

Summary of Tribal Consultation Teleconference to Discuss *Bering Sea and Aleutian Islands Halibut Abundance-based Management of the Amendment 80 Prohibited Species Catch Limit* with Aleutian Pribilof Islands Association, Inc.
July 16, 2021

On Friday, July 16th, 2021, the National Marine Fisheries Service, Alaska Region (NMFS) conducted a telephonic consultation with Aleutian Pribilof Islands Association, Inc. (APIA) representative Karen Pletnikoff. This consultation followed two letters sent by NMFS to Alaska Natives and Community Representatives¹ and an email exchange where a meeting was requested by APIA on the North Pacific Fishery Management Council (Council)'s action: Bering Sea and Aleutian Islands (BSAI) Halibut Abundance-based Management of the Amendment 80 Prohibited Species Catch Limit (PSC), referred to in this document as Halibut ABM².

The Council is preparing a draft Environmental Impact Statement (DEIS) analyzing proposed management measures to link the Amendment 80 commercial groundfish trawl fleet's (Amendment 80 sector) Pacific halibut PSC limit in the BSAI groundfish fisheries to halibut abundance. The Amendment 80 sector comprises trawl catcher/processor vessels in the BSAI that target groundfish species other than pollock. The Council is considering a program that links the Amendment 80 sector PSC limit to halibut abundance and provides incentives for the fleet to minimize halibut mortality at all times. This action could also promote conservation of the halibut stock and may provide additional opportunities for the directed halibut fishery. The purpose of the DEIS is to provide assessments of the environmental impacts of an action and its reasonable alternatives as well as the economic benefits and costs of the action alternatives and their distribution.

Prior to the July 16th meeting, several documents to help frame the conversation were exchanged via email. These documents are included as attachments to this summary document.

- Appendix 1 – Oral Public Testimony to the Council (April 2021) Provided by Karen Pletnikoff
- Appendix 2 – Written Public Testimony to the Council (April 2021) Provided by Karen Pletnikoff

Participants in the Consultation

Tribal Entities

- Karen Pletnikoff, Aleutian Pribilof Islands Association, Inc., Environment & Safety Program Administrator

NMFS Staff, Alaska Region, Sustainable Fisheries

- Glenn Merrill, Assistant Regional Administrator
- Dr. Anne Marie Eich, Ecosystem Branch Chief
- Bridget Mansfield, Alaska Region NEPA Coordinator
- Dr. Kelly Cates, Fishery Management Specialist

NOAA General Counsel

- Molly Watson, Deputy Alaska Section Chief

Consultation Report Notes

¹ NMFS sent letters in August 2020 and April 2021; they can be found here:

<https://www.fisheries.noaa.gov/alaska/consultations/alaska-fisheries-tribal-consultation-documents-and-workgroup>

² More information on the Council's Halibut ABM action can be found here: <https://www.npfmc.org/tag/halibut-abm/>

This informal meeting was facilitated by Anne Marie Eich.

Following introductions, all participants expressed their thanks for the space to discuss Halibut ABM concerns. Ms. Pletnikoff also acknowledged that she had the full support of the APIA board to participate and speak on behalf of APIA on Halibut ABM concerns.

