

## REGULATORY IMPACT REVIEW

For a Regulatory Amendment to Reduce a Harvest Restriction for Participants in the Harvest Limit Area  
Atka Mackerel Fishery in the Aleutian Islands Subarea

**Date:** May 2004

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**Abstract:** This Regulatory Impact Review (RIR) evaluates the costs and benefits of a proposed regulatory amendment to relax a harvest restriction for participants in the harvest limit area (HLA) Atka mackerel fishery in the Aleutian Islands. The proposed action would allow participants in the HLA fishery to harvest Atka mackerel outside of the HLA during the first assigned HLA fishery. Regulations currently prohibit harvest of any groundfish other than Atka mackerel, and then only within the HLA, during the first HLA fishery. This action would relieve a restriction on participants in the HLA Atka mackerel fishery and potentially provide additional protection for Steller sea lions by allowing for less harvest from within the HLA. The regulatory amendment would allow more efficient harvest of Atka mackerel. This RIR addresses the requirements of Presidential Executive Order 12866.

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## Executive Summary

This Regulatory Impact Review (RIR) was prepared to evaluate a regulatory amendment to relax a harvest restriction for participants in the harvest limit area Atka mackerel fishery in the Aleutian Island subarea of the U.S. Exclusive Economic Zone. This RIR addresses the requirements of Presidential Executive Order (E.O.) 12866, which mandates an evaluation of the costs and benefits, and of the significance, of all Federally proposed regulatory actions.

The regulations at 50 CFR 679.20(a)(8) establish a harvest limit area (HLA) fishery to control the removal of Atka mackerel within the designated HLA of the Aleutian Islands subarea. The HLA is defined as, the waters of statistical areas 542 and 543, west of 178° W longitude, and within 20 nm seaward of sites listed in Table 6 of 50 CFR part 679 that are located west of 177°57.00' W longitude. This area includes critical habitat for Steller sea lions, as well as waters around additional haulouts that are considered important for Steller sea lion foraging.

The original action was prompted by concern that, if the Atka mackerel fleet concentrated its effort in a single area, expected catch rates could cause localized depletion of Atka mackerel, an important prey species for Steller sea lions. To reduce the amount of daily catch in the HLA by about half, and to disperse the fishery over two distinct areas, the Atka mackerel trawl fleet is divided into two groups, each assigned to fish in the HLA in either area 542 or area 543. Two HLA fisheries are held each season. The current regulations at § 679.7(a)(19) and § 679.20(a)(8)(iii) prohibit fishing for all groundfish, including Atka mackerel, outside the HLA during the first assigned HLA fishery in a season. The intent of this prohibition was to ensure participants in the HLA fishery would not leave the HLA Atka mackerel assignment unused, while shifting effort to another groundfish fishery that may be open at the same time, thus increasing competition with other groundfish fishermen.

This action would allow Atka mackerel fishermen to fish for Atka mackerel (but not for other groundfish) outside the HLA during the first HLA fishery in each season.

Since the HLA fishery has been implemented, participants have occasionally fished outside the HLA during the second HLA fishery. By having the option to fish either inside or outside the HLA, the participants have the operational flexibility to increase the efficiency of their harvest of Atka mackerel. Removing the prohibition on fishing for Atka mackerel outside the HLA, during the first HLA fishery, will make the restrictions in the first and second HLA fisheries consistent and does not pose competition problems between Atka mackerel and other groundfish fisheries. This action may allow Atka mackerel fishermen to fish more profitably, and would provide the potential for additional reduction in the rate of Atka mackerel harvest within the HLA, potentially reducing competition and interaction between Steller sea lions and the Atka mackerel fleet.

This action is not believed to have the potential to be significant under the criteria specified in E.O. 12866.

## **Introduction**

This Regulatory Impact Review (RIR) evaluates the costs and benefits of a regulatory amendment to eliminate an unnecessary restriction on participants in the harvest limit area (HLA) Atka mackerel fishery in the Aleutian Island subarea. Atka mackerel is an important prey species for the endangered Steller sea lion. The HLA includes critical habitat for Steller sea lions, as well as waters around additional haulouts that are considered important for Steller sea lion foraging.

This action would allow Atka mackerel fishermen to fish for Atka mackerel (but not for other groundfish) outside the HLA, during the first HLA fishery in each season. This action is necessary to provide the participants in the HLA Atka mackerel fishery with access to alternative fishing locations, outside of the HLA, for more efficient Atka mackerel harvest, during the first assigned HLA fishery each season. This action will reduce a burden on participants in this fishery and may provide additional protection to Steller sea lions by reducing harvesting activities within the HLA.

