

Final Summary of Tribal Consultation Teleconference to Discuss Bering Sea Herring Bycatch Management August 14, 2020

On Friday, June 26, 2020 the National Marine Fisheries Service, Alaska Region (NMFS) conducted a telephonic consultation with representatives from several Alaska Native tribal entities. On June 10, 2020, Kawerak Inc., testifying during E1: Staff Tasking to the NPFMC with regard to NMFS inseason management actions to address herring bycatch in the Bering Sea, requested that the North Pacific Fishery Management Council (NPFMC) request NMFS conduct Tribal Consultation with regard to that matter. NMFS stated to the NPFMC that they would reach out to do so. The request was preceded by a June 6, 2020 comment letter submitted to the North Pacific Fishery Management Council (NPFMC) by Kawerak and testimony during the NPFMC's B reports; the letter is included in this report as Attachment 1.

The topic of the herring bycatch management was summarized by NMFS in the agency report to the North Pacific Fishery Management Council (NPFMC) on June 7, 2020 as follows:

Herring bycatch in the BSAI pollock directed fishery is higher in 2020, relative to recent years. This increased bycatch resulted in the pollock directed fishery exceeding its annual limit of herring prohibited species catch established in the final 2020/2021 harvest specifications. On June 4, 2020, NMFS issued Information Bulletin (IB-20-42) to prohibit directed fishing for pollock in the Herring Savings Areas of the BSAI, effective 12 noon, Alaska local time, June 15, 2020. This action includes prohibiting directed fishing for pollock by all vessels directed fishing for pollock, including vessels participating in the Community Development Program.

In advance of the consultation, NMFS provided to the participants a summary of herring management in the Federal groundfish fisheries off Alaska. That document is included in this report as Attachment 2.

Participants in the Consultation

Tribal Entities

- Aleut Community of St. Paul Island (Amos Philemonoff, President; Pamela Lestenkof - not present, Lauren Divine; Mateo Paz-Soldán -not present)
- Association of Village Council Presidents (represented by Jennifer Hooper)
- Bristol Bay Native Association (represented by Cody Larson)
- Chevak Traditional Council (Roy Atchak, First Chief; represented by Richard Slats)
- Chinik Eskimo Community (Irene Navarro, President; represented by Toby Anungazuk, Jr.)
- Native Village of Diomedede (Samantha Ozenna, President; represented by Robert Soolook)

- Kawerak, Inc. (represented by Austin Ahmasuk, Brandon Ahmasuk, Rose Fosdick, Brenden Raymond-Yakoubian, Julie Raymond-Yakoubian)
- The Native Village of Koyuk (Leo Charles, President; represented by Rosemary Otton, Maggie Otton, Charles Swanson) – not present
- Mary’s Igloo Traditional Council (Lucy Oquilluk, President) - not present
- Native American Rights Fund (Natalie Landreth)
- Nome Eskimo Community (Tiffany Martinson, Executive Director; represented by Jacob Martin, Devin Otten)
- Solomon Traditional Council (Kirsten Timbers, President; represented by Cameron Piscoya)
- Native Village of St. Michael (Alice Fitka, President; represented by Kawerak)
- Teller Traditional Council (Janelle Menadelook, President; represented by Janelle Menadelook and Kawerak)
- Native Village of Unalakleet IRA Council (Frank Katchatag, President; represented by Tony Haugen)
- Native Village of Wales (Anna Oxereok, President; represented by Kawerak)
- Native Village of White Mountain (Amos Brown Sr., President; represented by Kawerak)

NMFS Staff, Alaska Region

Jim Balsiger, Regional Administrator
 Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries
 Anne Marie Eich, Branch Chief, Ecosystem Branch
 Mary Furuness, Branch Chief, Inseason Management
 Alicia M. Miller, Branch Chief, Catch Shares Branch
 Kurt Iverson, Fishery Management Specialist
 Bridget Mansfield, NEPA Coordinator

NMFS Staff, Alaska Fisheries Science Center

Bob Foy, Director, Alaska Fisheries Science Center

NOAA General Counsel

Molly Watson, Deputy Alaska Section Chief
 John Lepore, Attorney-Advisor
 Joe McCabe, Advisor

Consultation Report Notes

The consultation was facilitated by Ms. Julie Raymond-Yakoubian (Kawerak) and Mr. Glenn Merrill (NMFS). Following introductions, and a discussion of meeting logistics, Mr. Jacob Martin provided a Lands and Waters Acknowledgement to the group:

The Bering Sea region is the contemporary home to dozens of Tribes, many of whom are on this call. As we enter into this Consultation meeting today, and work towards strengthening our collective relationships, it is important that we also acknowledge the waters and lands that we will be discussing. The Bering Sea, its islands, and its coastline are the traditional homelands and waters of the Yup'ik, Inupiaq, Unangan, and St. Lawrence Yupik Peoples. The Bering Sea is a living sea; it provides many of our traditional foods and supports our cultural traditions, it has influenced our languages, our spirituality, our very beings. The Bering Sea is a graveyard for our ancestors, the source of our well-being, and is our home.