- Ms. Pletnikoff began the meeting by inquiring whether written and oral testimony delivered during the Council process was clear and was being considered in the DEIS analysis. She also expressed that current attempts at Tribal engagement and initiation of Tribal consultation are nuanced, and that Tribal bodies are faced with numerous requests for consultation and engagement. It is often difficult for Tribal entities to distinguish between issues they should engage on and those that they do not need to. It is thus incumbent on agencies to initiate consultations/conversations.
- Ms. Pletnikoff also took time to introduce APIA, which is an Alaska Native regional non-profit consortium for the 13 federally-recognized Aleut Tribes. She stated that the Tribes that APIA represents expect APIA to represent them on larger issues and to get across messaging. She also noted that it is problematic that Native corporations can reach out and get formal consultation but the type of organizations like APIA are not afforded the same opportunity.
- Ms. Pletnikoff also pointed out that it is concerning that no Tribes have requested formal consultation on Halibut ABM. She suggested that there is an opportunity to improve outreach and that there are reasons we [NMFS] are not seeing participation from Tribes. She stated that the current consultation process is difficult to navigate and that if there are ways we can be creative to make the process better it would help Tribes better engage on issues. She suggested that talking with the Council Tribal liaison would be a good place to start. She also asked for clarification on the roles that NMFS and the Council play in decision making.
- Mr. Merrill clarified that the Council makes recommendations and NMFS approves and implements those recommended decisions. NMFS does not implement if there is a legal issue that the recommendation is not consistent with the MSA or other law.
- Ms. Pletnikoff asked how to have an impactful conversation/consultation with the "decision-maker" when the Council is the one taking action but Tribal consultation happens with NMFS. She also reiterated that it is a problem that Tribes are not engaging on this issue as it is a really impactful issue. She highlighted that, even though this discussion is informal, it is still really important.
- Mr. Merrill acknowledged the challenges Tribes face with multiple requests to consult from multiple agencies and the uncertainty around which ones are important. He stated that that information is very helpful for NMFS to know and to improve upon. He indicated that moving forward it would be helpful to discuss effective mechanisms to improve processes and engagement with Tribal governments. He also acknowledged that the current process may not elicit the response/involvement that NMFS hopes for and wanted to state that the formal/informal designation of conversations does not mean that either is less impactful on our decision making process. Mr. Merrill reiterated his appreciation for the time and opportunity to discuss these issues, and that this conversation can serve as an excellent example to use in our EIS analysis.
- Ms. Pletnikoff expressed appreciation for Mr. Merrill's comments and looks forward to seeing the EIS analysis. She also asked if it is common practice to invite the Council's Tribal liaison to these types of conversations.
- Dr. Eich responded that she did reach out to Council staff, but that they were unable to participate today specifically. She also stated that it is a fair point and that it could be useful for a Council Tribal representative to attend these meetings.
- Ms. Pletnikoff stated that moving forward it would be good to have the Council Tribal representative on these calls as it is their full time job and would be reassuring to have a familiar

presence on these calls. Tribes may also know this person and have a relationship with them. Would like this to be a standard invitation.

- Mr. Merrill stated that NMFS would reach out to the Council with the results of this conversation to help make sure they are aware of the concerns raised.
- Ms. Pletnikoff asked what the role of the Tribal liaison is.
- Mr. Merrill explained that Tribal consultation is formally a government to government process; however the topic is under discussion as to what role the Council should serve in the process. Mr. Merrill also noted that other entities and their role in the Council process are being reviewed (i.e., who qualifies as a Tribal representative, how do Council staff participate in the process).
- Ms. Pletnikoff responded that this seems odd as the Council is the decision maker, therefore they should be the primary entity involved in Tribal consultations.
- Mr. Merrill replied that the Council is the recommendation body, and decisions are made at the Secretary of Commerce level.
- Ms. Pletnikoff stated that it was her understanding that the Secretary of Commerce doesn't have the power to make decisions without litigation or regulatory changes, if recommendations from the Council fall within what is allowable, then the recommendations move forward. NOAA then accepts and implements.
- Mr. Merrill replied that NMFS certainly appreciates that perspective, and can highlight the uncertainty around roles and responsibilities related to NMFS and the Council and the ongoing discussions about engagement and roles and responsibilities.
- Ms. Pletnikoff reiterated that the point of today's conversation is to make sure that her concerns and main points are clearly understood. With that Ms. Pletnikoff shifted conversation to focus specifically on Halibut ABM concerns. Ms. Pletnikoff stated that APIA supports Halibut ABM Alt 4, opt 3. Ms. Pletnikoff stated that Halibut ABM Alt 4, opt 3 was made under the understanding that final action could have been taken in April, and that if that changes, that APIA would like the opportunity to review.
- Ms. Pletnikoff then spoke to 5 of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) National Standards³ (NSs) that she indicated most directly align with this action. For NS 1, optimum yield (OY), recognize how OY has changed throughout time, with potential reauthorization of the MSA this could change again, overall NS 1 was never intended to be executed by off the top PSC. Ms. Pletnikoff also stated that there has been a lot of animosity on this subject, and this is at the core of the frustration on this topic.
- Mr. Merrill pointed out that in regards to NS 1, that one of the challenges with management of halibut is that it is not managed under the groundfish fishery management plans (FMPs) and that halibut are managed under the International Pacific Halibut Commission (IPHC); Mr. Merrill noted that the comments are relevant because of impacts on users but the regulations are developed by the IPHC. Mr. Merrill further stated that provisions of OY apply to groundfish species, not halibut.
- Ms. Pletnikoff responded that the fact that we go through the IPHC does not require allocated PSC before directed fisheries and that there is nothing in Amendment 80 that says Amendment 80 catch is more sacred than halibut catch. She further stated that this has been a real detriment to small and local users up and down the coast and that they have seen a net migration out of juvenile halibut. Ms. Pletnikoff went on to say that the NSs are not the only obligation that NOAA has when making decisions that affect Tribal entities. They must also consider EOs and climate vulnerable communities. Furthermore it is important to know that the Aleut people of the Pribilof Islands were wards of the State under DOC and USFWS into the 1970s which affected marriages, education, food allowances, and the ability to harvest fur seals and caused people to come and go from communities. When the fur trade ended the Aleut people requested another

