The Honorable Wilbur Ross
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Via Email: TheSec@doc.gov

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August 14, 2020

Re: Request for Emergency Action to Suspend Closure of the Winter Herring Savings Area

Dear Secretary Ross, Administrator Jacobs, Assistant Administrator Oliver and Regional Administrator Balsiger:

The At-sea Processors Association (APA) represents companies that participate in the Bering Sea pollock fishery. On behalf of those members and vessels delivering to pollock motherships, we are writing to petition for emergency action to suspend the September 1, 2020 closure of the Winter Herring Savings Area until November 1, 2020, the date on which directed fishing for pollock closes by regulation.

Regulations promulgating federal management of herring PSC in BSAI groundfish fisheries are contained in Amendment 16a (effective 1991) to the BSAI Groundfish Fishery Management Plan (FMP). This amendment was designed to address management of herring (and other PSC species) in domestic trawl fisheries by establishing limits for Pacific herring taken as bycatch. The annual PSC limit is set at 1% of the annual biomass of Eastern Bering Sea herring and is apportioned among the various trawl fisheries. Attainment of any apportionment triggers closure of Herring Savings Areas to that fishery. Further, Amendment 16a states that the Regional Director may promulgate an in-season closure of an area (up to 60 days) to reduce PSC rates.

In April 2020, the midwater trawl pollock fishery reached its allocated limit (2,299 mt) of herring PSC. As a result, the following Herring Savings Areas closures will be triggered for the 2020 pollock B season and the 2021 pollock A season:

1. *Winter Savings Area – The part of the Bering Sea subarea that is between 58º and 60º N latitude and between 172º and 175º W longitude from September 1 through March 1 of the succeeding year.*

APA believes that closing the Winter Herring Savings Area (11,100 nm^2 of the Eastern Bering Sea shelf) on September 1 will create an emergency situation for the offshore pollock fishery during the 2020 B season by forcing the fleet onto potentially less productive fishing grounds and into higher herring bycatch areas; and will result in the fishery failing to achieve Optimum

Yield (OY). We submit that the pending emergency satisfies all three standards that are detailed in the NMFS Policy Guidelines for the Use of Emergency Rules.

Standard for Emergency Relief

Section 305(c) of the MSA allows the Secretary of Commerce to promulgate emergency regulations when the Secretary finds that an emergency exists involving any fishery. NMFS policy guidance states:

I. An Emergency Exists If a Situation Results From Recent, Unforeseen Events or Recently Discovered Circumstances

Three situations contribute to and comprise the emergency currently facing the offshore pollock fleet**.**

2020 A Season Herring Bycatch

The temporary rule to open the Summer Herring Savings Area 2, which was promulgated to prevent the under-harvest of the pollock total allowable catch (TAC) in the BSAI, stated the following:

> *The 2020 herring bycatch allowance of 2,299 mt specified for the trawl midwater pollock fishery in the BSAI has been reached. Prior to 2020, the PSC limit had not been reached in the pollock A season, and since 2010 has only been reached in the pollock B season once. NMFS recently became aware of concerns that the pollock sectors would not be able to respond to the* ***unexpected conditions presented in 2020*** *[emphasis added].*

Herring bycatch in the 2020 A season pollock fishery was unprecedented in both the timing of the catch and the overlap with traditional pollock fishing grounds. Herring bycatch in the 2020 A season pollock fishery was more than four times greater than during any recent A season and dramatically exceeded annual catches of herring in the directed pollock fishery in every year since 1991 (Figure 1). This occurred despite any change in the normal distribution (spatial and temporal) of A season pollock fishing and inconsistent with the traditional migratory patterns of herring as identified in the Amendment 16a Environmental Assessment (EA)[1]. Amendment 16a outlines research concluding that herring consistently migrate to wintering areas northwest of the Pribilof Islands (identified as the Winter Herring Savings Area). As such, it was unexpected and unforeseen to encounter herring in large quantities during the winter pollock fishery near the Pribilof Islands well outside of the documented spatial and temporal corridors. During the 2020 pollock A season, herring abundance and associated bycatch rates were at unprecedented and unforeseen levels in this area. This increase in herring PSC is not due to any change in fishing behavior or pollock distributions (Figure 2) and occurred despite avoidance efforts from the fleet. The subsequent closure of the Winter Herring Savings Area as a result of unprecedented A season bycatch will force the fleet away from currently productive pollock fishing grounds with low herring bycatch and requires emergency action.

[1] See Figure 4.3 on page 31 (sourced from Wespestad and Barton 1981).

