



**UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration**

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

AGENDA B-1

August 2007

June 5, 2007

RECEIVED

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N.P.F.M.C.

Stephanie Madsen, Chair
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, AK 99501-2252

Dear Madam Chair:

In December 2006, the North Pacific Fishery Management Council (Council) took final action to extend the accounting interval for calculating the maximum retainable amounts (MRAs) for selected groundfish species by the non-American Fisheries Act (AFA) trawl catcher/processors. A copy of the Council's minutes on this action is in Attachment 1 to this letter. One element of the motion is that:

"for P. cod in the BSAI and Atka mackerel in the AI, a new trip is started upon commencing fishing inside SSL Critical Habitat. The trip which starts inside CH will be subject to MRA accounting for Pacific cod and Atka mackerel at any point during the fishing trip..."

Based on the wording of the motion that referred to Pacific cod in the Bering Sea and Aleutian Islands management area (BSAI) and to Atka mackerel in the Aleutian Islands (AI), but did not refer to Atka mackerel in the Bering Sea (BS), we interpret that the Council intended the following:

1. For the non-AFA trawl catcher/processors, the MRA accounting interval for Pacific cod and Atka mackerel outside of the Steller sea lion (SSL) protection areas in the BSAI would be increased to allow compliance with MRAs at the end of the fishing trip, rather than at any point in time during the fishing trip ("instantaneous accounting"). Other species also were included in this recommendation, but this letter focuses only on Pacific cod and Atka mackerel.
2. The MRA accounting interval for Pacific cod inside the SSL protection areas in the BSAI and for Atka mackerel inside the SSL protection areas in the AI would remain as it is now with instantaneous accounting. However, the accounting interval for Atka mackerel inside the SSL protection areas in the BS would be increased to allow compliance with MRAs for Atka mackerel at the end of the fishing trip.
3. A new fishing trip would be triggered when the vessels entered or left a SSL protection area that is closed to directed fishing for Pacific cod in the BSAI or for Atka mackerel in the AI. However, a new fishing trip would not be triggered when these vessels entered or left the SSL protection areas closed to directed fishing for Atka mackerel in the BS.

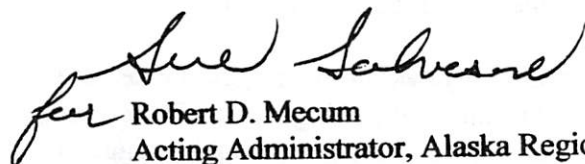


We have concerns with the Council's recommendations for MRA accounting for Atka mackerel inside SSL protection areas closed to directed fishing for Atka mackerel in the BS. The Council's proposal to extend the MRA accounting interval for Atka mackerel inside the SSL protection areas in BS would allow increased retention of Atka mackerel inside these protection areas. Allowing increased retention could provide an incentive for vessels to increase the total catch of Atka mackerel inside the protection areas. After the Council's final action, we conducted further analysis of the impacts of this element of the proposed action. Observer data combined with VMS data indicated that 97 percent of the observed catch of Atka mackerel in the BS in 2005 was caught inside SSL protection areas closed to directed fishing for Atka mackerel (See Table 1, Attachment 2). Based on this information, and on the potential for increased catch of Atka mackerel inside the SSL protection areas in the BS, NMFS would be required to more thoroughly assess the nature of the Atka mackerel harvest in these areas and the impacts of the Council's recommended action on Steller sea lions to determine whether a formal consultation under the Endangered Species Act would be required. Such a consultation would require significant additional analysis and would be complicated by the fact that we are in the process of preparing a new SSL recovery plan and planning to analyze proposed revisions to the SSL protection measures.

The Advisory Panel's (AP) motion acknowledged that there may be some concerns with its recommendations to the Council on this element of the proposed action. The AP included the following statement "In the event that item E requires further analysis or causes delay of final action, the other parts of this motion should move forward for implementation and item E should be developed as a trailing amendment." (see page 2 of Attachment 1) Although the Council adopted much of the AP motion, it specifically struck this statement (see page 4 of Attachment 1). In addition, in the attached minutes and on tapes of the meeting, the Council did not provide any explanation for why the SSL protection areas closed to directed fishing for Atka mackerel in the BS would be treated differently, and less conservatively, than the SSL protection areas closed to directed fishing for Atka mackerel in the AI.

