

# Report from the Tribal Consultation on Bering Sea Salmon Bycatch Management

Prepared by Gretchen Harrington and Brandee Gerke, National Marine Fisheries Service (NMFS).

Reviewed by the consultation participants.

On Tuesday, April 7, 2015, NMFS and the Department of State conducted a tribal consultation with representatives from the Tanana Chiefs Conference (TCC), the Stevens Village Tribal Council, Association of Village Council Presidents (AVCP), Yukon River Drainage Fisheries Association (YRDFA), Kawerak Inc., and Bering Sea Fishermen's Association (BSFA). These organizations sent NMFS and the Department of State letters requesting a consultation to discuss the salmon bycatch management measures under consideration by the North Pacific Fishery Management Council (Council, letters attached).<sup>1</sup> These organizations prepared a letter for the Council on these issues (attached).

## Participants:

Myron Naneng, President, AVCP

Rebecca Robbins Gisclair, Sr. Fisheries Policy Advisor, YRDFA

Ben Stevens, Stevens Village Tribal Council

Art Nelson, Interim Executive Director, BSFA

Gale Vick, Fisheries Consultant, TCC

Rose Fosdick, Director for Natural Resources, Kawerak Inc.

Sky Starkey, Landye Bennett Blumstein LLP

Anna Crary, Landye Bennett Blumstein LLP

Michael Clark, Office of Marine Conservation, Bureau of Oceans & International Environment & Scientific Affairs, Department of State

Jim Balsiger, Regional Administrator, Alaska Region, NMFS

Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries, NMFS

Lauren Smoker, NOAA General Counsel, Alaska Section

Gretchen Harrington, NEPA Coordinator, Alaska Region, NMFS

Brandee Gerke, Supervisor, Ecosystem Branch, Sustainable Fisheries, Alaska Region, NMFS

Mr. Naneng started the consultation by explaining the restrictions and hardships experienced by subsistence fishermen from Yukon and Kuskokwim area villages. Mr Naneng stated that Tribal members

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<sup>1</sup> At its April 2015 meeting, the Council considered measures to change the management of Chinook and chum salmon prohibited species catch (PSC) in the Bering Sea pollock fishery. Currently, Chinook and chum salmon PSC are managed under two different programs, which create inefficiencies and do not allow the pollock fishery the flexibility to modify their harvest patterns and practices to effectively minimize both Chinook and chum salmon PSC. The Council designed five alternatives to make salmon PSC management more effective, comprehensive, and efficient by providing opportunities for increased flexibility to respond to changing conditions and greater incentives to reduce bycatch of both salmon species. To address the chronic low returns of Chinook salmon, the alternatives also include improvements to further reduce Chinook salmon PSC. The measures under consideration include—

- Alternative 1, Status quo (no action).
- Alternative 2, Incorporate chum salmon into existing Chinook salmon Incentive Plan Agreements.
- Alternative 3, Require more stringent restrictions for Chinook salmon PSC in the Incentive Plan Agreements.
- Alternative 4, Modify the existing pollock summer season to begin and/or end earlier and reallocate 5 or 10 percent of the pollock harvest from the summer B season to the winter A season.
- Alternative 5, Require a lower performance standard and lower PSC limit in years of low Chinook salmon abundance.

feel like they are an endangered species because they are completely shut out from being able to fish. Mr. Naneng has not been able to commercially fish Chinook salmon in the Yukon since the 1980s, and is not able to teach the next generation to fish for Chinook. Tribes are interested in finding ways to reduce salmon bycatch in the Bering Sea. They have had to place a fishing moratorium on themselves to limit the catch of Chinook salmon. Mr. Naneng stated that tribal members are frustrated with the U.S. Government, which is supposed to be working in partnership with the tribes. The U.S. Government is giving the resources to the people who make the most money. Mr. Naneng stated that without the ability to fish, people from rural areas have to move to urban areas. Mr. Naneng stated that people displaced from rural areas are not able to find jobs, and they can no longer get food through subsistence activities. Mr. Naneng stressed that people are expecting action will be taken at this Council meeting. Mr. Naneng stated that those active in the pollock fisheries view the salmon as not having value, but for the people living on the rivers it is priceless.

Mr. Naneng's biggest concern is that currently they are not allowed to fish for Chinook salmon. Mr. Naneng stated that tribal members are concentrating on fishing for chum, silver, and red salmon. Soon they will have too large of an impact on these other species, similar to what happened in the 1990s — then what will they have left? Common sense tells us that we have to do something. Mr. Naneng would like answers from this consultation that tribal representatives can take back to the people that live on the river systems to bring some hope back to the villages. What is NMFS going to do to protect its trust resources? Some of the communities north of the Yukon River have nothing left. Tribes are doing their part to protect the river systems.