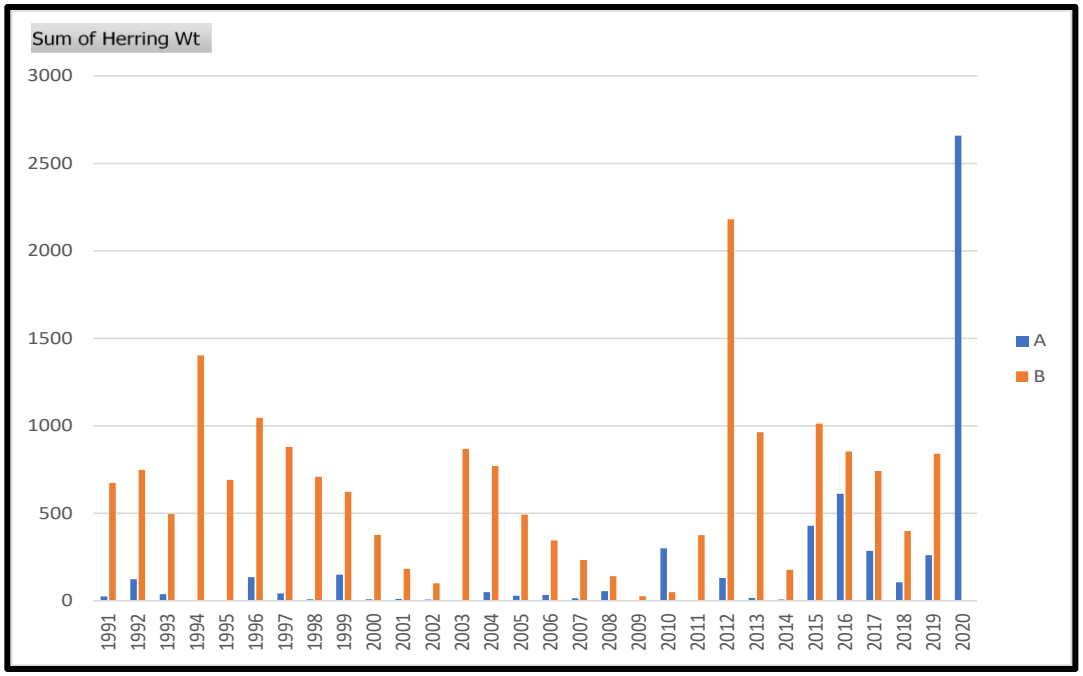

Figure 1. Herring catch in tons by season in the directed pollock fishery based on NORPAC observer data (from J. Ianelli through 2019, Sea State data for 2020). Prior to 2011, catcher vessels were not required to have 100% observer coverage therefore 15% of the catch of herring catch in the pollock fishery is not included prior to 2011. Source: SeaState, Inc.