³ More information on NSs can be found here: <https://www.fisheries.noaa.gov/national/laws-and-policies/national-standard-guidelines>

opportunity to provide for ourselves and that is where halibut allocation to Tribes came in. Now, when it is the Pribilof communities that are at risk of closing because of Amendment 80 bycatch, the disparity in the ability to access this resource is an environmental justice issue. An allocative policy that prioritizes a single fishery over every other user is not just an environmental justice issue, but a justice issue.

- Mr. Merrill appreciated the reminder of the history of the Aleuts and the involvement of the Federal government.
- Ms. Pletnikoff then stated that NS 5, economic efficacy, cannot be the reason to continue this allocation policy and that there is a need to reduce direct economic impact. She stated that the EIS did a decent job of capturing the negative and per capita impacts and burdens to small communities, but there is plenty more to add.
- Ms. Pletnikoff then moved on to NS 9, minimizing bycatch to the extent practicable, and stated that the argument over what is practicable is never going to go away. Use of a stringent bycatch limit will give Amendment 80 the [will power] to reduce bycatch.
- Mr. Merrill responded that there was lots of time at the April 2021 Council meeting spent discussing NS 8 and 9 relative to the Social Impact Assessment (SIA) and information there; feels like many issues raised here were discussed but appreciates the focus provided here.
- Ms. Pletnikoff then spoke of the wishes of the Aleut fishing communities and that at the direction of their fishing community APIA has provided testimony [at the Council], that they have an interest in seeing strong action taken on this action. Halibut are culturally important, and are critical to subsistence and commercial use. Ms. Pletnikoff further mentioned that Aleut Tribes historically developed special hooks to catch halibut. APIA wants these important cultural uses to be highlighted in analyses and in testimony. Additionally, it should be noted in the analyses that there will be direct losses to IFQ users with quota lowered to unsupportable amounts given this may be their only fishery.
- Mr. Merrill noted several places in the analysis where this is captured, specifically in the SIA and in public testimony.
- Ms. Pletnikoff asked if IFQ impacts are specifically measured in analyses.
- Mr. Merrill responded that the SIA looked at IFQ, CDQ, subsistence users and Amendment 80.
- Ms. Pletnikoff said all those impacts discussed, except for groundfish and Amendment 80, are happening to our users in the Pribilofs. She explained that all these social impacts stack on our community and when you are reliant on a resource like we are in our communities it is hard for our communities [to adjust]. Ms. Pletnikoff acknowledged the SIA and the work done to describe the impacts on the users.
- Ms. Pletnikoff then turned to the final two paragraphs on the second page of APIA's written testimony (Appendix 2). She asked which model should be used: the IPHC model or the Council's model used in analysis. She pointed out that the Council's own advisory bodies recognize that the analysis could use improvement in structure (in modeling) and in input from data, and that this is obviously very important for how the Council drafts conclusions. She added that a different analysis could do a better job to elucidate the impacts to various users. She also asked if staff would be reviewing a part of the model and if they would report back in October.
- Mr. Merrill responded that the Council has noted the concern raised by the SSC. The SSC has advised that for this particular application the IPHC model made were a few assumptions that for the long term were not applicable. Any changes made in response to SSC comments would be available for public comment at next NEPA review.
- Ms. Pletnikoff asked when the next NEPA draft was due.
- Ms. Mansfield said that the estimated dates are that the NEPA draft will publish September 10th, that public comment would start September 13th, that the comment period lasts 45 days, ending on October 27th. She noted that this is an estimate and that she would confirm later.
- Ms. Pletnikoff asked if there would be a second round of comments from the NEPA draft for the December Council meeting.

