

Adak Community Development Corporation

November 6, 2013

ADF&G Board of Fisheries
Boards Support Section
P.O. Box 115526
Juneau, AK 99811-5526
(907) 465-6094 FAX

Re: Emergency Petition to Rescind Action on Proposal 37

Dear Chairman Karl Johnstone,

At the Board of Fish's October 18-22nd meeting it considered Board generated proposal #37 which would have established a State Waters Atka Mackerel purse seine fishery within the "un-used jig allocation" which is capped at 2% of the Area 541 Atka Mackerel ABC. The board adopted a substitute proposal (RC 54) which would allocate 10% of the Area 541 Atka Mackerel quota to a State Water GHL purse seine fishery.

The petitioners request that the Board take emergency action to rescind the action at the earliest opportunity.

ACDC appreciates that the Board intended to provide a fishery opportunity that would benefit the community of Adak, however we believe that the costs are likely to far outweigh the benefits.

The North Pacific Fishery Management Council sets its Total Allowable Catch (TAC) amounts at the next meeting beginning on December 9th. If the Board doesn't act prior to that time, the NPFMC will have to reduce the area 541 ABC for Atka Mackerel in setting the federal TAC in order to accommodate the 10% GHL. Once the TAC's are set it is unlikely that they could be revised for 2014 if the Board rescinded the state GHL at a later date.

The most serious issue of concern with the Board action is its likely impacts on the ongoing Endangered Species Act consultation on the NPFMC's "Preferred Alternative."

NMFS Protected Resource division is in the process preparing a Biological Opinion which it expects to finalize in February. As part of the NMFS-PR decision making process it will consider the cumulative effects of reasonably foreseeable actions including the Board action to establish a GHL fishery for Atka Mackerel in state waters. If NMFS PR determines there are negative impacts on Steller Sea Lions (SSL) from a state fishery, its only remedy is to impose compensatory restriction on federal fisheries.

Until NMFS PR concludes its Biological Opinion the agency is unlikely to give a clear answer as to the specific tradeoffs that may flow from establishing a state water Atka Mackerel fishery. However, from past consultations we know the following:

1- As far back as 1998, NMFS PR has targeted the Atka Mackerel fishery for restrictions, based upon the high "frequency of occurrence" (FO) of Atka Mackerel in SSL scat. The most recent SSL EIS (table 5-19) showed an Atka Mackerel FO of 93% in summer and 61% in winter, by far the highest FO of any prey species in the SSL diet in the Aleutians.

2- In the 2001 Biological Opinion NMFS PR adopted a "zonal approach" to weighting the importance of Critical Habitat (CH) where 0-3 miles was regarded as the most sensitive part of CH, 3-10 somewhat less sensitive, 10-20 less sensitive still, and the non-CH area outside 20 miles as the least sensitive.

Because the Board action establishes a fishery for what appears to be the most important SSL prey species, in what NMFS has previously deemed to be the most sensitive segment of CH, the compensatory restrictions in federal fisheries are unlikely to be a "one for one" trade off. For example, if the fishery targeted for the offset were to be the pollock fishery, it has an FO one third the Atka Mackerel FO in winter, and just one fifteenth the Atka Mackerel FO in summer. We don't want to risk 19,000 tons of pollock for an as yet unproven 1600 ton Atka Mackerel fishery.

Congress allocated the Aleutian Island pollock fishery to the Aleut Corporation for the stated purpose of economic development of Adak in 2004. Up until now, pollock fishing has been prohibited in any portion of CH based on the 2001 Biological Opinion, which has effectively meant no pollock fishery at all in the Aleutians.

The NPFMC's "Preferred Alternative" would allow for a pollock fishery outside of 3 miles from haulouts and outside 10 miles from rookeries in area 541. Our concern is the establishment of a state water GHL of approximately 1600 tons of Atka Mackerel puts at risk a 19,000 ton pollock fishery. Adak and the Aleut Corporation have waited 10 years for a consultation on a pollock fishery. If the Board does not rescind the state GHL Atka Mackerel fishery regulation prior to the conclusion of this consultation, it will be years before the next Biological Opinion.

The potential for NMFS PR to take actions that would disproportionately impact the Preferred Alternatives for Aleutian Island cod in federal and parallel state water fisheries and Atka Mackerel fisheries should also be considered.

We believe this is a situation where "a biologically allowable resource harvest would be precluded by delayed regulatory action and such delay would be significantly burdensome to the petitioners because the resource would be unavailable in the future."

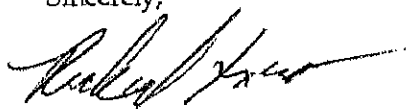
The existing 2010 Biological Opinion allowed for a non-trawl fishery (specifically jig gear) inside CH in 541 for up to 2% of the ABC for that area. The original BOF generated proposal #37 worked within the 2% constraint to allow a purse seine fishery. At this time, while there has been some preliminary work done under a commissioner's

permit, there has not been a presentation of evidence to the Board that a purse seine fishery for Atka Mackerel is either technologically or economically feasible.

It would be more prudent to rescind the Board action on the substitute proposal #37 and proceed with another commissioner's permit within the 2% constraint prior to establishing a fishery in regulation.

Thank you for considering our petition for Emergency Action.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Koso", written in a cursive style.

Rick Koso
President
Adak Community Development Corporation
PO Box 1943
Adak AK 99546