

To: The Honorable Vince Tutiakoff Sr.  
The Unalaska City Council  
Bil Homka, City Manager  
Chris Hladick, Consultant  
Michelle Price, Administrative Coordinator

From: Sebastian O'Kelly, Rick Marks & Brad Gilman

Re: Washington Update

Date: May 11, 2023

### **FY 2024 Appropriations**

The FY 2024 appropriations process has started slowly. Neither the House nor Senate have passed a Budget Resolution setting “top-line” spending amounts. Appropriations levels will be established through the “deeming process” set by the respective House and Senate Appropriations Committees. The House has passed legislation that includes an increase in the debt limit that sets overall appropriations caps for Federal spending at the FY 2022 enacted level. This will mean spending cuts in the House for most Federal agencies, with the exception of the Dept of Defense. Both the House and Senate Appropriations Committees will include Congressionally Directed Spending (CDS for short in the Senate, called Community Projects in the House) in their respective appropriations bills.

House and Senate leadership on both sides of the aisle have started to sit down with the President to negotiate a raising of the debt limit with Republicans seeking to link it to an agreement on a final spending deal. That process has begun with a kick-off meeting this month. These negotiations will likely occur over the next few weeks/months. The Treasury has forecast that without an increase in the debt limit by June 1 it will run out of cash to meet its debt obligations. Other analysts indicate that the timeframe may run a little longer, possibly into August, depending on how robust IRS tax receipts are from annual and quarterly tax filings. Either way, it is likely that at least a short-term extension of the debt limit will be necessary while negotiations continue between the White House and Congressional leadership on overall spending levels.

Concurrently, the House Appropriations Committee will start marking up bills this spring, with bills being considered by the full House in the late spring and summer. The bills will fall under the FY 2022 appropriated level cap and will be opposed by the Administration and House Democrats. They will need adjustments later in the year based on the outcome of the debt limit/spending level negotiations. The Senate appropriations bills will be developed later in the year and may wait for the outcome of the big negotiation.

Senator Murkowski and Rep Peltola both sought CDS/Community Project requests for FY 2024, with Rep. Peltola limited to submitting 15 requests (this limit applies to all House Members. In the Senate, there is no numeric request limit). Senator Murkowski has submitted the City's CDS

request of \$3.4 million for waterline infrastructure along Captain's Bay Road to the Appropriations Committee. The next step in the process is for the Committee to determine whether the project should be funded.

Separately, Senator Murkowski has also submitted to the Committee a \$550,000 CDS request under National Park Service accounts for roof repair/replacement of the WW II Aerology Building. The request is supported by the Ounalashka Corporation (OC) but given that OC is a considered a for-profit entity under Committee rules and cannot receive direct CDS funds, her request designates the Qawalangin Tribe as the funding recipient. Should the Committee fund the project, the Tribe can still subcontract with OC for the actual repair work.

### **Harbor Entrance Channel Dredging Project**

The Army Corps is making incremental progress on the dredging project that was funded at \$25.6 million in the FY 2023 Omnibus Appropriations Bill. The National Marine Fisheries Service (NMFS) has issued for public comment an Incidental Harassment Authorization (IHA) request from the Army Corps to "take" marine mammals (humpback whales, harbor porpoise, harbor seals and Steller sea lions) exposed to level A & B harassment from the dredging project. NMFS has determined that this level of harassment will exist due to the acoustic sound impacts from the project's underwater blasting that is expected to occur to move some parts of the sand bar to loosen it for dredging. Blasting cannot occur if animals are in the area and there must be observers (two land-based and one boat-based) and reporting of any blasting. Blasting cannot occur at night and the authorization sets distance limits for when the animals are considered in the area of the project. NMFS is proposing to issue a 1 year IHA beginning November 1, with the possibility of renewal after that if needed.

### **Brownfields/ANSCA Contaminated Lands Clean Up**

As a follow up to one of City/Trilateral Group's requests during the December DC visit, the AK Congressional Delegation has sent a letter to EPA in support of OC's FY 2023 Brownfields grant application for a community-wide assessment grant that would focus on the Bunker Hill, Pyramid Valley, and Strawberry Hill areas. Separately, Senator Murkowski has submitted a \$9.7 million CDS request on behalf of the Denali Commission for the outfitting of a barge with waste removal and disposal and water treatment equipment that could be deployed at remote contaminated sites in the Aleutians.

### **Transportation Grant Opportunities**

The Department of Transportation continues to roll out transportation grant opportunities and announcements that have been funded by a combination of Bipartisan Infrastructure Law funds and regular annual appropriations. The deadlines for FY 2023 RAISE and Port Infrastructure Development Program grant submissions have closed but the following program deadlines are upcoming.

- **Safe Roads & Streets For All** -- \$1.2 billion. Deadline July 10
- **Wildlife Crossings Pilot Program** -- \$112 million. Deadline August 1

- **Promoting Resilient Operations for Transformative, Efficient, and Cost-Saving Transportation (PROTECT) Program** -- \$848 million. Deadline August 18

Other DOT programs of interest to rural communities who have not issued their FY 2023 grant opportunities yet but are expected to later in the year include – Bridge Investment Program; Nationally Significant Federal Lands and Tribal Projects; National Culvert Removal, Replacement, and Restoration Grant Program; and Rural Surface Transportation Grant Program.