We acknowledge and honor the sea, as well as the knowledge of our Peoples and communities, and their ancestral and contemporary stewardship of the Bering Sea. We welcome all of you who are not from our Bering Sea to do the same.

Ms. Raymond-Yakoubian opened the conversation by explaining the general concerns of Bering Sea tribes, including those who could not attend the NPFMC meeting or participate in this meeting. Many of the tribes' concerns were outlined in Kawerak's letter and testimony provided to the NPFMC, including the stated desire for NPFMC to request NMFS to do Tribal Consultation on the herring bycatch issue.

Mr. Merrill expressed appreciation for the time that participants devoted to this meeting, and recognized this is a particularly difficult time of year to schedule a consultation. He apologized for the relatively short period of notification for this meeting, and explained that NMFS wanted to address the concerns of the tribes as soon as possible after the NPFMC meeting. Mr. Merrill offered to address any questions on topics that might be unclear to the group at this time, and invited additional questions outside of this meeting, particularly if the group does not get through the entire meeting agenda.

Mr. Merrill followed with a summary of the respective roles of the NPFMC as a policy body that provides advice on management objectives, and of NMFS as the management agency. He explained the development of the Magnuson-Stevens Act of 1976, and historical fishing practices among foreign fleets and joint venture vessels that harvested herring, along with other species. He then provided a summary of some of the pertinent Bering Sea management regulations that contributed to NMFS's recent decision making process to allow the pollock fishery to continue in Summer Herring Savings Area 2 (HSA 2).

Mr. Merrill's summary included the following: In 1991, NMFS implemented regulations to establish the targeted closure areas (Summer Herring Savings Areas 1 and 2, and Winter Herring Savings Area) if herring bycatch limits reached 1% of the total estimated fisheries biomass in the Bering Sea management area. This management system did not establish an overall limit for bycatch amounts; rather, it provided a trigger for time and area closures. Thus far, there has not been a situation when the herring bycatch reached the amount where NMFS

closed all three herring savings areas. Overall, the amount of bycatch has been well under the 1% limit. This was not the case in 2020.

In 2020, the 1% bycatch limit was reached, which compelled NMFS to evaluate closures. Since these regulations were put in place in 1991, there have been substantial changes in other aspects of Bering Sea management regulations, particularly regulations to more tightly constrain salmon bycatch in the pollock fishery. NMFS was faced with the potential implications of closing the herring areas under an inseason management action, with the implication of possibly forcing fishing into areas of increased salmon bycatch and the potential to not fully harvest the pollock total allowable catch (TAC).

When considering a closure of pollock fishing in HSA 2, NMFS had to evaluate a number of factors, including the potential impacts on further herring bycatch, salmon bycatch, and the pollock catch. The agency decided to balance these impacts by opening HSA 2 and retain the option to close this area if herring bycatch increases substantially. Among other things, NMFS believes this decision will reduce Chinook salmon bycatch in the pollock fishery.

Mr. Merrill then invited questions, comments, and concerns from the Tribes. Ms. Raymond-Yakoubian asked for more detail on the timeline for NMFS's decision making; specifically, the period when NMFS identified this as an issue and who was consulted and involved.

Mr. Merrill explained that herring bycatch rates are monitored throughout the season. His recollection is that during a period in May, as NMFS inseason managers monitor where the fleet is fishing along with their respective harvests, it became clear that the herring bycatch limit in pollock fishery would be reached. At that time, NMFS also started looking at the agency regulatory authority to potentially open the affected area. Ongoing discussions continued up until the June Council meeting. NMFS also reached out to the State of Alaska to better understand the potential implications on the herring stock assessment and biomass estimates in early June.

Lauren Divine asked the following question: If 2020 was the first time the limit has been reached, and if the HSAs have been in place for 30 years and haven't been needed until now, what was the process for the NMFS decision to not follow through with a regulatory closure of the area? Ms. Divine pointed out that vessels can move or choose not to fish in a particular area. She asked for an explanation for the rationale for keeping this area open. She mentioned this is a critical subsistence resource and ecosystem forage fish that has been affected with substantial declines as the ecosystem has changed. This does not seem to be weighed as important as pollock under-harvesting. Could managers still monitor Chinook bycatch under the

HSA closures? What is the urgency of not harvesting pollock versus just following the herring conservation measures that are in the regulations?