- Mr. Merrill stated that there would be.
- Ms. Pletnikoff stated that she is not a modeler and has not been able to put in the time to understand the models and that she just wants to acknowledge that when we rely on models the quality of our input data is essential. She wants to be reassured that NOAA is providing the Council with the best available data. This data should include information on impact to recruitment classes, and must have some impact on current abundance and distribution and needs to be addressed in a way that allows the many fishery users as well as the ecosystem benefits of halibut to continue and not be a victim of a single fishery. Ms. Pletnikoff then stated that if you were to have a fishery that follows the NSs then the directed fishery for halibut is that fishery, not so with the Amendment 80 fleet. She further noted that how effective the Amendment 80 fleet has been in executing their objectives is impressive and has occurred because they have money. Ms. Pletnikoff wants to highlight the importance of the halibut fishery, wants to change the involvement of Tribes in the Council process, and wants to acknowledge that their Tribes feel like they did engage by sending someone to talk about this action [at Council].
- Ms. Pletnikoff then stated that ANCSA requests are taken more seriously than Tribes - does not capture the intent of how Tribes will be represented. She then asked if it is only NOAA's seat at the table that would represent Tribal needs and that she hopes that NMFS invites her to a greater discussion on how to engage Tribes in consultation. She suggested that there are steps that could be taken to improve dialogue and concerns and that would get everybody on the same page. She noted that it is critical to bring the Council Tribal liaison to the table, as this is their day-to-day job, to improve this process.
- Mr. Merrill stated that he appreciates those comments and that the Council has attempted several avenues to increase communication such as the Council's Community Engagement Committee⁴ and with Council's Local Knowledge, Traditional Knowledge, and Subsistence Taskforce.⁵ He further noted that the Council is putting forth a lot of effort to improve Tribal engagement and that we certainly hear your concerns.
- Ms. Pletnikoff stated that it was never the intent of EOs to have Tribes overwhelmed with consultations and that there are reasons why NMFS is not hearing from Tribes even with outreach. Additionally, Ms. Pletnikoff then stated that in Tribal consultation and in Council analyses the importance of defining and not lumping together local knowledge and traditional knowledge. One spans generations, one is happening day to day.
- Ms. Pletnikoff then stated that she would welcome any additional questions/clarifications with any of her stated concerns.
- Mr. Merrill expressed his thanks for this meeting and that it has been very helpful to hear APIA's concerns. He reiterated that there is a need to better improve consultation processes and how NMFS and the Council interface in that process.
- Ms. Pletnikoff concluded the meeting with a request to have another opportunity to discuss Halibut ABM issues during the next comment period and before the December 2021 Council meeting.
- All parties agreed to follow up on this meeting. Mr. Merrill also stated that NMFS would notify Ms. Pletnikoff when the DEIS is published.

⁴ For more information on the Council's Committee Engagement Committee, see <https://www.npfmc.org/committees/cec/>.

⁵ For more information on the Council's Local Knowledge, Traditional Knowledge, and Subsistence Taskforce, see https://www.npfmc.org/lktk_taskforce/.

Appendix 1 – Oral Public Testimony to the Council (April 2021) Provided by Karen Pletnikoff

Halibut ABM Draft NPFMC Testimony

Thank you, Chairman Kinneen and good afternoon, Council Members. My name is Karen Pletnikoff, and I serve as the Environment and Safety Program Administrator at the Aleutian Pribilof Islands Association. APIA is an Alaska Native regional non-profit consortium for the 13 federally-recognized Aleut Tribes; however, I am testifying on behalf of APIA, our Board, as well as our President / CEO Dimitri Philemonof, through the consensus of our Fisheries Committee.

APIA has previously provided input in 2014 and 2015 as well as written comment in 2016. We most recently submitted online supporting Alternative 4 and Option 3, while also emphasizing several significant deficiencies that limit the decision documents' application for taking action. Because the APIA Fisheries Committee only addresses issues with positive regional scope and in full consensus, the fact that we are before you again today highlights the importance of this issue to the Unangan people, specifically to our codified value of utilizing, not wasting, our God-given resources, including the highly-prized halibut.