Dr. Balsiger explained that NMFS' opportunity to influence salmon bycatch is through the Council process. The Council recommends fishery management actions to NMFS. NMFS can disapprove the Council's recommendations, but we do not make our own independent of the Council. The Council developed the Amendment 91 program to reduce Chinook salmon bycatch. With salmon abundance as low as it is, it may be possible for the pollock trawlers to avoid more salmon, and that's why the Council is again looking at measures to further reduce salmon bycatch. NMFS is consulting with tribal representatives to be sure the Council is aware of tribal concerns. Dr. Balsiger encouraged tribal representatives to testify in front of the Council to get the eleven Council members to understand the tribal perspective. That's probably the most effective thing that tribal members can do at this meeting. Information on subsistence salmon fishing is laid out in the analysis, but it does not have the same impact as when someone comes to talk to the Council. Whatever the Council recommends, NMFS will work expediently to review, and if approved, implement the Council's recommendations.

Mr. Clark explained the role of the Department of State in meeting obligations under the Pacific Salmon Treaty and other international agreements.

Ms. Gisclair explained that while tribal representatives understand the need to work through the Council process at this time, Dr. Balsiger represents the Federal Government and as such has trust responsibilities to reduce salmon bycatch commensurate with declines in salmon harvests. We have not seen significant reductions in salmon bycatch as runs have continued to decrease. Tribal representatives want NMFS to hear tribal concerns that Chinook escapement goals are not being met.

Mr. Stevens explained that at the last consultation, he requested consideration of what residents in rural Alaska were experiencing, the real people who are just trying to eat. He is now demanding that NMFS represent the interests of rural Alaskans and take action in consideration of the real people who do not have a voice. The Council does not hear from rural people who do not understand the Council's process. Mr. Stevens understands and appreciates the quagmire of pressures that influence the Council members as they are deciding how to vote. On behalf of Stevens Village, he encourages NMFS to take action because we need to make sure Chinook salmon stocks survive and that people are able to put salmon on their table. Mr. Stevens asked Dr. Balsiger how he is going to vote on this issue.

Mr. Merrill explained that NMFS has been committed to improving the Amendment 91 program. A lot of work has gone in to figuring out how to further reduce Chinook bycatch in the pollock fishery. Listening to public testimony and Council debate is important before deciding how to vote. The central question is what can the pollock fleet do better? How do we improve the ability of each pollock vessel to avoid salmon bycatch at all times?

Mr. Stevens requested NMFS to consider that the Magnuson-Stevens Act was developed by bureaucrats, lawyers, and others, and there is no tribal voice in the statute. Mr. Stevens explained that his son asked him last year at fish camp why they were not going to set the net and harvest salmon. The people on the river have made the commitment not to fish.

Dr. Balsiger explained that he appreciates the fact that tribal representatives have taken the time to consult with NMFS.

Mr. Starkey explained that more than listening, it matters what NMFS does after the consultation. NMFS has trust responsibility to get subsistence food to these rivers under Title 8 of the Alaska National Interest Lands Conservation Act because NMFS is the only Federal agency with a vote on the Council. Aside from that, it's a pure matter of equity. The Council will balance whether the industry can catch their TAC, the people who are entitled to harvest salmon, and the need for escapement. Tribal representatives want to know how NMFS will vote on Alternative 5 and whether NMFS supports a 60 percent reduction in the bycatch limit and performance standard in years of low abundance. Does NMFS have any concerns with Alternative 5 that the parties at the consultation can address? The poorest people are bearing the burden of salmon bycatch. NMFS is the appropriate agency to balance

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<sup>2</sup> More information on the Council's outreach meetings is available at [http://legistar2.granicus.com/npfmc/meetings/2015/4/923\\_A\\_North\\_Pacific\\_Council\\_15-04-06\\_Meeting\\_Agenda.pdf](http://legistar2.granicus.com/npfmc/meetings/2015/4/923_A_North_Pacific_Council_15-04-06_Meeting_Agenda.pdf), under agenda item C4 Bering Sea Salmon Bycatch – Final Action.

that and bring that in to the equation. Tribal representatives made a full court press when the Council adopted Amendment 91 and the 60,000 Chinook salmon PSC limit but it did not make a bit of difference because the PSC limit was too high. Tribal representatives do not agree that Amendment 91 is working. Amendment 91 was supposed to result in the lowest bycatch at all levels of abundance but it did not work in 2011 when the pollock fleet caught a lot of Chinook salmon in the B season. We need the reductions in the PSC limit that are in Alternative 5.

Ms. Vick explained that the representatives at this consultation have been attending meetings with their communities. Yukon River communities are suddenly aware of the pressures of climate change on salmon. Yukon River communities are new to the Council process. The challenge is getting everybody up to speed. What they do know is that they cannot fish. The pressure is greater on the upper river villages than the lower river villages, and the problems vary as you go up the river. Canada is also having problems. All of these communities bear the brunt of not having fish on the table. Yukon River communities do not have as much representation as they'd like because they cannot get people to the Council meeting and are not going to have the proportionate testimony for the importance of the issue. It is hard to explain to people why we still have a huge bycatch potential. People do not understand that salmon have any protection.