Mr. Merrill explained that a suite of factors were considered in NMFS's decision. Within its regulatory authority, NMFS may open or close specific areas. Some of the factors that are considered include potential impacts on bycatch of other species; in this case, the species are Chinook salmon and herring. There is a potential to broadly facilitate an allocation for a sector or for an entire season, and generally, also consider overall management implications for the fishery. The herring savings areas have not been closed in all three areas in any year until this year, although there have been three years when the bycatch limit was achieved late in the year (and triggered the closure of only herring savings area three), and NMFS did not modify closures in those years. This is the first time the limit was hit so early in the year to close all three herring savings areas, and NMFS only opened one area (HSA 2) this year. The pollock fishery begins its B-Season on June 10, so this HSA 2 closure would have been in place July 1 for part of this B-season. At the start of the season, about 450,000 metric tons of pollock harvest would have been impacted. The fleet could have still harvested pollock outside HSA 2, but it could also increase salmon bycatch, which by regulation is constraining to the fishery.

NMFS also considered the levels of herring bycatch that might occur in this area if it were open or if it were closed. When these closures were established in 1991, we had a different understanding of the herring biomass and of the pollock fishery operations. NMFS considered current fleet operations, and where the fleet would have to fish to harvest pollock, and whether this would result in increased herring and Chinook bycatch and longer trips and a longer season that extends into a period when there tends to be increased salmon bycatch. NMFS also conferred with biologists at the State of Alaska, who provided observations about commercial fish harvests in Western AK (Togiak) and Norton Sound and the potential impacts on the commercial herring fishery in NMFS's decision.

Ms. Divine asked if this was considered an anomalous year for herring in the Bering Sea. Mr. Merrill agreed that NMFS has not seen this pattern of bycatch before.

Ms. Divine asked two questions: 1) if NMFS considered information that was not available to the public, then would that information be made available? And, 2) if this was an anomalous year for herring distribution and abundance issues, how was the determination made that Chinook bycatch would increase in October, given that there are unknown ecosystem affects with herring? Ms. Divine asked why didn't NMFS follow the cautious management approach used in regulations?

Mr. Merrill referenced the document that NMFS provided to this group and the supplemental information document posted online, as well as information provided to the NPFMC that detailed the decision-making process, including the agency communications with the State of Alaska, and the type of information that was provided. All information used from the State should be available online. Additional information that would not be publicly available would include specific herring harvests in the commercial fishery, which is confidential because of the number of processors and vessels involved in that harvest. Information that is used to forecast future harvests is complicated to process and something that inseason manager's face every year. Inseason managers engage in an iterative process of reviewing data, and the managers rely on many sources of information, including the Observer Program, Electronic Monitoring, the tracking of fleet activity, including bycatch rates and predicting forward what bycatch totals may be. There is also a lot of direct communication with the fishing fleet.

Mr. Brenden Raymond-Yakoubian expressed that NMFS's rationale doesn't answer the question about, "why?" He also expressed that it seems unlikely that ecosystem conditions are only anomalous for one species (herring) and not others such as salmon, and that NMFS has made assumptions that salmon bycatch will be similar to previous years. Additionally, NMFS is mandated to manage bycatch for both species (herring and salmon), not just salmon. And the argument that there have been changes since Amendment 16a actually cuts the other way, and that improved technology and salmon bycatch tracking should mean that the fleet is already better at minimizing bycatch.

Mr. Merrill explained that NMFS's understanding of what may happen with salmon bycatch is based upon the best information that is available at the time. That information has been used to prepare several amendments to the Bering Sea Fishery Management Plan to strengthen salmon bycatch measures. Some things continue to be true today and are supported in our data. For example, when the inshore pollock fleet has traditionally operated outside of HSA 2, the Chinook salmon bycatch rate tends to be higher. This is part of the information NMFS used as a basis of its recent decision. Salmon bycatch measures are established to reduce salmon bycatch under any level of abundance, and has different accountability measures to minimize bycatch of Chinook and chum salmon. NMFS's best information is that there is a good certainty that fishing outside HSA 2 is associated with higher Chinook bycatch and fishing later in the year results in higher salmon bycatch rates relative to earlier in the year. Mr. Merrill noted that if times traveled between ports and the fishing grounds increases, then the fleet needs more time to fish, and that fishing later in the year results in higher bycatch rates relative to earlier in the year. Mr. Merrill stated that Mr. Raymond-Yakoubian is correct that years are different, but that is the challenge that NMFS managers regularly face: to assess the information we have and make management decisions inseason.

Mr. Raymond-Yakoubian indicated he understands these are factors considered, but expressed concern that there was not a lot of transparency beyond the list of factors. This inseason action is highly compressed and it is hard to see the urgency. He said he understands NMFS has the authority to do this to prevent under-harvest. However, it is not a legal requirement to prevent under-harvest but there are a lot of other legal requirements that must be considered; Mr. Raymond-Yakoubian expressed concern that NMFS has not provided an adequate understanding of ecosystem impacts in this decision, including utilizing Local and Traditional Knowledge and best available science (National Standard 2), minimizing bycatch (National Standard 9), Executive Order 13175, and other legal mandates. It seems peculiar the way this is happening.