The Unangan, or Aleut people, have utilized and depended on chugix, or halibut, for thousands of years. Even today, we celebrate this customary and traditional food resource through cultural practices, including in song, through traditional dance, and in the customary celebration and sharing of a young person's first landed halibut. Due to the high costs of store foods throughout the region, especially prices for nutritious, high quality protein, halibut is an essential and healthy part of the modern Aleut diet.

As importantly, halibut is an essential part of the fishing economy for nearly all our Unangan communities and the primary driver for several communities' economies. From Nelson Lagoon on the Alaska Peninsula, out the Aleutian Chain to Atka, and up to the Pribilof Islands, we fish and rely on all gear types and sectors, where local directed fisheries provide the greatest benefits. Local fisheries create jobs beyond those fishing, support critical community investments including infrastructure, and economic opportunities such as Individual Fishing Quotas (IFQ) quotas. But current extended low abundance has left many IFQ investors on the beach without remedy, as all of the West Coast direct halibut users continuing to lose access, while a single sector discards an ever increasing proportion of the recruitment classes, our nation's insurance against the unmanageable impacts of climate change and ocean acidification.

As APIA commented, the current draft Environmental Impact Statement (EIS), including the Social Impact Assessment (SIA), do not adequately measure and summarize the impacts of each alternative to at least five of the ten National Standards under the Magnuson Stevens Act (MSA). However, Magnuson-Stevens is not even the only fisheries regulation that the Council must evaluate and balance before taking action. The National Environmental Protection Act (NEPA) process, as well as Executive Orders, and perhaps most difficult to define simply, the federal

trust responsibility to the Aleut Tribes are all important aspects that require additional discussion and evaluation before taking action.

The Social Impact Assessment (SIA) acknowledges that the prioritization of Amendment 80 Prohibited Species Catch (PSC) has the direct effect of closing halibut fisheries and local processing.

Perhaps most importantly, both the Scientific and Statistical Committee (SSC) and the Advisory Panel (AP) have raised significant issues with the current draft and the information underlying the Alternatives. The SSC acknowledges the issues raised by others on the applicability of the current model. The Aleut Community of St. Paul Island Tribal Government has asked that Council request the International Pacific Halibut Commission's (IPHC) model as the best available science use it for analysis for this action. The SSC also notes that the analysis lacks consideration of the PSC impacts to commercial and recreational halibut fisheries in downstream areas in the Gulf of Alaska and the Pacific Northwest, since the removal of Under 26 inches (U26) fish in the Bering Sea/Aleutian Islands (BSAI) as bycatch mortality results in reduced Total Constant Exploitation Yield (TCEY).

The AP concluded that the current analysis does not adequately consider several required elements, and therefore is not sufficient to allow them to selection of a Preliminarily Preferred Alternative, including the effects of bycatch specifically on Area 4CDE directed halibut fishery at low levels of halibut abundance; specific information on the effects on Area 4CDE Alaska Native peoples, and on the historic and modeled ratios between the directed halibut fishery and the bycatch fishery in Area 4CDE under each alternative.. The analysis should quantify the alternatives' possible effects on directed fishery catch limits in downstream areas resulting from the bycatch of U26 fish in the BSAI.

This problem has been ongoing for many years, and you must have adequate information to evaluate and balance all of the required regulations before taking action. Please request and weigh all of the data on behalf of all of the invested halibut users before taking considered management action that endures future anticipated challenges. APIA expects that supplemental data will support, or even require additional community and halibut protections to be developed for, Alternative 4, including Option 3.

Beyond sustaining the directed halibut fisheries all around the Bering Sea, there will also be greater survival of recruitment class halibut, allowing more outmigration of halibut from the Bering Sea, bolstering sport, commercial, and personal use fisheries throughout the Gulf of Alaska and even as far away as the West Coast, and by increasing availability and moderating prices, putting more halibut in the mouths of more Americans, the very definition of Optimal Yield (OY).

I thank you very much, Chairman Kinneen and each of you Council Members, for your consideration and am prepared to take any questions.



