before a vessel registration may be issued. Vessels must also have an activated vessel monitoring system approved by NMFS. The operator of a vessel participating in IFQ or CDQ crab fisheries must notify the USCG at least 24 hours prior to departing port when carrying crab pot gear. USCG can be contacted at: (907) 581-3466 or (907) 359-1575 (after hours).

At the time of vessel registration, all pots onboard the vessel and in wet storage must comply current Bering Sea snow crab fishing regulations. There is no crab pot limit or buoy tag requirement for the Bering Sea snow crab fishery. Fishermen may register up to 20 groundfish pots. Fishermen are reminded to report all Pacific cod retained for bait on fish tickets at time of landing.

A fisherman may transport crab pot gear to the fishing grounds for another fisherman. The registered fisherman of the crab pot gear has seven days to be active in the registration area where the gear is deployed. Fishermen may register for gear operation cooperatives, and a fisherman may make a one-time transfer of all pot gear to one other fisherman at the completion of fishing operations.

Bering Sea–Aleutian Islands crab fishery registrations will be completed through the Dutch Harbor ADF&G office. An individual holding a current Commercial Fisheries Entry Commission (CFEC) Bering Sea Tanner crab interim use permit card (T91Q or T09Q) must be present during registration. Fishermen may participate concurrently in IFQ and CDQ fisheries, but a separate CFEC permit card is required for each fishery.

Fishermen must notify ADF&G within 72 hours of completing fishing operations in the registration area or when departing the registration area with gear in long-term storage or transferred to another vessel. Unbaited gear with doors open may be stored for up to 14 days outside of designated storage areas after fishing is completed. Pots must be removed from the water or placed in long-term storage if left unattended in a registration area for more than 14 days. A fisherman’s registration will be invalidated after 14 days of inactivity in a registration area.

For questions regarding issuance of quota share and IFQ/IPQ, contact NOAA Fisheries RAM Division at 1-800-304-4846 (option #2). For questions regarding federal Crab Rationalization Program regulations, contact NOAA Fisheries Sustainable Fisheries Division at (907) 586-7228 or the NOAA Office of Law Enforcement in Kodiak at (907) 486-3298 or Dutch Harbor at (907) 581-2061.

For further information contact ADF&G Dutch Harbor at (907) 581-1239, or ADF&G Kodiak at (907) 486-1840.

COVID-19

Under Alaska’s Health Advisories 1, 2, 3, and 4, commercial fishing is an Essential Business and is part of Alaska’s Essential Services and Critical Infrastructure. Commercial fishermen should ensure that all travel and other activities in support of commercial fishing operations follow protocols in Alaska COVID-19 Health Advisories. COVID-19 Health Advisories may be found here: <https://covid19.alaska.gov/health-advisories/>.

-end-

**CBSFA Comments on Amendment 123; NMFS Proposed Implementing Regulations; and
final Environmental Impact Statement/Regulatory Impact Review**

Exhibit 3

Division of Commercial Fisheries
Sam Rabung, Director

Dutch Harbor Area Office
PO Box 920587
Dutch Harbor, AK 99692



Alaska Department of Fish and Game
Doug Vincent-Lang, Commissioner

PO Box 115526
Juneau, AK 99811-5526
www.adfg.alaska.gov

Advisory Announcement

For Immediate Release: 10/10/2022

CONTACT:

Miranda Westphal, Area Management Biologist
Ethan Nichols, Asst. Area Management Biologist
907-581-1239

2022/23 Bering Sea Snow Crab Season Closed

The Alaska Department of Fish and Game (ADF&G) and National Marine Fisheries Service (NMFS) have completed analysis of 2022 NMFS trawl survey results for Bering Sea snow crab. The stock is estimated to be below the ADF&G regulatory threshold for opening a fishery. Therefore, Bering Sea snow crab will remain closed for the 2022/23 season.

ADF&G appreciates and carefully considered all input from crab industry stakeholders prior to making this decision. Understanding crab fishery closures have substantial impacts on harvesters, industry, and communities, ADF&G must balance these impacts with the need for long-term conservation and sustainability of crab stocks. Management of Bering Sea snow crab must now focus on conservation and rebuilding given the condition of the stock. Efforts to advance our science and understanding of crab population dynamics are underway. With crab industry input, ADF&G will continue to evaluate options for rebuilding, including potential for sustainably fishing during periods of low abundance. This will allow ADF&G to work on issues related to state and federal co-management, observer coverage, discard mortality, and fishery viability.

Additional information will be available during the annual ADF&G/Crab Industry meeting. Meeting details will be announced shortly.