Mr. Merrill noted the legal mandates of the MSA, which compels NMFS and the NPFMC to balance a lot of different factors, including obligations for optimum yield, minimizing bycatch, effects on communities, and safety at sea. These National Standards are key components of management decisions. There must be a balance of these factors to achieve the mandates of sustainable fisheries. In terms of herring bycatch, under existing authority, NMFS can continue to monitor bycatch in HSA 2, and based on harvest rates, total bycatch, and rates outside the HSA 2, the agency can make decisions to close this area in the specified time frame.

Cody Larson thanked NMFS for this conversation. He indicated it is concerning that managers and subsistence users are faced with a choice between resources (herring and king salmon) and of which resources are less important to the waters and the communities. King salmon depletion has created a narrative that they are the most important resource to avoid. This action is about harvest efficiency of the pollock fleet. Subsistence users also seek to be efficient. Non-wasteful harvest is paramount to efficiency. For this time period, what ways are there to incentivize minimizing herring bycatch during this opening period? What is the new trigger point for a closure of HSA 2?

Mr. Merrill said that these are good questions. One issue is how to balance all these factors. This is an ongoing challenge. NMFS is not trying to diminish the importance of one species over another; rather, the agency is trying to meet the mandates that may seem at times to be at cross-purposes with each other. This is a difficult and challenging task to accomplish, especially at times like this. In terms of triggers to close HSA 2, management will look at two factors: whether there is an increase in bycatch taken overall and if higher rates occur inside HSA 2 vs. outside the area. NMFS has not precisely determined the specific amount or trigger amount. These factors would be carefully monitored and strongly considered in closing this area.

Mr. Larson asked what is considered substantial in terms of bycatch? What are the incentives for the fleet to minimize herring bycatch during this open period? Mr. Merrill indicated there are several incentives folded into the answer: 1) the fleet is concerned about increased Chinook bycatch, and the potential impact on pollock harvest; 2) the herring savings areas were established 30 years ago, and the understanding of timing of herring migration has changed. For example, there may be less bycatch inside than outside this area; 3) the fleet is incentivized to minimize herring bycatch because NMFS can close this area if too much bycatch occurs. NMFS has had a series of conversations with the pollock fleet to remind them of the importance of minimizing all bycatch, but herring in particular. Also, the fleet has established hot-spot monitoring for herring bycatch to provide warnings to the vessels. When the fishery opened on June 10, the fleet was operating in this area (HSA 2) and tracking the herring bycatch, and this may be an indication of what to expect. NMFS was not seeing high bycatch rates in HSA 2 when the fishery opened on June 10, 2020, rates decreased from earlier in the year, and the rates have been the same inside HSA 2 as outside HSA 2, indicating relatively low rates of herring bycatch compared to earlier in the year. This is a good sign that we may not see much difference in bycatch rates inside and outside the area (HSA 2).

Toby Anungazuk mentioned the effects of climate change in 2019, when almost all of the ice went away, which in turn exposed kelp to storms and ice waves. When the herring came inshore to spawn, there was no place for eggs to attach to on the beach. If this happens several years in a row, there could be problems with herring biomass. Herring is important to other subsistence hunting of seals and marine mammals that feed on herring.

Ms. Raymond-Yakoubian noted that what Toby stated was very important information. She did not see climate change and changing conditions, and information about age classes, addressed in the materials.

Ms. Rose Fosdick spoke to the timeline for the decision making process and impacts of this management decision. She questioned how this Consultation can be seen as meaningful, since NMFS has already taken this to the NPFMC and the action has already been taken? Before the action took place, NMFS consulted with the industry and with the State of Alaska. Since management action has already been taken, she questioned how NMFS will provide the information provided in this consultation to the Council? She pointed out that there were a lot of comments heard at the Council.

Mr. Merrill said NMFS appreciates the comments and testimony at the Council. He indicated there are a couple ways this meeting is important for this action and also for herring bycatch management in general. With respect to this action, information from this consultation is

important for NMFS managers to understand tribal perspectives and concerns and consider in future decisions to manage herring bycatch in this area. The closures in 2020 were for a 6-week period, and they were not in effect until July 1, so this consultation is timely to consider for future actions this year and for inseason management as NMFS looks at potential impacts of the pollock fishery on herring. This consultation is also important to start a dialogue about the management of this resource that the Council has not addressed since 1991, when the regulations were put in place. This was the last time the Council considered herring bycatch. The consultation is timely to understand the importance of herring, impacts of bycatch, and concerns about climate change impacts and changes in the ecosystem, as well as management of herring moving forward. The NPFMC's next meeting is in October 2020. At that meeting, NMFS will provide an overview of the pollock fishery, and of bycatch caught in the fishery. The agency will provide an update on actions that impacted HSA 2.