## **What is a Regulatory Impact Review?**

This RIR is required under Presidential Executive Order (E.O.) 12866 (58 *FR* 51735; October 4, 1993). The requirements for all regulatory actions, specified in E.O. 12866, are summarized in the following statement from the order:

In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nonetheless essential to consider. Further, in choosing among alternative regulatory approaches agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

E.O. 12866 requires that the Office of Management and Budget review proposed regulatory programs that are considered to be “significant.” A “significant regulatory action” is one that is likely to:

- Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, local or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.

## **Statutory authority**

The National Marine Fisheries Service, under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq* (Magnuson-Stevens Act), manages the U.S. groundfish fisheries in the Exclusive Economic Zone (EEZ), including those off the coast of Alaska. The

North Pacific Fishery Management Council (Council), under the same authority, is responsible for preparation of fishery management plans (FMPs). Regulations implementing those FMPs appear at 50 CFR part 679. General regulations that also pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

### **Purpose and need for action**

As previously noted, Atka mackerel is an important prey species for the endangered Steller sea lion. In order to protect the western distinct population segment of Steller sea lions from jeopardy of extinction or adverse modification of critical habitat from the effects of the groundfish fisheries, temporal and spatial harvest restrictions were established in regulations for the commercial groundfish fisheries off Alaska (68 FR 204, January 2, 2003). Under this rule, the harvest of Atka mackerel in the Aleutian Islands subarea is managed to control the amount of harvest over time and area. The details for managing the Atka mackerel fishery in 2004, are in the annual harvest specifications (69 FR 9242, February 27, 2004).

The regulations at 50 CFR 679.20(a)(8) establish an HLA fishery. The HLA is the waters of statistical areas 542 and 543 west of 178° W longitude and within 20 nm seaward of sites listed in Table 6 of 50 CFR part 679 that are located west of 177°57.00' W longitude. Its purpose is to control the removal of Atka mackerel in the designated HLA. This area includes critical habitat for Steller sea lions, as well as waters around additional haulouts that are considered important for Steller sea lion foraging. Steller sea lion closure areas and no transit areas that apply to the Atka mackerel fishery are included in the HLA . See Figure 1.

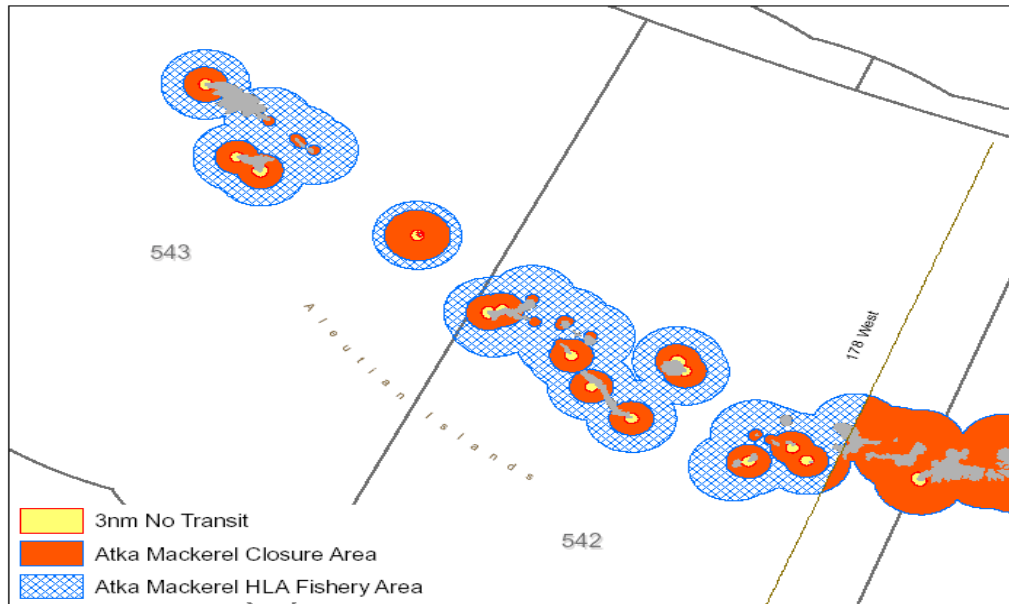


Figure 1. Atka Mackerel HLA Fishery Area

To reduce the amount of daily catch taken from within the HLA by about half, and to disperse the fishery over two areas, the Atka mackerel trawl fleet is divided into two groups, each of which is assigned to fish within the HLA in either area 542 or area 543. Two HLA fisheries occur each season with the vessel groups switching areas at the end of the first HLA fishery, each season. The harvest of Atka mackerel is split 50/50 between the A and B seasons. Up to 60 percent of a seasonal apportionment for the statistical area may be taken inside the HLA.