For questions regarding federal Crab Rationalization Program regulations, contact NOAA Fisheries Sustainable Fisheries Division at (907) 586-7228 or the NOAA Office of Law Enforcement in Kodiak at (907) 486-3298 or Dutch Harbor at (907) 581-2061.

For further information contact ADF&G Dutch Harbor at (907) 581-1239, or ADF&G Kodiak at (907) 486-1840.

-end-

**CBSFA Comments on Amendment 123; NMFS' proposed implementing regulations; and
final Environmental Impact Statement/Regulatory Impact Review**

Exhibit 4

Division of Commercial Fisheries
Sam Rabung, Director

Dutch Harbor Area Office
PO Box 920587
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Doug Vincent-Lang, Commissioner

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Advisory Announcement

For Immediate Release: 09/3/2021

CONTACT:

Miranda Westphal, Area Management Biologist
Ethan Nichols, Asst. Area Management Biologist
907-581-1239

2021/22 Bristol Bay Red King Crab Season Closed

The Alaska Department of Fish and Game (ADF&G) and National Marine Fisheries Service (NMFS) have reviewed final NMFS trawl survey data for the Bristol Bay red king crab stock. The stock is estimated to be below the regulatory threshold for opening a fishery. Therefore, Bristol Bay red king crab will remain closed for the 2021/22 season.

Detailed information will be available during the annual ADF&G TAC meeting in early October 2021.

For questions regarding federal Crab Rationalization Program regulations, contact NOAA Fisheries Sustainable Fisheries Division at (907) 586-7228 or the NOAA Office of Law Enforcement in Kodiak at (907) 486-3298 or Dutch Harbor at (907) 581-2061.

For further information contact ADF&G Dutch Harbor at (907) 581-1239, or ADF&G Kodiak at (907) 486-1840.

COVID-19

Under Alaska's Health Advisories 1, 2, 3, and 4, commercial fishing is an Essential Business and is part of Alaska's Essential Services and Critical Infrastructure. Commercial fishermen should ensure that all travel and other activities in support of commercial fishing operations follow protocols in Alaska COVID-19 Health Advisories. COVID-19 Health Advisories may be found here: <https://covid19.alaska.gov/health-advisories/>.

-end-

**CBSFA Comments on Amendment 123; NMFS' proposed implementing regulations; and final
Environmental Impact Statement/Regulatory Impact Review**

Exhibit 5

Division of Commercial Fisheries
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Advisory Announcement

For Immediate Release: 10/10/2022

CONTACT:

Miranda Westphal, Area Management Biologist
Ethan Nichols, Asst. Area Management Biologist
907-581-1239

2022/23 Bristol Bay Red King Crab Season Closed

The Alaska Department of Fish and Game (ADF&G) and National Marine Fisheries Service (NMFS) have completed analysis of 2022 NMFS trawl survey results for Bristol Bay red king crab. The stock is estimated to be below the ADF&G regulatory threshold for opening a fishery. Therefore, Bristol Bay red king crab will remain closed for the 2022/23 season.

ADF&G appreciates and carefully considered all input from crab industry stakeholders prior to making this decision. Understanding crab fishery closures have substantial impacts on harvesters, industry, and communities, ADF&G must balance these impacts with the need for long-term conservation and sustainability of crab stocks. Management of Bristol Bay red king crab must now focus on conservation and rebuilding given the condition of the stock. Efforts to advance our science and understanding of crab population dynamics are underway. With crab industry input, ADF&G will continue to evaluate options for rebuilding, including potential for sustainably fishing during periods of low abundance. This will allow ADF&G to work on issues related to state and federal co-management, observer coverage, discard mortality, and fishery viability.

Additional information will be available during the annual ADF&G/Crab Industry meeting. Meeting details will be announced shortly.

For questions regarding federal Crab Rationalization Program regulations, contact NOAA Fisheries Sustainable Fisheries Division at (907) 586-7228 or the NOAA Office of Law Enforcement in Kodiak at (907) 486-3298 or Dutch Harbor at (907) 581-2061.

For further information contact ADF&G Dutch Harbor at (907) 581-1239, or ADF&G Kodiak at (907) 486-1840.

-end-

**CBSFA Comments on Amendment 123; NMFS' proposed implementing regulations; and
final Environmental Impact Statement/Regulatory Impact Review**

Exhibit 6

Division of Commercial Fisheries
Sam Rabung, Director

Dutch Harbor Area Office
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Dutch Harbor, AK 99692



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Advisory Announcement
For Immediate Release: 10/08/2021

CONTACT:

Miranda Westphal, Area Management Biologist
Ethan Nichols, Asst. Area Management Biologist
907-581-1239

Bering Sea Tanner Crab Season Opens October 15
Total Allowable Catch Announced

Alaska Department of Fish and Game (ADF&G) and National Marine Fisheries Service (NMFS) have completed analysis of 2021 NMFS trawl survey results for the Bering Sea District Tanner crab stock. Estimated mature male biomass in the eastern Bering Sea area remains below thresholds required for a fishery opening. The 2021/22 Western Bering Sea Tanner crab fishery (WBT), west of 166° W long, will open 12:00 noon October 15, 2021, and close 11:59 pm March 31, 2022, with a TAC of 1.1 million pounds. The Eastern Bering Sea Tanner crab fishery (EBT), between 166° W long and 163° W long will remain closed for the 2021/22 season.

