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Board of Fish, Anchorage AK, March 19 - 24

Dear Chairman Johnstone and Board of Fish Members:

Board of Fish Proposal 243 would change the meaning of 'forage fish' in 5 AAC 39.212 in order to include Pacific herring as a forage fish under the official definition. In this letter, my intent is to point out some important considerations that must be taken into account by anyone who wants to come to a reasoned conclusion about whether this proposal should be adopted. I first provide one good reason not to adopt the proposal. Second, I show that the only cogent argument that has been given in favor of the proposal rests on a confused interpretation of the language in 5 AAC 39.212. I conclude that Proposal 243 deserves to be rejected by the Board of Fish.

First point. The proposal is unmotivated, as it would not accomplish its purported goal. If you read the proposal statement, you will find that the alleged goal is to clarify the question whether the Alaska Board of Fish considers Pacific herring as a forage fish (see the section entitled "What Will Happen if Nothing is Done?"). But, were the proposal enacted, it would not clarify this issue – for the answer to the question whether the Board of Fish considers Pacific herring as a forage fish is already maximally clear (it could be no clearer).

Allow me to explain. In 5 AAC 39.212 (f), the technical term 'forage fish' is stipulated to apply to Family Osmeridae, Myctophidae, Bathylagidae, Ammodtidea, Trichodontidae, Pholidae, Stichaeidae, Gonostomatidae, and to species of the Order Euphausiacea. Family Clupeidae (the family to which Pacific herring belong) is not included in this list, and so the term 'forage fish' is clearly defined in such a way that it definitely does not apply to Pacific herring. There is therefore nothing unclear about whether the BoF considers Pacific herring as a "forage fish" (as long as you use the term 'forage fish' with the meaning it is stipulated to have in 5 AAC 39.212 (f)). So including Pacific herring in the definition of will not resolve any unclarity.

Since proposal would not accomplish its goal, there is a reason to reject it. For there must be some motivation to introduce changes into our existing regulations: there must be some coherent issue or problem that such proposals intend to address.

Second point. I now want to take the time to address an interesting – but confused – point

raised in a recent opinion letter that has been circulating on the internet. (The opinion letter is called "Board of Fish Proposal 243; Adding Pacific Herring to the State's Forage Fish Management Plan". It can easily be found on Google. It was published online by the Juneau Empire.) In that letter, it is claimed that "Herring ... meet the role of a forage fish as *defined* by the BoF in the FFMP (5 AAC 39.212 (d))..." (emphasis my own). The letter goes on to quote at length part (d) of 5 AAC 39.212:

The board finds that forage fish perform a critical role in the complex marine ecosystem by providing the transfer of energy from the primary and secondary producers to higher trophic levels. The higher trophic levels include many commercially important fish and shellfish species. Forage fish also serve as important prey species for marine mammals and seabirds.

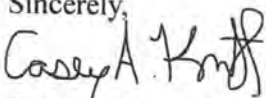
The suggestion, of course, is that in part (d) of 5 AAC 39.212 the term 'forage fish' is defined to apply to any kind of fish that performs "a critical role in the complex marine ecosystem by providing the transfer of energy from the primary and secondary producers to higher trophic levels". If this were true, then there might be some reason to consider revising 5 AAC 39.212. But it is not true, for the definition of 'forage fish' is not given in part (d) of 5 AAC 39.212. The one and only definition of 'forage fish' (which I have already provided above) can easily be found in part (f) of 5 AAC 39.212.

(I note in passing that 5 AAC 39.212 (d) clearly should be interpreted merely as a statement *about* "forage fish", where the term 'forage fish' is defined in part (f) of 5 AAC 39.212. Part (d) of 5 AAC 39.212 should not be interpreted as a *definition* of the term. Consider the following analogy. I might make a statement *about* dogs by saying 'Dogs are furry and have four legs'. But do not take me to have given you my *definition* of the word 'dog', since I am perfectly aware that there are plenty of things that are furry and four-legged but are not dogs: cats, for example.)

Therefore, there is no good argument for Proposal 243 based on the idea that herring satisfy some definition of 'forage fish' given in 5 AAC 39.212. Nor, for that matter, is there a good argument to the effect that 5 AAC 39.212 contains an unclarity on the ground that part (d) and part (f) introduce different definitions of the crucial term.

I conclude that the Board of Fish has been given no reason whatever to adopt Proposal 243, and that there is a good reason not to adopt the proposal. The considerations at hand therefore clearly dictate that the proposal should be rejected.

Sincerely,



Casey A. Knight