The current HLA Atka mackerel fishery regulations at § 679.7(a)(19) and § 679.20 (a)(8)(iii) prohibit participants from fishing for all groundfish outside the HLA, including Atka mackerel, during the first assigned HLA fishery in a season. The intent of this prohibition was to ensure that cooperative fishing arrangements among participants in the HLA fishery would not be used to free up fishing resources that could be shifted into other groundfish fisheries, increasing competition there. However, it has been determined that this prohibition, as currently implemented, is more stringent than necessary to achieve its objectives, in particular because it includes Atka mackerel.

Since implementation of the HLA fishery, participants have occasionally fished outside the HLA during the second HLA fishery. By having the flexibility to fish either inside or outside the HLA, the participants have the opportunity to increase the efficiency of harvest of Atka mackerel. Removing the prohibition on fishing outside the HLA in the first season would make the restrictions in the first and second HLA fisheries consistent and would not pose competition problems between Atka mackerel and other groundfish fisheries.

The action is necessary to remove a counterproductive and burdensome restriction on the participants in the HLA Atka mackerel fishery. Without the action, the participants would not have the opportunity to efficiently harvest Atka mackerel, and potentially less protection would be provided to Steller sea lions. National Standard 5 of the Magnuson-Stevens Act requires conservation and management measures to consider 'efficiency' in the use of marine resources. The proposed action is responsive to this National

Standard mandate insofar as it rectifies an unanticipated consequence of the earlier HLA action, which imposed operational ‘inefficiencies’ on the Atka mackerel fishing sector.

*Market failure rationale*

U.S. Office of Management and Budget guidelines for analyses under E.O. 12866 state that,

...in order to establish the need for the proposed action, the analysis should discuss whether the problem constitutes a significant market failure. If the problem does not constitute a market failure, the analysis should provide an alternative demonstration of compelling public need, such as improving governmental processes or addressing distributional concerns. If the proposed action is a result of a statutory or judicial directive, that should be so stated.

The HLA measures were adopted to address a market failure associated with protection and management of “common property” resources. Specifically, Steller sea lion (SSL) stocks in this region are listed as endangered under the Endangered Species Act. Fishing activity has been identified as a factor that may adversely affect SSL populations under certain conditions. Fishermen, fishing for Atka mackerel in the EEZ, harvest a species used by SSL as a primary food source in this area. Fishing activity near foraging Stellers may disturb them. Such impacts on endangered Steller sea lions constitute a negative externality, and the HLA measures are part of a package of measures implemented to provide protection to the western distinct population segment of SSL, while managing the Atka mackerel resource (both “common property” assets belonging to the American people).

**Alternatives considered**

*Alternative 1: Status quo*

This is the no action alternative. Under this alternative, the prohibition on fishing outside of the HLA during the first assigned HLA fishery would not be changed.

*Alternative 2: Remove the prohibition on the directed harvest of Atka mackerel outside the HLA during the first assigned HLA Atka mackerel fishery for each season.*

This proposed action would allow authorized participants in the HLA fishery the flexibility to harvest Atka mackerel both inside and outside of the HLA during the first assigned HLA fishery in a season. Currently, regulations at § 679.7(a)(19) and § 679.20 (a)(8)(iii) prohibit fishing for all groundfish outside the HLA, including Atka mackerel, during the first assigned HLA fishery in a season.

**The benefits and costs of the proposed action**

Potential benefits are (a) reduced costs for participants in the HLA Atka mackerel fishery, and (b) reduced potential for interaction between Steller sea lions and the fishing fleet. This action has no significant identifiable costs.