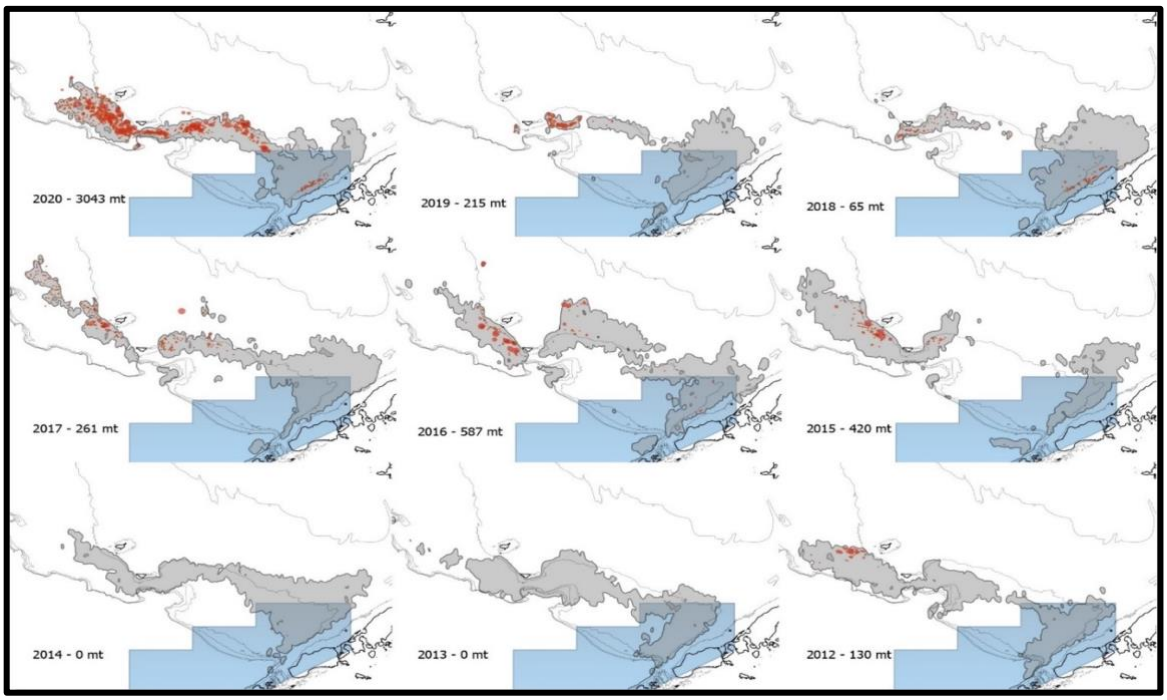

Figure 2. Pollock A season fishing footprint (gray shading) overlaid with herring bycatch (red circles) for 2012-2020 A season pollock fisheries. Size of circles indicates amount of herring bycatch per haul. Hauls with < 100 kg herring ommitted in all cases as hauls with trace amounts of herring can be very numerous (>1000) but have not summed to more than 32 mt of herring in this dataset. Source: SeaState, Inc.

2020 B Season Fishery Performance

Pollock Catch Per Unit Effort (CPUE) in the 2020 B season has been 22% below the 10-year average (Table 1) and unexpected given the current estimated pollock stock size. The distribution of pollock has been patchy across all of the traditional B season pollock fishing grounds to the northwest, while the Catcher Vessel Operational Area (CVOA) remains closed to directed fishing by the catcher processor fleet during the B season. The catcher processor harvest is currently 26,000 metric tons behind the comparable 2019 harvest level, and in 2019 fishing operations extended through the end of October (Figure 3). The pending closure of the Winter Herring Savings Area will jeopardize the ability of the offshore fleet to achieve OY.

Table 1. Catcher Processor Pollock Catch Per Unit Effort (tons of pollock/trawl hours) during the B season dates of June 10-August 12. Source: Seastate, Inc.

Year	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**	**2020**	**Average**
CPUE Pollock (MT/hr)	27.364	20.074	27.068	34.432	25.651	29.627	32.707	34.273	31.621	25.946	21.986	**28.119**

