



September 20, 2019

Mr. Steve K. Minor
Golden Harvest Alaska Seafoods, Inc.
Seawall Road
Adak, AK 99546

Golden Harvest Alaska Seafoods
2219 Rimland Drive
Bellingham, WA 98226

Dear Mr. Minor,

Thank you for your July 22, 2019, letter on behalf of the City of Adak, the Adak Community Development Corporation, Golden Harvest Alaska Seafood, B&N Fisheries, the Aleut Corporation, and the Aleut Enterprise Corporation. Your letter petitioned Secretary Ross (Secretary) for an emergency rule that would reinstate certain provisions of Amendment 113 to the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI), and implement revisions to Amendment 113 recommended by the North Pacific Fishery Management Council (Council) in December 2018. I appreciate your quick action responding to a decision of the U.S. District Court for the District of Columbia, dated March 21, 2019, vacating NOAA Fisheries' 2016 regulations implementing Amendment 113 (81 FR 84434; November 23, 2016).

Your petition for a temporary emergency rule asks the Secretary to implement "specific features of Amendment 113," including the following: a "5,000 MT Bering Sea Limitation and Aleutian Islands Set-Aside; and prioritizing that Set-Aside for access by Catcher Vessels (CVs) delivering their AI Pacific cod to shore plants in the Aleutian Islands." NOAA Fisheries interprets this request as containing the following components:

- Establish a limitation (commonly referred to as a "set-aside") of 5,000 metric tons of Pacific cod allocated to trawl catcher vessels in the BSAI. .
- Prohibit trawl catcher vessels from harvesting that 5,000 mt of Pacific cod in the Bering Sea subdistrict from January 20, 2020 through March 15, 2020.
- Allow trawl catcher vessels to harvest that 5,000 mt of Pacific cod in the Aleutian Islands subdistrict provided it is delivered only to Aleutian Islands shoreplants (i.e., a processing facility that is physically located on land west of 170° W. longitude within the State of Alaska).
- Implement accounting procedures for the catch of Pacific cod in the Aleutian Islands to ensure that harvests in the Aleutian Islands not delivered to Aleutian Islands shoreplants would not be debited against the 5,000 mt set-aside for delivery to Aleutian Islands shoreplants.



This request effectively asks the Secretary to reinstate regulations that were implemented under Amendment 113 to the Fishery Management Plan (FMP) for Groundfish of the BSAI ((81 FR 84434; November 23, 2016) and subsequently vacated by the U.S. District Court for the District of Columbia. *Groundfish Forum v. Ross*, Civ. No. 16-2495 (D.D.C. March 21, 2019). Your request would also implement revisions to Amendment 113 recommended by the Council in December 2018. These revisions to Amendment 113 were never implemented by NOAA Fisheries in light of the Court's decision.

We analyzed your request against NOAA Fisheries' Policy Guidelines for the Use of Emergency Rules (NMFS Policy Procedure 01-101-07) that define three criteria that must be met to determine that an emergency exists.

The phrase "an emergency exists involving any fishery" is defined as a situation that:

- (1) Results from recent, unforeseen events or recently discovered circumstances; and
- (2) Presents serious conservation or management problems in the fishery; and
- (3) Can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts to the same extent as would be expected under the normal rulemaking process.

Our analysis concludes that the petition does not meet all of these criteria. The Court's order vacating the rule implementing Amendment 113 may be a recent unforeseen event or recently discovered circumstance. However, the petition fails to explain how the Secretary could exercise his emergency rulemaking authority to reinstate the essential components of Amendment 113 in a manner that would be consistent with the Court's opinion. NOAA Fisheries interprets the Court's opinion as precluding it from addressing your concerns through the requested emergency regulations. This position does not, however, prevent the Council from considering alternative courses of action that would be consistent with the Court's opinion.

I am encouraged that the Council is considering possible long-term management solutions for Pacific cod in the BSAI. I believe working through the Council is the best approach to developing a well-reasoned proposal that can address the concerns of the broad range of stakeholders in the BSAI Pacific cod fishery. Please be assured of our commitment and full cooperation in the development of a long-term management program for Pacific cod, particularly in the Aleutian Islands. If you have any questions, please contact Dr. James Balsiger, Regional Administrator, Alaska Region.

Sincerely,



Chris Oliver
Assistant Administrator for Fisheries