Below is a good link to keep track of rural transportation grant opportunities and awards.

<https://www.transportation.gov/rural/funding-opportunities>

### **Denali Commission – Waterfront Infrastructure Program**

The Bipartisan Infrastructure Law along with regular annual appropriations have enabled the Denali Commission to set up a new program to fund small waterfront infrastructure projects. The Commission proposed spending \$5 million this year on such projects. The application period closed in April but there will be future opportunities to apply for funding.

### **Energy**

USDA continues to take grant/loan funding application for rural renewable and energy efficiency projects. Small businesses as well as AK native/village corporations are eligible to apply. The Inflation Reduction Act provided just over \$1 billion in funding for the program which includes both grants and loans. The application window runs on a quarterly basis.

The USDA POC for energy project discussions is below.

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### **Fisheries & Oceans**

- **Heart of the Ocean “PRIME” Alaska Marine Sanctuary** – As reported earlier, on June 8, 2022 NOAA officially added to the National Marine Sanctuary Inventory the Aleut Community of St. Paul’s request for a 100-mi sanctuary encircling the two Pribilof Islands in the Bering Sea. Concern over this proposal was a high priority of the City/Trilateral Group’s DC visit in December. On February 23, 2023 the AK Senators sent a joint letter to NOAA Administrator Richard Spinrad requesting the agency rescind the decision to add PRIME to the NMSA Inventory. On April 6<sup>th</sup> NOAA convened a *Roundtable on National Marine Sanctuary Nominations in Alaska*. At this time, we understand the agency has no immediate plans to initiate formal designation. Should

NOAA change course and propose a formal designation, there will be a lengthy formal rulemaking process with further opportunity for public input.

- **NOAA to Initiate ESA Consult on BSAI/GOA Groundfish Fisheries** -- In late 2022 NOAA signaled its intent to reinstate an ESA Section 7 consultation on the effects of Bering Sea and Gulf of Alaska groundfish fisheries on listed species and critical habitat. The GOA fisheries review is expected to start in 2023, with the BSAI analysis to follow in 2024.
- **NOAA Proposes to ESA list Sunflower Sea Star off the West Coast & Alaska** -- On March 16<sup>th</sup> NOAA issued a proposed rule/request for comments on a threatened listing for the Sunflower Sea Star. Although there is some bycatch of the Sea Star in pot gear fisheries, NOAA is not considering any new fishery restrictions other than a requirement that Sea Stars be gently removed and released from fishing gear.
- **Earth Justice Files Tribal Lawsuit on BSAI Groundfish Fisheries** -- On April 10<sup>th</sup> the Association of Village Council Presidents (AVCP) and Tanana Chiefs Conference (TCC), represented by Earth Justice, filed a suit in U.S. District Court in Alaska to reexamine the 2023-24 NOAA groundfish catch limits for BSAI fisheries. The NGO has alleged the 2023 and 2024 groundfish specifications are arbitrary, capricious and inconsistent with NEPA requirements. The plaintiff requested the current specifications be vacated and fishing delayed until a new NEPA analysis can be completed.
- **Wild Fish Conservancy Lawsuit and the 2023 Salmon Troll Season in Alaska** -- A lawsuit, won last year by the Washington-based Wild Fish Conservancy (WFC), requires NOAA Fisheries to rewrite of the BiOp governing management of the endangered Southern Resident Killer Whale. This population resides in Washington waters and has a diet that includes King Salmon that are caught in the Southeast AK troll fishery. In its filing, WFC requested suspending the Incidental Take Statement (ITS) for the Southeast troll fishery rather than wait for the revisions to the BiOp. NOAA is pressing to revise the BiOp and submit it to the U.S. District Court -- Western Washington so that the fishery might open this year. In March 2023, the Alaska State House of Representatives voted 35-1 to support the fishery; and the AK Congressional delegation filed a friend of the court brief to keep the fishery open as well as a follow-on press release condemning the court's decision.
- **USDA Seafood Buy** -- The Delegation has announced a planned buy by the USDA under its Section 32 authority of up to \$120 million in Alaska seafood products for its school, childcare and food bank feeding programs. The buy includes sockeye salmon (canned -- \$37.5 million, fillets -- \$30 million) and Pacific groundfish (\$52 million).
- **FY 2024 President's Budget Request -- National Marine Fisheries Service (NMFS)** The budget request is seeking \$1,286,653,000 for NMFS, an increase of 17.7 percent above the enacted level. Budget increases for base programs are more modest and generally reflect below inflationary increases. Specialty initiatives such as offshore wind (+\$32.4 million) and climate-ready fisheries (+\$10 million) fare better.