We request that the Council revisit its action given our concerns about potential increased harvest of Atka mackerel in SSL protection areas in the BS, lack of justification for less conservative management of harvest in these areas compared to the AI, and the Council's explicit direction to not bifurcate parts of its motion into a trailing amendment. To proceed with this action as expeditiously as possible, we recommend that Atka mackerel MRA restrictions in the SSL protection areas in the BS be the same as those implemented for Atka mackerel in the AI and Pacific cod in the BSAI.

Sincerely,


Robert D. Mecum
Acting Administrator, Alaska Region

Attachments

Attachment 1

Excerpt from the Council's December 2006 minutes on agenda item C-2 MRA Adjustments

ACTION REQUIRED

Final action on MRA Adjustment regulatory amendment.

BACKGROUND

At its June 2006 meeting, the Council conducted initial review of an analysis of alternatives to modify the accounting period for the maximum retainable allowance (MRA) for the non-AFA trawl catcher processor sector. MRAs limit the amount of each non-directed species catch that may be retained to a percentage of directed species catch. Under current regulations, MRA accounting is instantaneous. In effect, a vessel must be in compliance with the MRA at all times during a fishing trip. This proposed action would modify the MRA accounting period for certain species to the end of a fishing trip or until an offload. A fishing trip ends on the earliest of: a directed fishing closure, an offload, entering or leaving an area subject to a directed fishing closure, changing fishing gear, or the end of a weekly reporting period. At its June meeting, the Council requested that staff make several changes to the analysis. Staff has completed the requested revisions, and this item is scheduled for final action at this meeting.

Prior to the June meeting, the analysis considered MRA changes only for yellowfin sole, rock sole, flathead sole, other flatfish, and arrowtooth flounder, with options to include Aleutian Islands Pacific ocean perch, Atka mackerel, Greenland turbot, and other rockfish. In June, the Council added options to consider application of new adjustment periods for Pacific cod and Bering Sea Pacific ocean perch. The Council also removed options for applying the modified accounting period for Greenland turbot, northern rockfish, shortraker rockfish, rougheye rockfish, and other rockfish, but requested that staff include analysis of effects of the action with respect to other rockfish. The change in accounting would apply to all of the non-AFA trawl catcher processor sector prior to the implementation of the Amendment 80 cooperative program. Upon implementation of Amendment 80, the change would apply only to participants in the non-AFA trawl catcher processor limited access fishery (and not to vessels in cooperatives). The Council requested staff evaluate the effect of relaxing the MRA accounting period on incentives for cooperative formation and membership. The Council also asked that staff explore impacts of the modified MRA adjustment periods both before and after implementation of Amendment 85. Amendment 85 is intended to be implemented in January 2008.

In addition to the revisions requested by the Council, staff also expanded the analysis in some sections. The discussion of potential impacts of the proposed action on endangered species has been expanded, as well as the discussion of potential effects of the action on targeting behavior, sorting, and processing, and the associated costs and benefits of changes in those

activities. The analysis was mailed to you on November 8, and the executive summary is provided below.

The **Scientific and Statistical Committee** did not address this agenda issue.

Report of the Advisory Panel

The AP recommends the Council approve Alternative 3 with suboptions as follows:
Alternative 3: In the BSAI, calculate the period of accounting for MRA of yellowfin sole, rock sole, flathead sole, "other flatfish" and arrowtooth flounder at the time of offload.

Include AI POP

Include Atka mackerel in the Bering Sea and Aleutian Islands

Include BSAI Pcod

The intended effect of this change is that the accounting period for MRA would commence when fishing begins and the MRA would be calculated:

- a. on the effective date of a notification prohibiting directed fishing in the same area;
- b. upon offload or transfer of fish or fish product from that vessel;
- c. when a vessel enters or leaves an area where a different directed fishing prohibition applies; or
- d. when a vessel begins fishing with a different type of authorized fishing gear.
- e. for Pcod in the BSAI and Atka mackerel in the AI, a new trip is started upon commencing fishing inside SSL Critical Habitat. The trip which starts inside CH will be subject to status quo enforcement for Pcod and Atka mackerel MRAs.

In the event that item E requires further analysis or causes delay of final action, the other parts of this motion should move forward for implementation and item E should be developed as a trailing amendment.