Tanner crab IFQ or CDQ may be retained up to five percent (5%) of the weight of snow crab onboard a vessel registered for the Bering Sea snow crab fishery in waters west of 166° W long. During the directed WBT fishery, snow crab IFQ or CDQ may be retained up to thirty-five percent (35%) of the weight of Tanner crab onboard a vessel. Fishermen may not concurrently register for multiple Bering Sea crab fisheries. Retention of incidentally caught Tanner crab is prohibited onboard a vessel registered to fish Bering Sea snow crab, operating in waters east of 166° W long.

The 2021/22 Bering Sea District Tanner crab fishery total allowable catch (TAC) is apportioned as follows:

	West of 166° W long (WBT)	East of 166° W long (EBT)
Individual Fishing Quota (IFQ)	990,000 pounds	-
Community Development Quota (CDQ)	110,000 pounds	-
Total	1,100,000 pounds	CLOSED

To protect the Pribilof blue king crab stock, waters enclosed by connecting the following coordinates: 58° N, 171° W; 58° N, 168° W; 57° N, 168° W; 56° 30' N, 169° W; 56° 30' N, 170° W; 57° N, 171° W; 58° N, 171° W are closed to the operation of commercial king and Tanner crab pot gear and commercial groundfish pot gear for Pacific cod taken as bait during commercial IFQ/CDQ crab fisheries. The associated closed ADF&G statistical areas are: 685730, 695730, 705730, 705701, 705703, 695701, 695700, 685700, 695631, 695632, the northeast half of 705630, and the northwest half of 685630. A map of the closed area will be provided at the time of registration.

A valid United States Coast Guard (USCG) Commercial Fisheries Vessel Safety Decal is required before a vessel registration may be issued. Vessels must also have an activated vessel monitoring system approved by NMFS. The operator of a vessel participating in IFQ or CDQ crab fisheries must notify the USCG at least 24 hours prior

to departing port when carrying crab pot gear. USCG can be contacted at: (907) 581-3466 or (907) 359-1575 (after hours).

At the time of vessel registration, all pots onboard the vessel and in wet storage must comply current Bering Sea Tanner crab fishing regulations. There is no crab pot limit or buoy tag requirement for the Bering Sea Tanner crab fishery. Fishermen may register up to 20 groundfish pots. Fishermen are reminded to report all Pacific cod retained for bait on fish tickets at time of landing.

A fisherman may transport crab pot gear to the fishing grounds for another fisherman. The registered fisherman of the crab pot gear has seven days to be active in the registration area where the gear is deployed. Fishermen may register for gear operation cooperatives, and a fisherman may make a one-time transfer of all pot gear to one other fisherman at the completion of fishing operations.

Bering Sea–Aleutian Islands crab fishery registrations will be completed through the Dutch Harbor ADF&G office. An individual holding a current Commercial Fisheries Entry Commission (CFEC) Bering Sea Tanner crab interim use permit card (T91Q or T09Q) must be present during registration. Fishermen may participate concurrently in IFQ and CDQ fisheries, but a separate CFEC permit card is required for each fishery.

Fishermen must notify ADF&G within 72 hours of completing fishing operations in the registration area or when departing the registration area with gear in long-term storage or transferred to another vessel. Unbaited gear with doors secured open may be stored for up to 14 days outside of designated storage areas after fishing is completed. Pots must be removed from the water or placed in long-term storage if left unattended in a registration area for more than 14 days. A fisherman’s registration will be invalidated after 14 days of inactivity in a registration area.

For questions regarding issuance of quota share and IFQ/IPQ, contact NOAA Fisheries RAM Division at 1-800-304-4846 (option #2). For questions regarding federal Crab Rationalization Program regulations, contact NOAA Fisheries Sustainable Fisheries Division at (907) 586-7228 or the NOAA Office of Law Enforcement in Kodiak at (907) 486-3298 or Dutch Harbor at (907) 581-2061.

For further information contact ADF&G Dutch Harbor at (907) 581-1239, or ADF&G Kodiak at (907) 486-1840.