With Spirit and Strength

March 30, 2021

North Pacific Fisheries Management Council
(Comments submitted online)

RE: C2 BSAI ABM Halibut – Supporting Alternative 4 and Option 3

To the North Pacific Fisheries Management Council (NPFMC) Members:

I am writing to express the Aleutian Pribilof Islands Association's (APIA) strong support for Alternative 4 of the Bering Sea/Aleutian Islands (BSAI) Abundance-Based Management (ABM) of Halibut draft Environmental Impact Statement Initial Review, along with our support for Option 3. APIA is a non-profit consortium of the thirteen federally-recognized Aleut Tribes and provides a wide number of services to our communities, including health and safety, cultural heritage and environmental health. APIA last reached out the NPFMC on this issue, as directed by a consensus of our Fisheries Committee, expressing the directed halibut fisheries' significance on our communities' economies and the concerns of Aleut people with regards to utilizing, not wasting, our valuable fisheries resources.

Since 2011, more Pacific Halibut have been removed through by-catch than direct fisheries, which does not meet National Standards (NS) 1, 4, 5, 8 and 9, as regulated by the Magnuson-Stevens Act (MSA). Of the alternatives presented by the BSAI ABM Halibut draft EIS Initial Review, only Alternative 4, including Option 3, can meet these guiding regulations.

NS1, or the optimal yield standard (OY), was never intended to be accomplished by indefinitely perpetuating the wanton waste of by-catch through 'off the top' Prohibited Species Catch (PSC) allocation, before directed fisheries allocation. The goal has always been that take, whether for food production or recreation (directed fisheries), not removal (bycatch) be prioritized for the maximum benefit of the Nation. As in the first line defining OY, the primary non-consumptive use for a biomass is for the protection of the marine ecosystem. Yet contrary to the regulation, codifying an ever increasing by-catch share fails to protect the ecosystem, particularly when managing for the uncertainty of climate impacts requires building the resilience of protected recruitment classes into the system.

These directed halibut fisheries are essential to Aleut communities' economies, where NS4 unambiguously requires the interests of aboriginal Americans be actively considered when determining allocations. However, the federal government's trust responsibility, shared by the NPFMC, to the Aleut Tribes and their members extends beyond this single federal action. And the NPFMC's responsibility to the communities of the Bering Sea are greater than the Alaska Native

trust responsibility; MSA considerations for fisheries-dependent communities, as well as Executive Orders on Tribal consultation, minority communities impacted by environmental justice considerations, and special considerations for climate-vulnerable communities are additional requirements that still need to be directly addressed and weighed against the Alternatives.

A frequently-repeated argument in favor of the status quo or even increasing the proportion of the halibut allowed to be used as Prohibited Species Catch, is that of efficient economics for the Amendment 80 vessels. But using economic efficiency as a consideration for allocation explicitly violates NS5, failing to meet the MSA requirements. By balancing access between fisheries, Alternative 4, incorporating Option 3, follows this guidance.

NS 8 plainly requires the consideration of communities, for ongoing fisheries and to minimize direct economic impact. The NPFMC's Social Impact Assessment (SIA) openly acknowledges the prioritization of Amendment 80 PSC directly closes halibut fisheries and local processing, measurably reducing local economic activity and directly resulting in community out-migration. Falling community size compounds the burdens of increased per-capita educational and health care costs, increased costs of consumer goods, and reduces transportation, among many other impacts with insufficient accounting. These losses are not balanced by any benefit to our indigenous Americans losing their access to a shared American resource outside their front door. Due to the protective effects of larger economies with much greater employment opportunities, these losses are not shared by the Amendment 80 community when prioritizing the directed fisheries.

As evidenced by the mandate to eliminate by-catch to the extent practicable, NS9 is the where Alternative 4, including Option 3, can provide significant alignment with the regulations. Over time, reduced by-catch will improve abundance, relieving competitive pressures and allowing multiple fisheries to catch halibut. Incentivizing the reduction of by-catch will improve the stock, paying dividends to fishermen and the rest of the ecosystem.

Thank you for your consideration and continued leadership. Please contact Environment and Safety Program Administrator Karen Pletnikoff at (907)276-2700 or karenp@apiai.org with any questions or additional informational needs.

Sincerely,



Dimitri Philemonof, President/CEO