Ms. Fosdick thanked Mr. Merrill for the response. She expressed concern for the bycatch of herring vs. the bycatch of Chinook salmon. This tradeoff in the management was proposed by NMFS as it could possibly reduce Chinook salmon bycatch. However, both are important species. Ms. Fosdick asked that NMFS should consider coastal people that live here in the Bering Sea and understand the importance of all the fish, some of which feed other species in the ocean and ensure the Bering Sea's health is maintained. People know how these effects trickle through the ecosystem. She said she will look for discussion about more timely and meaningful tribal consultation and how this information can actually affect the decision making process before decisions are made.

Mr. Merrill noted the challenge of considering the impacts of this action on other species and this is important for us to hear through this consultation process. It is also important for NMFS to address questions about the status of herring stocks. Herring are managed within state waters by the state of Alaska, including monitoring of herring biomass. It will be important for NMFS to continue to hold conversations with the State on the information they have. Mr. Merrill also noted in his response to Ms. Fosdick that he hopes information NMFS provides at the upcoming NPFMC meeting will address some of Ms. Fosdick's concerns.

Natalie Landreth said this raises a novel fisheries question. A lot of the issues being raised are due to the lack of a clear and transparent up-front tribal consultation policy. She asked if there is a memo explaining why the Council doesn't feel it needs to engage in tribal consultation? Is a Freedom of Information Act request needed? The Tribes need to understand the expectations about who to talk to and who is responsible for tribal consultation. She explained they need to make sure everyone is clear on these points.

Molly Watson from NOAA General Counsel responded. She said she will circulate a link that is posted on the Alaska Region website that provides a document on the tribal consultation process. Ms. Watson also noted there are policy and procedure documents from the Department of Commerce as well as from NOAA Fisheries. In terms of the EO 13175, this only applies to NMFS as a Federal Agency, not to the NPFMC, and so it is NMFS's responsibility to consult. The online process document notes that the broad understanding of the Council process includes a lot of public input and so NMFS encourages the Council to talk with tribes to understand and consider their concerns while developing fishery conservation and management measures under the Magnuson-Stevens Act.

Ms. Landreth said she was trying to understand why EO 13175 does not apply to the Council. She asked what document provides this guidance.

Ms. Watson responded that this was a great question and that she doesn't have an answer at hand; however NOAA General Counsel will look into this.

Mr. Anungazuk asked to make further comments on the importance of herring. He has hunted a lot for fur seals and pointed out that seals need herring as a food source to trigger winter fur growth. Ringed seals in particular develop warm fur coats, which in turn are important for clothes and hunting equipment. The use of these herring is important to those that live at the end of Norton Sound. Residents learned these things from elders; they did not make this up themselves.

Ms. Raymond-Yakoubian expressed to the group that there are a lot of experts on this call like Toby who are knowledgeable about herring importance to the ecosystem as a whole, and if they want to share their knowledge, please do so.

Brandon Ahmasuk thanked NMFS for this consultation; however, he finds this conversation very disturbing. He said that over and over, the Tribes hear that NMFS is the manager and the NPFMC is just the advisory body. However, if NMFS relies on NPFMC for decisions, then who is the manager? Mr. Ahmasuk questioned how this consultation can be meaningful when the decision is already made, as Ms. Fosdick noted? This is after-the-fact. He expressed that not all the factors were considered by NMFS, such as what Mr. Anungazuk noted. This is an ecosystem issue. He mentioned that bearded seals are listed as threatened, and that herring are important to all seals. Herring are important to ice seals and for their hair growth—he stated that a UME (Unusual Mortality Event) had been declared and that seals are having trouble growing coats, they have sores, and they lack sufficient blubber. Is this the reason why? This is all very disturbing. All these resources are connected and one affects the others. He said that the 2007

work on the pollock fishery bycatch of salmon is all wasted. Now, NMFS has already made the decision that we need to increase herring bycatch because the pollock industry wants it. The rural Alaskans are bearing the burden of conservation yet again, but they are not the managers. When we were the managers, the ecosystem was in great shape. This decision process is not fair and equal. Once again, rural Alaskans will bear the brunt of conservation with limited harvest of king salmon with wasted fish caught in the pollock fishery. He said he can't stress how important this resource is that affects all other resources. He indicated he is upset – his family is dependent upon harvesting seals, especially bearded seals, every spring, and has harvested them for generations. He wonders if he will have to bear the burden of conservation. This action has butterfly effects. He also asked to see in the regulations where McDonalds has more right to a fillet of fish than Alaska Natives and their families do to harvest seals.

Mr. Merrill indicated he appreciated Mr. Ahmasuk sharing his concern and frustration. He offered his apologies if he was unclear to the group earlier, and clarified that NPFMC is the advisory body and NMFS is the decision maker. NMFS is making this decision on herring management. The agency consulted with NPFMC on this in June; this is a typical process for many management actions.