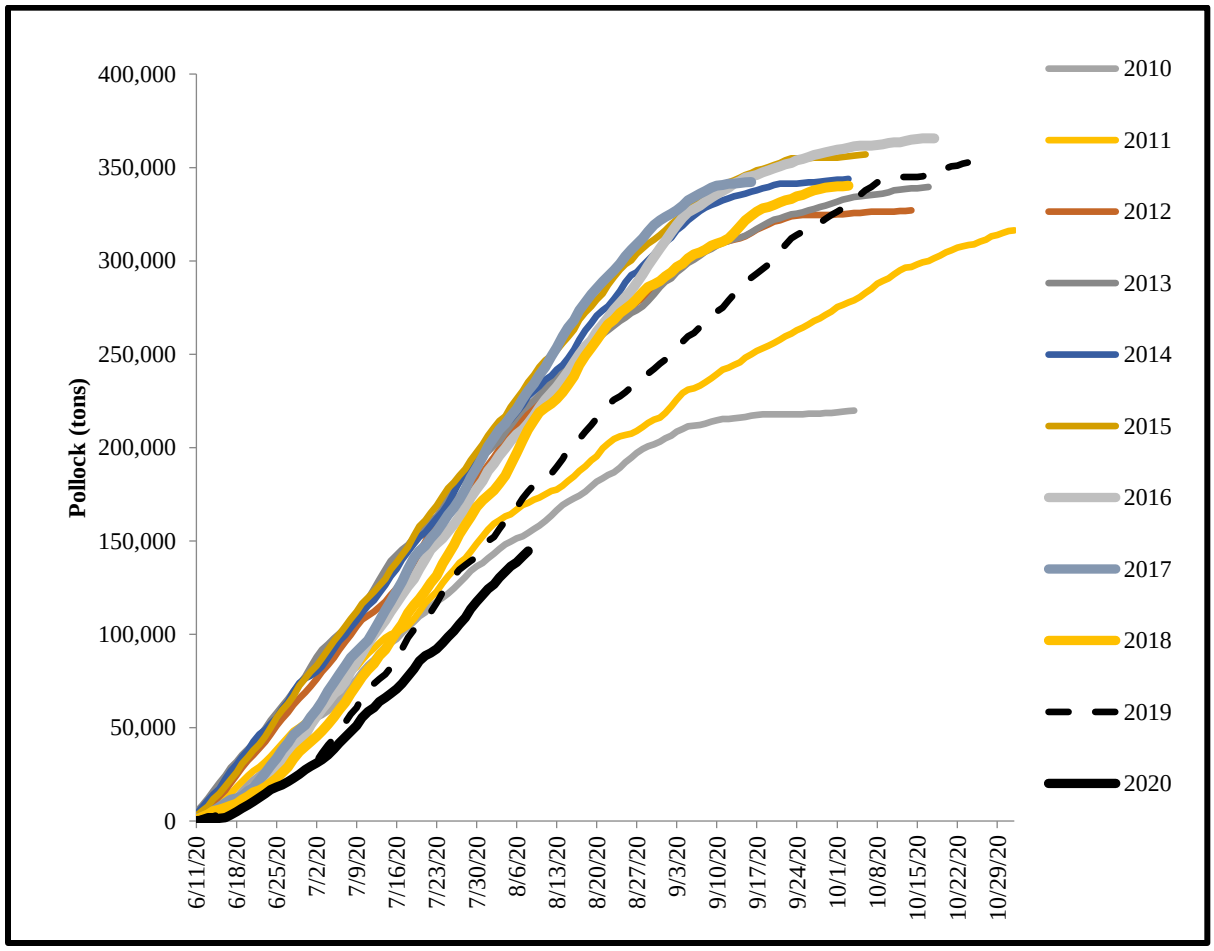

Figure 3. Historical (2010-2020) cumulative B season pollock catch for the Catcher Processor fleet only (catch updated through August 9, 2020). Source: SeaState, Inc.

COVID-19

The true impact of COVID-19 on the fleet's ability to achieve fishery targets of optimum yield and minimize bycatch to the extent practicable have only recently been discovered by the fleet and is still unfolding. Unexpected challenges of COVID-19 related to timing and scale of fishing and processing capacity have contributed to the worst B season fishery performance (season to date) of the last decade (Figure 3) and should not be underestimated. Multiple APA vessels were delayed from beginning B season operations until mid-July and some vessels have been absent from the fishery for up to one month to facilitate mandated quarantine, isolation and testing protocols, thereby causing significant lost fishing time in our fleet. This lost fishing time puts the fleet at high risk of not achieving optimum yield. The pending closure of the Winter Herring Savings Area would compound the negative impacts already facing the fleet, by forcing the fleet to fish in areas that have potentially higher herring bycatch, lower CPUE, and more dispersed pollock aggregations.

The cumulative and compounding impact of changes in herring spatial/temporal distribution, low CPUE, and lost fishing time due to COVID-19 represent unforeseen, unexpected and recently discovered circumstances that directly risk the fleet's ability to achieve optimum yield and

minimize bycatch to the extent practicable. Keeping the Winter Herring Savings Area open will support the fleet's ability to achieve optimum yield by maintaining access to productive fishing grounds and allow fleet-wide movement away from herring and other bycatch species.

II. An Emergency Exists If a Situation Presents Serious Conservation or Management Problems in the Fishery

Herring Bycatch Rates Higher Outside of Winter Herring Savings Area in 2020

In 2020, the catcher processor fleet bycatch rate of herring has been *seven times higher outside of all Herring Savings Areas than it has been inside of the Winter Herring Savings Area*. The herring bycatch rates experienced by the catcher processor fleet since 2008 both inside and outside of the Herring Savings Areas are shown in Table 2. The data show that closure of the Winter Herring Savings Area would very likely force the fleet into areas of higher herring bycatch, an extremely perverse management outcome.

Table 2. Herring bycatch rates (kg/ton) experienced by catcher processors both inside and outside of the Herring Savings Areas (Yellow highlighted boxes indicate area was closed to directed pollock fishing, Gray shading indicates areas and times herring bycatch rates were highest each year). Source: Seastate, Inc.

Year	Outside Open	Summer Savings Area I		Summer Savings Area II		Winter Savings Area	
		Closed (June 15-July 1)	Open	Closed (July 1-August 15)	Open	Closed (September 1-March 1)	Open
2008	0.361		0.000		0.001	0.542	0.021
2009	0.007		0.000		0.000	0.000	0.002
2010	1.129		0.003		0.000	0.526	0.002
2011	0.239	0.000	0.000	0.002	0.085	7.120	0.060
2012	1.900		0.000	0.042	0.001		0.125
2013	1.899		0.000	0.004	0.000	0.014	0.045
2014	0.005		0.000	1.271	0.069	0.003	0.005
2015	0.830		0.000	0.209	0.002	0.005	0.014
2016	1.004	0.004	0.022	2.282	0.030		0.006
2017	0.657	0.052	0.000	0.085	0.011	0.000	0.349
2018	0.165		0.005	0.000	0.031	0.052	0.005
2019	0.510		0.000		0.068	0.012	0.003
2020	7.235		0.001		1.009		0.992