Report of the Enforcement Committee

In its June 2006 discussion the Committee recommended Alternative 2 as preferred in terms of definitions of a fishing trip. However, since the June enforcement meeting the Council added two additional species (P. cod and Atka mackerel) to the analysis which poses some additional enforcement concerns. NOAA Fisheries Enforcement notes that all three alternatives are 'enforceable,' but that each presents differing challenges to enforce MRAs.

Under both status quo (Alternative 1) and Alternative 2, NOAA Fisheries Enforcement and USCG personnel would in some cases continue to be able to conduct compliance monitoring of MRAs both during at-sea and dockside boardings, as well as by utilizing Weekly Product Reports (WPR) submitted by the vessel. It was noted that in the past, under the 'at any point in time during a fishing trip' basis, shoreside review of WPRs has allowed NOAA Fisheries Enforcement staff to flag ongoing or inadvertent directed fishing violations, and enabled

them to contact vessel or company representatives to notify of these situations. This has allowed for the minimization of violations and the lessening of potential resource damage.

Under both Alternatives 2 and 3, complexity of determining compliance with MRAs will increase. The value of P. cod and Atka mackerel species creates the concern in relationship to potential takes inside SSL critical habitat.

The Committee report contains more discussion and rationale for the Committee's recommendation which is "If the Council is going to take final action at this time, the Committee continues its support of Alternative 2 without the addition of P. cod and Atka mackerel. The Committee would like additional time to consider assessing the appropriate language to express enforcement concerns on this issue to the Council." (Please see Enforcement Committee Report, Appendix IV to these minutes, for the entire report.)

COUNCIL DISCUSSION/ACTION

[NOTE: Earl Krygier sat in on this discussion for Mr. Campbell.]

Earl Krygier made the following motion:

The Council adopts the AP motion with the following changes:

Bold = added language

~~Strikethrough~~ = deleted language

The Council adopts the staff's recommended change to the problem statement.

The ~~AP recommends the Council approve~~ adopts Alternative 3 with suboptions as follows:

Alternative 3: In the BSAI, calculate the period of accounting for MRA of yellowfin sole, rock sole, flathead sole, "other flatfish" and arrowtooth flounder at the ~~time of offload~~ end of a fishing trip.

Include AI POP

Include Atka mackerel in the Bering Sea

Include Atka mackerel in the Aleutian Islands

Include BSAI Pacific cod

The intended effect of this change is that the accounting period for MRA would commence when fishing begins and the MRA would be calculated:

- a. on the effective date of a notification prohibiting directed fishing in the same area;
- b. upon offload or transfer of any fish or fish product from that vessel;
- c. when a vessel enters or leaves an area where a different directed fishing prohibition applies; or
- d. when a vessel begins fishing with a different type of authorized fishing gear. ; or
- e. the end of a weekly reporting period, whichever comes first.
- f. ~~e.~~ for P. cod in the BSAI and Atka mackerel in the AI, a new trip is started upon commencing fishing inside SSL Critical Habitat. The trip which starts inside CH will be

subject to MRA accounting for Pacific cod and Atka mackerel at any point during the fishing trip (status quo enforcement) ~~for Peod and Atka mackerel MRAs.~~
~~In the event that item E requires further analysis or causes delay of final action, the other parts of this motion should move forward for implementation and item E should be developed as a trailing amendment.~~

The motion was seconded by Ed Rasmuson and carried unanimously.

In support of the motion, Mr. Krygier stressed that one goal is to provide the non-AFA CP sector with more flexibility to retain economically viable species where possible. He noted that the Council's original goal in implementing an accounting for groundfish MRAs was to slow the catch for a species so that the catch depletes up to the TAC by the end of the year in order to attain optimum yield.

Attachment 2

Table 1. Atka mackerel catches inside and outside of Steller sea lion protection areas, average catch, and percent of catch in the Bering Sea and Aleutian Islands.

Year	2003	2004	2005	Average Catch	% by subarea
Atka mackerel caught in AI, not in SSL protection areas (mt)	34,343	35,674	40,664	36,894	69%
Atka mackerel in AI SSL protection areas	16,749	15,613	16,982	16,448	31%
Atka mackerel caught in EBS, not in SSL protection areas (mt)	14	147	6	56	3%
Atka mackerel in EBS SSL protection areas	1,489	2,555	1,308	1,784	97%
Total All Atka areas	52,596	53,989	58,961	55,182	

Atka mackerel data report from NMFS- Steve Lewis, Juneau

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