- **NOAA Organic Act** -- The House Science Committee is working on legislation proposed by Chairman Rep. Frank Lucas (OK-R-3<sup>rd</sup>) to make NOAA an independent agency (like the EPA & NASA) and remove it from the Department of Commerce. The bill also calls for a GAO study to shift all ESA/MMPA responsibilities from NOAA to the USFWS. The House bill is not expected to move quickly as there is shared jurisdiction between Science and Natural Resources Committees. In the Senate, a counterpart bill from Chairwoman Cantwell (D-WA) which does not make NOAA an independent agency is expected in June.
- **NOAA 30x30 Advisory Committee** -- In January NOAA closed the nomination period for stakeholders to serve on a new advisory body titled the *Marine and Coastal Area Management Advisory Committee* related to the Biden Administration’s goal of “conserving” at least 30% of the US EEZ by 2030. The agency has not published the final membership list for this body. For additional information, visit [www.noaa.gov/marine-area-based-management-committee](http://www.noaa.gov/marine-area-based-management-committee)
- **New National Academies Committee on Offshore Wind Energy and Fisheries holds its inaugural meeting April 26-27** -- The new committee of the National Academies of Science, Engineering and Medicine (NASEM) held its first meeting in Washington, D.C. during April 26-27. The committee was established to expand and improve BOEM’s engagement and communication with the fishing community on offshore wind energy activities. For more information visit: <https://www.nationalacademies.org/our-work/standing-committee-on-offshore-wind-energy-and-fisheries>
- **S. 1227, the “Fighting Foreign Illegal Seafood Harvests Act of 2023” or the “FISH Act of 2023”** -- Sen. Sullivan (R-AK) has introduced a bill to combat illegal, unreported, and unregulated fishing at its sources globally. It was introduced on April 20<sup>th</sup> and referred to the Senate Commerce, Science, and Transportation Committee. There is no House counterpart.
- **SIMP Expansion Proposed Rule** -- Back On December 28<sup>th</sup> NOAA published a proposed rule (See 87 FR 79836) that would amend the existing Seafood Import Monitoring Program (SIMP) by adding a number of species or species groups to the current program for importation of these products. The comment period was extended and finally closed on April 27<sup>th</sup>. A final rule is expected later this year.
- **NOAA’s National Seafood Strategy** -- On February 14<sup>th</sup> NOAA released for comment its draft *National Seafood Strategy* to assist the competitiveness and growth of the domestic commercial fishing/seafood industry. This action is the next to final step from the May 7, 2020 Executive Order 13921 from the Trump Administration. The public comment period was extended and finally closed on March 31<sup>st</sup>.
- **Biden Administration’s Climate Agenda Activities** -- On March 21<sup>st</sup> the White House announced a suite of climate-related actions. The Administration releasee a final Ocean-Climate Action Plan; the plan for the creation of a Pacific Remote Islands National

Monument; the 2022 status report on the “America the Beautiful” initiative (which includes the “30x30” component); and federal guidance for agencies to address ecological connectivity and wildlife corridors (including in the ocean). To review the White House statement on these issues please visit this link:

<https://www.whitehouse.gov/briefing-room/statements-releases/2023/03/21/fact-sheet-biden-harris-administration-takes-new-action-to-conserve-and-restore-americas-lands-and-waters/>

- **NOAA To Revise Magnuson-Stevens Act National Standard Guidelines for 4, 8 & 9**  
-- On March 2<sup>nd</sup> NOAA announced it is initiating a national review of the guidance for National Standards 4, 8, and 9 which outline the principles related to allocation, communities, and bycatch. Step one will be the publishing of an Advance Notice of Proposed Rulemaking (ANPR) this spring to gather initial input to inform next steps the agency might take. The agency has indicated the goals of this ANPR will be two-fold:
  1. To receive public input on the current National Standard 4, 8, and 9 guidelines and areas/issues that may benefit from further consideration and/or revisions, as appropriate; and
  2. To ensure the National Standard 4, 8, and 9 guidelines remain relevant given existing and emerging issues facing U.S. fisheries management.

There will be opportunity for public input during this comprehensive rulemaking process.

- **NOAA to Hold Public Hearing on Federal Management of Salmon in AK --**  
According to NOAA -- under a 2016 Ninth Circuit ruling, and the 2022 summary judgment opinion of the Alaska District Court in *UCIDA, et al. v. NMFS*, NOAA Fisheries must implement an amendment to the Salmon FMP by May 1, 2024 to federally manage the salmon fisheries that occur in Federal waters of upper Cook Inlet. At its April 2023 meeting, the NPFMC considered amending the Salmon FMP to manage the salmon fishery in Cook Inlet Federal waters, but chose not to take action. Absent a Council recommendation NOAA is preparing the amendment/implementing regulations pursuant to MSA section 304(c) to meet the court deadline.
- **U.S. Supreme Court to Hear NJ Commercial Fishing Case with National Implications** -- A group of NJ commercial fishermen filed a 2022 case against NOAA and the agency’s requirements that fishing operations pay for on-board observers in the East Coast Atlantic herring & mackerel fisheries. The Supreme Court will hear the case in the term that runs from fall 2023 to spring 2024. The lower court D.C. Circuit decision, if affirmed, would permit the agency to mandate that arrangement in any fishery where industry funding is “necessary and appropriate” for fulfilling a fishery management measure and would continue the status quo. However, if the Supreme Court overturns the decision, it may have implications for all industry-funded observer program in Federally-managed fisheries.