The herring management measures implemented in the 1990s intended to reduce herring bycatch, that were based on foreign trawl observer data from 1983-1988, have failed to address the spatial and temporal distribution of herring interactions recently observed in the domestic catcher processor fleet. Excluding vessels from the Winter Herring Savings Area will likely increase herring bycatch. Figure 4 shows clearly that during the months of September and October, when the Winter Herring Savings Area would close to directed pollock fishing, herring bycatch rates by the catcher processor fleet have historically been higher outside of the Winter Herring Savings Area than inside. Figure 5 below demonstrates how poorly the Winter Herring Savings Area would have functioned in reducing herring bycatch during the B season. Just seven hauls have had herring catch greater than one ton since 2008 inside the Winter Herring Savings Area, while the majority of herring bycatch (tows greater than five tons of herring) have largely occurred outside of the Winter Herring Savings Area.

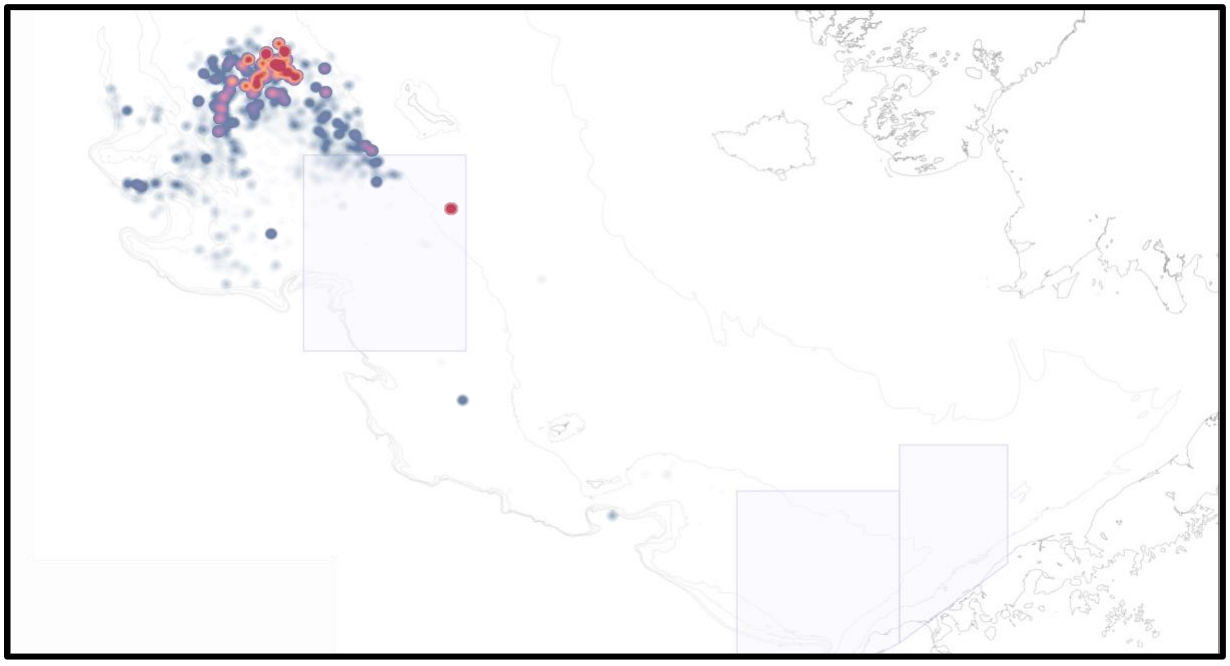

Figure 4. Herring bycatch rates (kg/t of pollock) for the CP's from 2008-2019 during the months of September and October each year. Source: SeaState, Inc.