Ms. Raymond-Yakoubian responded that there are broadly two issues at play: 1) consultation for this action; and, 2) consultation in general regarding NPFMC and NMFS. She expressed that in practice, the Council is the decision making body, and asked NMFS to point out how often NMFS has reversed a Council decision. In practice, that is not how things function. And regarding this consultation, Ms. Raymond-Yakoubian appreciates Ms. Fosdick's comments. She did not think we were only consulting on the decisions going forward. It is now clear that the Tribes are not consulting on the decision already made. Consultation was not done on this action, and this is a problem. These issues need to be discussed further at a future meeting. She stressed the importance of an ongoing relationship between the Agency and the Tribes and asked that NMFS provide dedicated staff to support this. She also stressed that NMFS must make a better effort, otherwise the Tribes will not be able to provide a timely and meaningful contribution. As an example, if the Tribes had an ongoing and meaningful relationship, then NMFS would have told the Tribes immediately upon seeing increased bycatch, long before today.

Jacob Martin indicated he agrees with Mr. Ahmasuk and Ms. Fosdick. This consultation is after-the-fact. It might even be wasting our time. This meeting could have just been an email. He said he is the Vice Chair of the Eskimo Walrus Commission. This is not meaningful co-management. This does impact the rural subsistence users. Subsistence users have been forced to bear the burden of conservation. He mentioned his concern for what the future bears. He has only seen

a few herring here. He wonders if he is just calling in to hear about that. His said his daughter has only seen 1 herring that washed up on the beach and she gave it to her grandmother. He said we are in favor of reasonable development, but this is not reasonable. He expressed his desire that in the future, the Tribes will hear about management issues before the decision has been made. He said he is looking forward to a meaningful partnership with NMFS to benefit everyone, rather than just listening to a 2-hour call and that he does not want to be called into a meeting after the fact for an issue already decided. He reiterated his frustration and that he wished to see the results going forward.

Mr. Merrill indicated he was hopeful they could have productive conversations in the future with less frustration. To address that goal, he feels this conversation has been useful.

Jennifer Hooper highlighted and reiterated several comments that she said apply no matter the community or region of the state because there are extremely important points to be expressed. This includes that the issue cannot be an “either/or” decision of herring vs. salmon. One is not more important than the other. Ms. Hooper noted that there are 56 tribes in her region. There are 25 or 26 tribes directly on the coast or in proximity, and others inland on the rivers. These communities have individual perspectives on each resource. They have diverse perspectives. One resource may be more critically important depending on where a community is. It is not productive or honest to peg one perspective against the other. Ms. Hooper also indicated the importance of herring to the ecosystem, and therefore, this is a complex issue and not a simple one. Within the Bering Sea region, there is still a commercial herring fishery, and in the not too distant past there were 6 commercial fisheries with 23 tribes relying on this commercial resource. Markets and processing have contributed to the decline of these fisheries and the livelihoods of those who participated in those fisheries. Had the processing interest continued, the region would have that many more people interested on this call. Ms. Hooper posed a question about how this consultation will be viewed, used, and weighted compared to other stakeholder feedback and communication. She suggested the tone of the conversation is projecting forward about improving consultation in the future. But for this particular process, this has occurred after the decision. She noted the comment period closes after the effective date of this action. Knowing all that, focusing on this consultation, what role will this conversation play in the final decision?

Mr. Merrill discussed the difference between the tribal consultation process and how this is considered distinct from the public comment process. Consultations are a unique government-to-government process. NMFS will be looking at the issue of herring bycatch and trying to understand how to consider this consultation in that process. NMFS understands the importance of herring in Western AK and has also heard the importance of how the pollock

harvests impact Chinook salmon bycatch, and how those impacts affect the herring resource and subsistence users throughout western Alaska. One factor that will be strongly considered is whether or not this herring opening will result in higher bycatch than we would otherwise anticipate. We need to keep that in mind if we consider closing the HSA 2. All of these considerations, including what has been heard in this consultation, will be important in the next 6 weeks and in the future.

Ms. Raymond-Yakoubian raised the question about a second meeting. She indicated she thought NMFS has clearly heard that the tribes do not want NMFS to open this HSA 2.

Brandon Ahmasuk had three comments: He agrees with Ms. Hooper with what she said about king salmon. This management discussion is after-the-fact, an ultimatum, and scare tactics, and it should not be that way. Second, he noted the UME going on for ice seals; ice seals are starving. Mr. Ahmasuk noted that Mr. Anungazuk talked about climate change and dwindling sea ice. The Norton Sound chum crash has lasted 30 years; it is the only place in Alaska to have had a Tier 2 fishery. And finally, subsistence users are bearing the burden of conservation. He reiterated the need for more conversation on these issues.

Ms. Raymond-Yakoubian asked about the time and date of the next call, and suggested the possibility of discussing it over email.