Benefits cannot be quantified because of data confidentiality concerns and the uncertainty of future fishing patterns which might be undertaken by participants in the HLA Atka mackerel fishery. However, net benefits may reasonably be expected to be positive (or at worst, zero), because (1) Atka mackerel fishermen will only exercise this newly available operational flexibility if they believe it is in their

economic interest to do so (otherwise, they will voluntarily limit their fishing to within the HLA, i.e., adhere to the status quo), and (2) any resulting dispersion of fishing effort outside of HLA that does occur, must, by definition, diminish the stresses on endangered SSLs, attributed to fishery interactions within the HLA .

#### *Benefits to HLA Atka mackerel participants*

In 2003, 10 trawl catcher/processing vessels participated in the Aleutian Islands Atka mackerel fishery. Estimated retained Atka mackerel catches were about 40,000 mt, with an estimated first wholesale gross value totaling about \$40 million. Average value per vessel was, therefore, about \$4 million.<sup>1</sup> All of the entities participating were diversified, catching a wide range of other groundfish species over the course of the entire 2003 fishing year, including, Pacific cod, Pacific Ocean perch, rock sole, and yellowfin sole.

The current regulations prohibit the HLA Atka mackerel fishery participants from fishing outside the HLA during the first HLA fishery, regardless of the catch rates within the HLA. This action would be expected to benefit the participants in the HLA Atka mackerel fishery by allowing Atka mackerel harvest during the first HLA fishery, either inside or outside the HLA (but not inside the Atka mackerel SSL closure areas or 3 nm no transit areas). The Atka mackerel fishermen would still be prohibited from targeting other groundfish species during this period.

With the harvest restriction removed, the participants would have the opportunity to harvest in more locations in Areas 542 and 543. The participants would have the potential to move to otherwise unrestricted areas with higher catch rates of Atka mackerel, and potentially lower harvest costs. While these benefits may be reduced by the increased travel time and cost required to fish some areas outside of the HLA, fishermen would not take advantage of the opportunity unless they believed their net benefits would be positive.

#### *Benefits from potential improvements in Steller sea lion protection*

The proposed action may be beneficial to Steller sea lions by allowing the shifting of fishing effort on Atka mackerel to locations outside of the HLA. Less harvest activities in the HLA would result in less potential for interaction between Steller sea lions and the fishing fleet and less potential for competition for this important SSL prey species.

#### *Minimal potential for interaction with other fisheries*

No significant fishery interaction effects are expected if there is increased activity by Atka mackerel trawlers outside of the HLA during the first HLA fisheries. The opportunity for any such interaction would be very short in duration (2-10 days) and unlikely to occur, because Atka mackerel schools do not normally intermingle with other target species. Furthermore, only small numbers of vessels are typically present in the area at this time of year; in recent years, only six to ten Atka mackerel vessels, and only three or four other vessels targeting other groundfish species have operated during this time of the year in the area. Industry representatives for pollock and Pacific cod fisheries (the two target fisheries with some potential for such interaction) have stated that this action will not have an adverse impact on their

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<sup>1</sup>Using an estimated 2002 first wholesale value of \$995/mt, supplied by the Alaska Fishery Science Center.



fisheries.<sup>2</sup> Indeed, the only area historically identified where the Atka mackerel and pollock fisheries may overlap is at Buldir Pass, but this is based on the location of one pollock vessel, making the possibility of overlap very small.<sup>3</sup> While there is golden king crab fishing in the Aleutian Islands during the period when the first HLA fisheries are active, this tends to take place in deeper waters (i.e., from 100 to 400 fathoms).

### **Summary of the significance criteria**

The E.O. 12866 significance criteria were listed earlier in this document. As noted, total gross revenues from the Aleutian Islands Atka mackerel fishery are estimated to be about \$40 million, annually. Thus, any “change” in potential revenues or costs to these fishing operations, attributable to this action, must be substantially smaller than that amount, because the exercise of the new operational opportunity in the HLA fishery is completely voluntary. On the basis of the foregoing analysis, this action does not, therefore, appear to have the potential to have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. NMFS has not identified any factors associated with the proposed action that would (a) “Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency”; (b) “Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof”; or (c) “Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.”

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<sup>2</sup>Personal communication with: Brent Paine, Executive Director, May 4, 2004, United Catcher Boats Association, 4005 20th Avenue W., Suite 116, Seattle, WA 98199, and Lori Swanson, April 5, 2004, Groundfish Forum, 4241 21st Ave W Ste 200, Seattle WA 98119.

<sup>3</sup>Personal communication, Steve Barbeaux, Research Fisheries Biologist, May 5, 2004, Alaska Fisheries Science Center, Seattle, Washington.

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