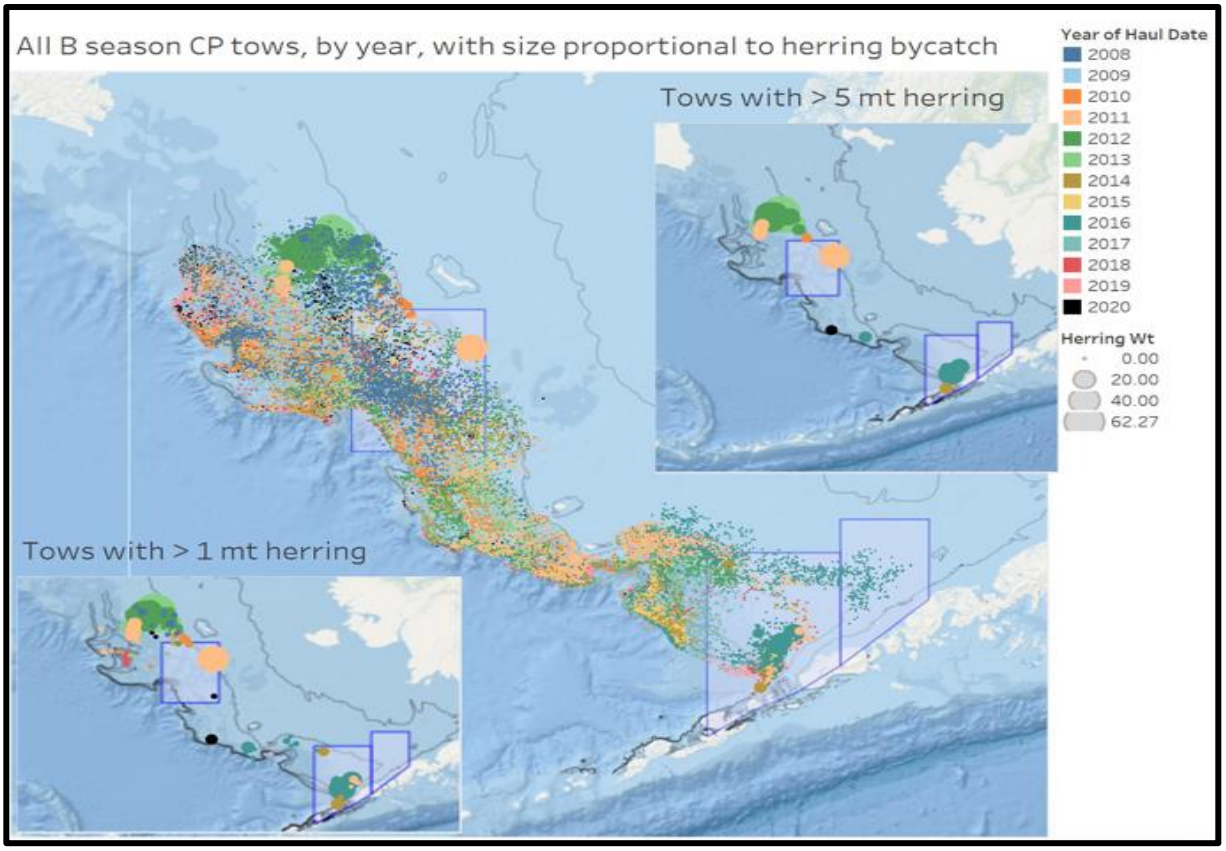

Figure 5. Catcher Processor B season hauls and herring catch weight per haul. Source: SeaState, Inc.

Unintended Management Outcomes for Other PSC Species

Due to lost fishing time from unexpected COVID-19 circumstances and low pollock catch rate to date, current projections estimate the catcher processor fleet will require all of the remaining days in the B season to harvest the full TAC. The loss of 11,100 nm_2 of fishing grounds on the Eastern Bering Sea shelf starting September 1, combined with fixed closures already in place for the offshore catcher processor fleet and poor CPUE, is anticipated to result in the fleet failing to achieve OY. Figure 6 illustrates the catcher processor fishing footprint (2010-2020) and three large existing closures (Catcher Vessel Operational Area, Pribilof Habitat Conservation Area and Spectacled Eider Wintering Unit). Figure 6 also illustrates the B Season Chinook Conservation Areas, which under the rules of the Catcher Processor Incentive Plan Agreement (CP IPA) could also close an additional 1,295 square miles along the outermost shelf. All vessels participating in the CP IPA are prohibited from fishing in these areas from October 15 to the end of the season during years when the September Chinook bycatch rate exceeds 0.015 Chinook per ton of pollock catch. Furthermore, the pollock fleet is striving to avoid both chum and Chinook salmon via weekly rolling hot-spot closures that further constrain the fleet's ability to move. Given the near certainty of the fleet remaining on the grounds through the end of October and the documented higher Chinook bycatch rates later in the season, absent emergency action by the Secretary the combination of the herring and Chinook salmon fixed closed areas could result in perverse and unintended management outcomes for all Prohibited Species Catch (PSC) species.