COVID-19

Under Alaska’s Health Advisories 1, 2, 3, and 4, commercial fishing is an Essential Business and is part of Alaska’s Essential Services and Critical Infrastructure. Commercial fishermen should ensure that all travel and other activities in support of commercial fishing operations follow protocols in Alaska COVID-19 Health Advisories. COVID-19 Health Advisories may be found here: <https://covid19.alaska.gov/health-advisories/>.

-end-

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Advisory Announcement

For Immediate Release: 10/08/2021

CONTACT:

Miranda Westphal, Area Management Biologist
Ethan Nichols, Asst. Area Management Biologist
907-581-1239

Saint Matthew Island Section Blue King Crab Season Closed

The Alaska Department of Fish and Game (ADF&G) and National Marine Fisheries Service (NMFS) have completed analysis of 2021 NMFS trawl survey results for Saint Matthew Island Section blue king crab. The stock is estimated below the federal minimum stock size threshold and consequently has been declared overfished. In addition, estimates for 2021 mature male abundance are below the state harvest strategy threshold for a fishery opening. Therefore, Saint Matthew Island Section blue king crab will remain closed for the 2021/22 season.

For questions regarding federal Crab Rationalization Program regulations, contact NOAA Fisheries Sustainable Fisheries Division at (907) 586-7228 or the NOAA Office of Law Enforcement in Kodiak at (907) 486-3298 or Dutch Harbor at (907) 581-2061. For questions regarding quota shares and IFQ/IPQ, contact NOAA Fisheries RAM Division at 1-800-304-4846 (option #2).

For further information contact ADF&G Dutch Harbor at (907) 581-1239, or ADF&G Kodiak at (907) 486-1840.

COVID-19

Under Alaska's Health Advisories 1, 2, 3, and 4, commercial fishing is an Essential Business and is part of Alaska's Essential Services and Critical Infrastructure. Commercial fishermen should ensure that all travel and other activities in support of commercial fishing operations follow protocols in Alaska COVID-19 Health Advisories. COVID-19 Health Advisories may be found here: <https://covid19.alaska.gov/health-advisories/>

-end-

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Advisory Announcement

For Immediate Release: 10/08/2021

CONTACT:

Miranda Westphal, Area Management Biologist
Ethan Nichols, Asst. Area Management Biologist
907-581-1239

Pribilof District Red and Blue King Crab Seasons Closed **Emergency Order # 4-SF-09-21**

Alaska Department of Fish and Game (ADF&G) and National Marine Fisheries Service have completed analysis of 2021 NMFS trawl survey results for Pribilof District red and blue king crabs. Pribilof District red and blue king crab fisheries will remain closed for the 2021/22 season.

The 2021 Pribilof District blue king crab abundance estimates remain below the federal minimum stock size threshold and the stock has been declared overfished. Total mature biomass also falls below minimum harvest strategy thresholds required for a fishery. Therefore, the Pribilof District blue king crab fishery will remain closed for the 2021/22 season.

Due to uncertainty in Pribilof District red king crab abundance estimates and high potential for blue king crab bycatch during a red king crab fishery, the Pribilof District red king crab fishery will also remain closed for the 2021/22 season.

To decrease the likelihood of bycatch of Pribilof Island blue king crab and prevent over-fishing from occurring, the Alaska Department of Fish and Game has closed waters surrounding the Pribilof Islands to commercial crab fishing for the 2021/22 fishing season. This closure also applies to commercial fishing for Pacific cod for use as bait in the Bering Sea crab fisheries.

Waters enclosed by connecting the following coordinates are closed to the operation of commercial king and Tanner crab pot gear and commercial groundfish pot gear for Pacific cod taken as bait during commercial IFQ/CDQ crab fisheries from October 15, 2021, through June 1, 2022:

<u>Latitude</u>	<u>Longitude</u>
58° N	171° W
58° N	168° W
57° N	168° W
56°30' N	169° W
56°30' N	170° W
57° N	171°
58° N	171° W

The associated closed ADF&G statistical areas are: 685730, 695730, 705730, 705701, 705703, 695701, 695700, 685700, 695631, 695632, the northeast half of 705630, and the northwest half of 685630. A map of the closed area will be provided at the time of registration.

For further information contact ADF&G Dutch Harbor at (907) 581-1239, or ADF&G Kodiak at (907) 486-1840.

COVID-19

Under Alaska's Health Advisories 1, 2, 3, and 4, commercial fishing is an Essential Business and is part of Alaska's Essential Services and Critical Infrastructure. Commercial fishermen should ensure that all travel and other activities in support of commercial fishing operations follow protocols in Alaska COVID-19 Health Advisories. COVID-19 Health Advisories may be found here: <https://covid19.alaska.gov/health-advisories/>

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