Tony Haugen said he spent years as a commercial herring fisherman in Norton Sound and that he wanted to note climate change impacts in the region. He agrees with Mr. Anungazuk – that climate change is resulting in increased wave action which is destroying kelp beds. He indicated there has been a decline in herring stocks since the 1990s and a reduced commercial fishery, except for a bait fishery. He said younger fish are not returning. Additionally, there have been very small returns of Chinook in the region, and there has been no commercial Chinook salmon fishery. Recently, there have been some Chinook returns, but they have been much smaller than previous years. There needs to be another consultation meeting on these topics.

Ms. Raymond-Yakoubian noted that tribes and communities have immense knowledge that should be used to inform the decision-making process.

Richard Slats spoke to how people have relied on the waters of the Bering Sea since the beginning of time. Low participation by tribes in this conversation does not represent lack of interest, nor do they take the decision-making process lightly. Tribes who are not present are currently occupied with subsistence activities. Food security/food sovereignty for the winter is important, and herring and other species are the main sources of food. He said he appreciated

Ms. Landreth's comments about the consultation meetings, which are a government-to-government process. Also, the Executive Order she spoke to is important, as is State of Alaska administrative order 186. These are trying times for the tribes, and they are asking for consideration of subsistence use of these bycatch species. Subsistence users have to abide by the rules and bear the burden of conservation. Our waters have multiple different managers. Subsistence uses should be a priority over bycatch in the decision-making process, and subsistence foods should have precedence over for-profit fish. Bycatch is a product of pollock fishing, and it is food that would otherwise be on our tables. Fish were washing up last summer because of man-made impacts to ocean temperatures. Bycatch should be lowered and prevented in consideration of the people who rely on those resources. Herring is an integral part of the food chain and Bering Sea ecosystem, and so also impacts to herring effect other things they hunt and fish for. He also explained that changes are also impacting subsistence users and making it harder to hunt and fish for subsistence species. There needs to be an implementation of tribal consultation. He asked for expedited considerations for subsistence users.

Ms. Raymond-Yakoubian recommended a follow-up meeting. She suggested it could be scheduled over email. Mr. Merrill agreed that a follow up meeting could be arranged over email and noted that it may take some time to figure out the timing of the next meeting given summer fishing schedules. Ms. Raymond-Yakoubian said she will organize and get in touch with people to identify a date and time for this meeting.

ATTACHMENT 1



KAWERAK, INC.

REPRESENTING

Brevig Mission

Sitaisaq

Council

Diomedea

Injalik

Elim

Niviarcaurluk

Gambell

Sivuqaq

Golovin

Chinik

King Island

Ugiuvak

Koyuk

Kuuyuk

Mary's Igloo

Qawiaraq

Nome Eskimo

Sitnasuak Inuit

Savoonga

Sivungaq

Shaktoolik

Saktulik

Shishmaref

Qikiqtaq

Solomon

Anuutaq

St. Michael

Tacik

Stebbins

Tapraq

Teller

Tala

Unalakleet

Unjalaqik

Wales

Kinjigin

White Mountain

Igakuik /

Nutchirviq

June 6, 2020

To: North Pacific Fishery Management Council
Submitted via NPFMC agenda website

Re: **Staff Tasking – E1**

Dear Chairman Kinneen and Council members,

Kawerak, Inc. is the regional non-profit Tribal Consortium for the 20 federally-recognized Tribes of the Bering Strait region of Alaska. We are writing this letter for two reasons: first, to voice our opposition to the emergency rule request regarding the BSAI herring PSC allowance, and, second, to provide some comments related to how NPFMC is holding meetings during the Covid-19 pandemic and beyond.

Kawerak is opposed to the Request for Emergency Action to increase the BSAI herring PSC allowance from 1 to 2 percent of EBS herring biomass. Granting this request would be an inappropriate usage of emergency regulations authority. The current scenario does not meet NMFS' criteria defining emergencies. It is important to also bear in mind the importance of herring to subsistence harvests and as forage fish in the ecosystem. Resource management is historically inflexible as pertains to subsistence use; granting this request would be, on the other hand, another in a long line of management accommodations for large commercial interests. Subsistence – which does not damage the ecosystem, and in fact stewards it – and the marine ecosystem itself should not be continually forced to bear the burden of conservation. Granting this request would potentially be deleterious to the subsistence resource as well as the long-term health of the marine ecosystem.

Granting this request would also mark a significant departure from science-based and precautionary decision-making – especially given the lack of scientific analysis related to the recent higher herring bycatch rate. Reaching the herring PSC bycatch limit is not an emergency. Fishery changes – which we should all be prepared for as the new norm in the face of climate change – do not constitute a justification to deplete resources. The Council's response to this request potentially will set a tone for how it will address future changes, and granting this request would be the wrong approach to take. We would also caution against

KAWERAK, INC.

PO Box 948 • Nome Alaska 99762 • 907.443.5231 • www.kawerak.org

Advancing the capacity of our people and tribes for the benefit of the region.

