



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

**Department of
Fish and Game**

DIVISION OF COMMERCIAL FISHERIES
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TO: Karl Johnstone, Chair
Alaska Board of Fisheries

DATE: November 8, 2013

THRU: Jeff Regnart, Director
Division of Commercial Fisheries

SUBJECT: Petition to rescind
Atka mackerel
state-waters fishery

FROM: Steve Honnold, Region IV Regional Supervisor
Division of Commercial Fisheries

This letter provides Alaska Department of Fish and Game (department) staff assessment of a petition submitted by Rick Koso dated November 6, 2013 to the Alaska Board of Fisheries (board) to consider an emergency action out of cycle.

Action Requested

The petition asks the board to rescind the establishment of a state-waters Atka mackerel fishery in the central Aleutian Islands from 172° W long. to 177° W long. The state-waters fishery is scheduled to open January 1, 2014 under regulatory provisions contained in board record copy (RC) 54, dated October 21, 2013.

Background

In 2012, the department issued a Commissioner's permit for experimental use of purse seine gear to harvest Atka mackerel in the Aleutian Islands from 170° W long to 177° W long. Nontrawl Steller sea lion (SSL) protection measures specified in Table 12 of 50 C.F.R. 679 and the Seguam Foraging Area, as well as seine gear closures in Quail, Kuluk, and Hidden bays, were in effect under the terms of the permit. The permit allowed for an Atka mackerel harvest of up to 250,000 pounds. The authorized vessel pursued Atka mackerel during a three-week period in August 2012 and made more than 20 sets. No harvest was recorded or landed under this experimental permit.

Reallocation: The Bering Sea and Aleutian Islands (BSAI) federal Atka mackerel total allowable catch (TAC) is divided among the Eastern Aleutian Islands (EAI) and Bering Sea (BS), Central Aleutian Islands, and Western Aleutian Islands. The TACs are further divided among Community Development Quota (CDQ) and non-CDQ trawl sectors, with a portion of the TAC set aside for incidental catch in other fisheries (50 C.F.R. 679.20). Up to 2 percent of the non-CDQ TAC in the EAI/BS is allocated to the jig sector. Tables 1 and 2 contained in RC53 provided at the October board meeting detail the acceptable biological catch (ABC), total allowable catch (TAC) and the existing 2013 federal allocations for Atka mackerel by federal management area.

The new Atka mackerel state-waters fishery would require a reallocation from federal/parallel fishery participants in the EAI/BS because the TAC is currently set at an amount equal to ABC. This will result in a reduced allocation to all participants (trawl and potential jig), including CDQ groups.

Effect on Steller sea lion consultations: The board adopted Steller sea lion no groundfish fishing sites and the Seguam Foraging area as closed to fishing. These Steller sea lion rules are less restrictive than those imposed under federal management for trawl gear; however, the board choose to authorize seine gear for the state-waters fishery.

NMFS has formally reinitiated consultation under section 7 of the Endangered Species Act on a proposed action to change sea lion mitigation measures for the BSAI groundfish fisheries, and the action is focused on fisheries interactions with three prey species of Steller sea lions (Pacific cod, pollock, and Atka mackerel). All of the board actions from the October 2013 Statewide Pacific cod meeting will be considered as part of the cumulative impacts that affect Steller sea lions, and NMFS will incorporate the board actions into its ongoing Biological Opinion reviewing the impact of all fisheries on Steller sea lions. If any of the board actions were to cause effects, beyond the reallocation from the federal and parallel fisheries, NMFS will accommodate those impacts by changing management in Federal and parallel fisheries.

One result of the board action could be to require additional management measures that would further restrict fishing, which is most likely to occur in the case of the Atka mackerel state-waters fishery. Atka mackerel is a key prey species for Steller sea lions, and the Aleutian Islands is the area of greatest concern for Steller sea lion conservation. Because the board action would allow up to 10 percent of the EAI/BS ABC to be removed from near shore Steller sea lion critical habitat, the effect of the fishery could be greater than the current federal and parallel fisheries that are largely excluded from critical habitat. It is possible that the Biological Opinion could mandate additional closures, limits on catch, or other management changes on the federal and parallel fishery beyond the reallocation of 10 percent of the harvest. Because the Biological Opinion process has not been concluded, and is not scheduled for completion until the end of February 2014, it is difficult to estimate the impact of the board action on the existing fisheries.

However, because the board action significantly changes the baseline of the fishery from an essentially all-trawl fishery fishing outside of critical habitat, to one that now allows a new gear to operate inshore, it may require NMFS to adjust fishing, and may have a greater impact on fishery participants than it would if there was a limited harvest allowed, similar to the level authorized in the Commissioner's permit issued in 2012 (250,000 pounds). This is in part because this relatively small harvest could be accommodated within the existing harvest allocations that allow up to 2 percent of the TAC to be used by jig gear. Because jig gear has never been successfully used for Atka mackerel, that allocation is unharvested and can support a Commissioner's permit. An allocation of roughly 3,750,000 pounds under the board's action has a potentially greater and different impact.

Discussion

Based on the background information regarding past effort and little evidence that any significant harvest occurred under the Commissioner's permit fishery in 2012, and given the original proposal amount (unused jig allocation; proposal #37), it seems prudent to allow the

public to continue experimentation with seine gear to prove this fishery can be successfully prosecuted. The department could continue to work with stakeholders to allow fishing under a Commissioner's permit at levels near that contained in proposal 37.

Findings of Emergency

In order for the board to take action on a petition it must first make a finding of emergency. In accordance with AS 44.62.270, and the Joint Board Petition Policy (5 AAC 96.625), emergencies will be held to a minimum and are rarely found to exist. In this section, an emergency is an unforeseen, unexpected event that either threatens a fish or game resource, or an unforeseen, unexpected resource 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.

It is the department's conclusion that this petition may meet the criteria of an emergency under 5 AAC 96.625(f). The fishery, in the department's opinion, is experimental, and the limited evidence provided to-date suggests that the fishery cannot be prosecuted with the authorized gear. Thus, there is likely to be resource left unharvested, up to the projected 3.7 million pounds; and the unharvested portion could not later be made available to other federal or state participants. In addition, there is considerable uncertainty and risk to this and other potential fisheries, including pollock and Pacific cod, due to federal Steller sea lion concerns. It is possible that the ongoing federal Biological Opinion could mandate additional closures, limits on catch, or other management changes on the federal and parallel fisheries in the Aleutian Islands, in order to compensate for the board's action.

cc: Cora Campbell, Commissioner
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