



North Pacific Fishery Management Council

Simon Kinneen, Chair | David Witherell, Executive Director
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Mr. Jeffrey Bossert Clark
Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division
950 Pennsylvania, Avenue, NW
Washington, DC 20530-0001

Mr. Chris Oliver
Assistant Administrator
NOAA Fisheries
1315 East-West Highway
Silver Spring, MD 20910
VIA email: chris.w.oliver@noaa.gov

Dear Mr. Clark and Mr. Oliver:

During the June 2019 North Pacific Fishery Management Council (Council) meeting, NOAA General Counsel provided an update on the Amendment 113 litigation. As you are aware, on March 21, 2019, United States District Court for the District of Columbia in *Groundfish Forum v. Ross*, Civ. No. 16-2495 (TJK), vacated Amendment 113's implementing regulations (Amendment 113). On May 17, 2019, the Defendant-Intervenors, including the City of Adak, filed a notice of appeal. On May 20, 2019, the U.S. Department of Justice (DOJ) filed a notice of appeal, but the Solicitor General has not yet reached a final decision as to whether DOJ will proceed with an appeal. After receiving the update from NOAA General Counsel and listening to public testimony concerning the risks facing Aleutian Islands (AI) communities due to excess offshore harvesting and processing capacity following the vacatur of Amendment 113, and considering the precedent that this decision creates by restricting the Council's tools to provide stability for fishing communities, the Council encourages the DOJ to proceed with appealing the District Court's decision.

Since 2008, the Council has been evaluating the need for community protections in the AI due to the implementation of catch share programs for various fisheries. Catch share programs provide benefits to processing vessels, affording opportunities for consolidation, and thus, freeing some processing capacity to target and process BSAI groundfish that is not included in a catch share program. These catch share programs have resulted in excess offshore processing capacity being utilized in the AI Pacific cod fishery which currently lacks insufficient protections for AI fishing communities.

After years of stakeholder input, the Council developed Amendment 113 with an implementation date of November 23, 2016. Amendment 113 effectively made a portion of the AI Pacific cod fishery a catcher vessel (CV) fishery for a specified period (January 20 – March 15) during the trawl CV Pacific cod A-season (January 20 – April 1) and required delivery to onshore processors in the AI. The Council recognized the challenges faced by participants in the AI Pacific cod fishery and agreed that deliveries of Pacific cod to the AI shoreside processors is vital to the economic health of the AI communities. The

Council determined that Amendment 113 was crucial, providing necessary economic benefits and stability to both harvesters and fishery-dependent fishing communities.

Amendment 113 is consistent with long-standing Council policies to provide harvesting and processing protections for fisheries that are not included in a catch share program and provide opportunities for harvesters and shoreside processors participating in AI fisheries.

Given the importance of Amendment 113 in providing economic benefits and stability for both harvesters and fishery-dependent communities in the AI, the Council encourages DOJ to proceed with appealing the District Court's decision.

Sincerely,



Simon Kinneen
Chairman, NPFMC

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cc: Amelia G. Yowell
Andy Mergen
John Luce