ATTACHMENT 1

problematic arguments which have been raised alongside this request. We reject the notion that herring PSC bycatch limits are a tool for addressing bycatch for other species such as salmon. We are strongly opposed to pitting the protection of one fish resource against another. (We also expect the fleet to minimize salmon bycatch during upcoming harvests, and will be monitoring this closely). Additionally, we are concerned that the AP cut off their consideration of this issue after public testimony was received, failing to have a discussion of the matter and consideration of a motion. **We recommend the Council reject this emergency rule request** as it runs contrary to the appropriate use of regulatory authority, ecosystem stewardship, science-based management, and the need for equity and an appropriate public process in fishery management.

With regard to processes for holding meetings, we have some recommendations to make in light of the current meeting. First, we urge the Council to continue the possibilities for virtual participation and public testimony which are being explored and utilized during this pandemic in an ongoing fashion after the pandemic passes – alongside traditional means for participation and the suggested improvements from the Community Engagement Committee. Secondly, we strongly encourage the Council and its bodies to add buffers to their scheduling, so as to avoid what occurred at the AP during this meeting where full consideration of a crucial matter was tabled because of time concerns.

Thank you for your consideration of our comments.

Sincerely,
KAWERAK, INC.

Julie Raymond-Yakoubian

Julie Raymond-Yakoubian
Social Science Program Director

KAWERAK, INC.

PO Box 948 • Nome Alaska 99762 • 907.443.5231 • www.kawerak.org

Advancing the capacity of our people and tribes for the benefit of the region.



ATTACHMENT 2

Pacific Herring Management in the Federal Groundfish Fisheries off Alaska

Pacific herring are designated as “prohibited species” and not allowed to be retained in the federal groundfish fisheries because they are the target of the herring domestic fisheries.

The [Magnuson-Stevens Fishery Conservation and Management Act](#) requires that bycatch be minimized to the extent practicable. In the Alaska Region, the North Pacific Fishery Management Council (Council) and NOAA Fisheries have adopted measures to limit the catch of species taken incidentally in groundfish fisheries.

In 1991, the Council and NMFS implemented [Amendment 16a \(July 18, 1991, 56 FR 32984\)](#), which set the herring bycatch limit at 1% of the Bering Sea and Aleutian Islands herring spawning biomass and established the Herring Savings Areas (HSAs) to reduce herring bycatch in the groundfish trawl fisheries in the Bering Sea. The HSAs are timed area closures triggered when the herring bycatch limit is reached. The herring biomass is developed annually by the Alaska Department of Fish and Game. Closing the HSAs does not limit the herring bycatch because the fishery remains open and herring bycatch may continue outside the HSAs.

- Summer HSA 1 is that part of the Bering Sea subarea that is south of 57° North latitude and between 162° W longitude and 164° W longitude, and is closed from 1200 hours, A.l.t., June 15 through 1200 hours A.l.t., July 1, 2020.
- Summer HSA 2 is that part of the Bering Sea subarea that is south of 56°30” North latitude and between 164° W longitude and 167° W longitude from 1200 hours, A.l.t., and is closed from July 1 through 1200 hours A.l.t., August 15, 2020.
- Winter HSA is that part of the Bering Sea subarea that is between of 58° and 60° North latitude and between 172° W longitude and 175° W longitude, and is closed from 1200 hours, A.l.t., September 1 through 1200 hours A.l.t., March 1, 2021.

On average from 2003 to 2019 the herring bycatch has been less than 1% of the biomass and has been 40% of the herring bycatch limit. In the Bering Sea, herring bycatch is mostly from the trawl gear pollock fishery. The 2003 to 2020 average bycatch is 94% from the pollock fishery. The Bering Sea pollock fishery is allocated 10% to the Community Development Quota (CDQ) program, and then 50% to the inshore sector, 40% to catcher/processors, and 10% to motherships after setting aside amounts for incidental catch in other fisheries. Including 2020, herring bycatch limits for the pollock fishery have been reached four times since 1991 resulting in area closures:

- 1991 Winter HSA on Sept. 21, 1991 to Mar. 1, 1992
- 1994 Winter HSA on Nov. 14, 1994 to Mar. 1, 1995
- 2012 Winter HSA on Oct. 1, 2012 to Mar. 1, 2013
- 2020 all Summer and Winter HSAs on June 10, 2020 to Mar. 1, 2021

ATTACHMENT 2

At their June 2020 meeting, NMFS conferred with the Council on the 2020 HSA closures. The Council, after receiving oral and written public comment on the issue, [unanimously recommended](#) that NMFS use its inseason authority to open and manage, including potential closure, the Summer HSA 2 from July 1 through August 15 for the AFA pollock trawl inshore sector, AFA mothership sector, and CDQ program in the Bering Sea subarea of the BSAI. [NMFS issued the opening of the Summer HSA 2 effective July 1 to August 15, 2020](#), and is monitoring the herring bycatch.