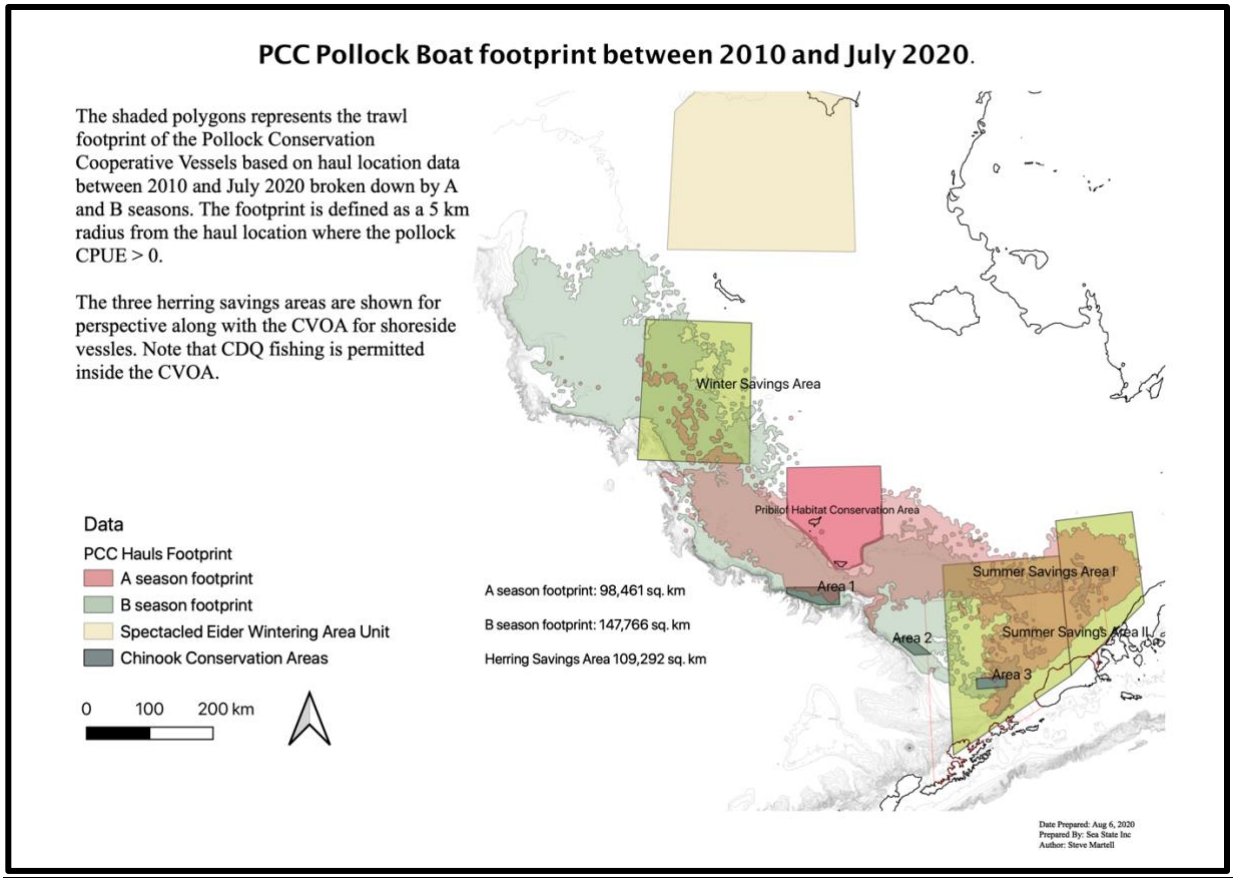

Figure 6. Catcher Processor Fleet fishing footprint by season overlayed with existing closures. Source: SeaState, Inc.

Chinook Salmon PSC Priority

Section 7.3.5 of the Amendment 91 Final EIS (published December 2009) states the following regarding the impacts to Pacific herring from establishing Chinook salmon PSC limits:

> *Changes in the pollock fishery resulting from Alternatives 2 through 5 are not expected to change typical levels of herring bycatch. Thus, the alternatives would likely not change the pollock fishery in a manner that would increase bycatch of herring to the extent that bycatch would impact abundance of these species.*

It is clear that the assumptions and conclusions reached in the Chinook salmon PSC analysis regarding the impacts on herring bycatch did not anticipate the increase in herring PSC due to high herring abundance seen in the 2020 pollock A season. During the 2020 pollock A season, vessels fishing east of St. George avoided productive pollock fishing grounds altogether due to repeat "lightning strike" (greater than 10 mt per haul) encounters of herring PSC. The fleet moved west of the Pribilofs along the shelf break. Vessels explored deeper waters (out to 90 fathoms) but found unsustainable bycatch rates of Chinook salmon, which forced them back into the band of higher herring bycatch in shallower waters.

The situation from the A season is a cautionary lesson for the remainder of the 2020 B season should the Winter Herring Savings Area remain closed. Due to regulations implemented under Amendment 91 for the pollock fishery, Chinook salmon hard caps mean that on the grounds decisions (Chinook avoidance, movement, etc.) in response to encounters of Chinook salmon take priority over all other bycatch species. If the Winter Herring Savings Area closes, it is anticipated the fleet will face a similar situation of avoiding spatially dispersed, and prioritized bycatch species, yet be constrained in their ability to move to new and cleaner fishing grounds. The fleet having areas to move to is an essential tool to effectively mitigate bycatch, and a foundational element of the CP IPA. Closure of the Winter Herring Savings Area greatly compromises this tool by taking a vast area of productive and important fishing grounds away from the fleet. Currently, the fleet operating in the Winter Herring Savings Area is finding more productive and cleaner pollock fishing inside the area compared to outside the area.

III. An Emergency Exists If a Situation Can Be Addressed Through Emergency Regulations for Which the Immediate Benefits Outweigh the Value of Normal Rulemaking

The midwater trawl pollock fishery reached its annual herring PSC limit in April 2020. The normal Council and Magnuson-Stevens Act rule-making process for addressing wholesale changes to herring PSC management is not available in time for the 2020 pollock B season (June 10 start date) and under the existing regulations the Winter Herring Savings Area would close on September 1.

No Negative Impact on Herring Stocks

The At-sea Processors Association recognizes that Pacific herring is an important subsistence food resource in the Eastern Bering Sea region, supports a commercial state-waters fishery, and provides forage for commercially important groundfish species, seabirds, marine mammals, and salmon. This request for emergency action will not negatively impact the Eastern Bering Sea herring biomass, as the historical data shows higher herring bycatch has occurred outside the Winter Herring Savings Area than inside during B season pollock fishing. Given the higher herring rates outside the Winter Herring Savings Area, this request is anticipated to result in lower overall herring bycatch rates compared to the area closing.

The commercial harvest of Eastern Bering Sea herring stocks has declined in recent years, however the Amendment 16a analysis expected the Bering Sea directed herring fisheries to be fully utilized. For 2020, the Togiak herring fishery closed with less than half of the Togiak seine and gillnet allocations harvested, leaving more than 19,400 tons of exploitable herring left in the water. As such, the amount of pollock fishing effort inside the Winter Herring Savings Area is not anticipated to result in any conservation concerns for the stock. Pacific herring are not currently overfished or experiencing overfishing.

Economic Justification for Emergency Action

The BSAI pollock fishery accounts for approximately 30% of all U.S. seafood harvested annually generating incomes for thousands of family wage jobs. The closure of the Winter

Herring Savings Area on September 1 could result in failure of the fishery to achieve OY and thereby risk loss of income for many of the jobs the pollock fishery supports. Emergency action is justified in this situation to prevent a significant direct economic loss and to preserve economic benefits for the pollock fishery participants, local communities and the State of Alaska.

The BSAI pollock fishery is also critically important in narrowing our nation's sizable seafood trade deficit. A significant majority of U.S. pollock is exported. The U.S. Customs Districts for Anchorage and Seattle report seafood exports that account for approximately 70% of total national export value, with pollock a major component of those Alaska and Pacific Northwest exports. A failure to fully harvest the B season TAC would hamper this key driver of U.S. seafood export production and further exacerbate the national seafood trade deficit.

Duration of Emergency Rule Request

We are requesting an emergency rule that will open the Winter Herring Savings Area for an additional two months in 2020, without an extension. That will be sufficient to address the immediate need and will provide the Council and stakeholders with time to consider regulatory and non-regulatory approaches to address herring bycatch management through the normal Council and MSA rulemaking process.

Commitment to Herring Bycatch Reduction

The At-sea Processors Association is committed to working with the National Marine Fisheries Service and the State of Alaska to minimize the bycatch of herring for the remainder of the B season. Catcher Processor cooperative managers will adopt move-on and bycatch avoidance rules when fishing in the Winter Herring Savings Area identical to those used by the current pollock catcher vessels inside the Summer Herring Savings Area II. Those rules state that any vessel experiencing a bycatch rate greater than 0.05 kg/mt (herring/pollock) in any given haul will be required to move a minimum distance to a new location and ensuring best practices in the subsequent haul (e.g., test tow, use of net cameras) to reduce the herring bycatch rate before making another haul. The goal is to maintain herring bycatch rates at or below levels experienced in the absence of a Winter Herring Savings Area closure.

APA and the pollock mothership sector respectfully ask the Secretary of Commerce to alleviate the limitations and associated negative impacts from closure of the Winter Herring Savings Area by temporarily suspending the pending September 1, 2020 closure of the Winter Herring Savings Area until after the commencement of the 2020 B season pollock fishery on November 1, 2020.

Thank you for your time and consideration of this request for emergency action.

Sincerely,

Stephanie D. Madsen

Stephanie Madsen, Executive Director
At-sea Processors Association

Cc:
Simon Kineen, Chair, North Pacific Fishery Council
Doug Vincent-Lang, Commissioner Alaska Department of Fish and Game
Rachel Baker, Deputy Commissioner Alaska Department of Fish and Game
Glenn Merrill, Alaska Assistant Regional Administrator, National Marine Fisheries Service