Ms. Gisclair explained that Alternative 5 with a 60 percent reduction in the bycatch limit and performance standard is really critical. Bycatch at the 60,000 Chinook salmon PSC limit and 47,591 Chinook salmon performance standard would devastate the Chinook salmon stocks. Every single fish is necessary for escapement. Under Alternative 5, the 60 percent performance standard would have only been exceeded in 2011 which is the year we're trying to address. People on the rivers are changing their behavior, and it's the responsibility of the pollock fishery to change their behavior. What can we do to convince NMFS to vote for Alternative 5?

Dr. Balsiger explained that NMFS and the Council have clearly been trying to reduce salmon bycatch in the Bering Sea pollock fishery. NMFS has supported all of the bycatch reductions. He'd like to find pragmatic solutions that we can put in place that will result in salmon savings. That's why NMFS has moved progressively.

Mr. Merrill explained that in the big picture NMFS needs to make sure we get something out of this process that complies with the Magnuson-Stevens Act and, as required, balances the necessary factors. How do we take the current 2 percent impact rate and lower that? How low can we take the bycatch limit and the performance standard in periods of low abundance to achieve a lower impact rate? There is a fair bit of uncertainty about how to do that. Public testimony will be important for understanding the impacts of the Alternative 5 limits. Everyone at the Council is struggling with which limits maximize the benefit of the program. We are all trying to balance how to put the different alternatives together to take the 2 percent impact to an even lower level, and there's uncertainty as to whether, and how much, the impact rate can be reduced.

Mr. Naneng explained that subsistence fishermen were cited for having one salmon in their nets, and they had to pay a fine they could not afford. That one Chinook salmon was going to put food on the

table. There should be a penalty on the people who catch the salmon bound for Western Alaska—confiscate their boats and equipment. What is good for one American should be good for every American. The ones that get away with it are the ones who can afford it the most.

Ms. Fostick explained that tribal people have contributed to the conservation of salmon for a long time, and the Chinook and chum salmon runs are not producing enough salmon to support subsistence. They are sacrificing with no benefit. The local economy is not in dollars, it is in salmon, which is culturally, spiritually, and emotionally valuable. If we can't have a seat at the Council table, we want NMFS to say this for us.

Dr. Balsiger agreed that Chinook salmon bycatch should be as low as reasonable. The best use of salmon is not bycatch.

Mr. Nelson explained that, under Alternative 5, the trigger on the 3 river system index is only looking at years with low abundance but at extremely low years — the worst of the worst. In those situations, when the rivers shut down — what level of bycatch is acceptable? In these situations it's not the 60,000 PSC limit or the 47,591 performance standard. When drastic management measures are being taken in the river, the 60 percent cut in the bycatch limit and performance standard is appropriate. The pollock fleet is smart and they will adapt. The extra cost to catch pollock is nothing compared to the pain experienced by people on the rivers.

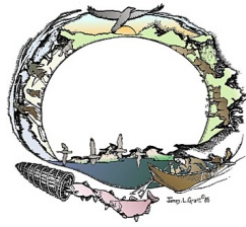
Mr. Starkey suggested NMFS consider the position western Alaska has been in for a while. When the 60,000 PSC limit was put in place, tribal representatives told NMFS and the Council that they could not afford that level of bycatch. Testimony at the Council meeting in Nome was shocking about the lack of effort of some pollock fishermen to reduce bycatch. NMFS should make its decision based on subsistence users and balance uncertainty in the direction of subsistence users. NMFS should take seriously the trust responsibility and treaty obligations discussed in this consultation. Let the pollock fleet come back and ask for a remedy if they are as adversely impacted as they say they will be. Keep tribal perspectives in mind when you vote.

Ms. Vick asked if there is a lesson to learn from how Canada deals with halibut bycatch and whether they have lower halibut bycatch.

Dr. Balsiger explained how halibut bycatch is addressed in the British Columbia groundfish fishery. While their bycatch rate of halibut is much higher than in the Bering Sea, bycatch numbers are lower due to the smaller amount of total groundfish caught in British Columbia. They use individual bycatch quotas for every species that they can trade in real time. While their halibut bycatch amount was reduced, it was also devastating for parts of the British Columbia fishery. However, the Council needs to think about all kinds of options for minimizing bycatch.

Mr. Starkey and Mr. Naneng thanked Dr. Balsiger, Mr. Clark, and agency staff for consulting. They look forward to seeing the results in the next few days.

Dr. Balsiger and Mr. Merrill closed by thanking participants for sharing their concerns, explained that consultations are important to hear what tribal representatives are thinking, and reiterated encouragement of testimony at the Council meeting that tells the different stories of impacted tribal members.



Tanana Chiefs Conference, 122 First Avenue, Fairbanks, AK 99701  
Association of Village Council Presidents, 101 Main Street, Bethel, AK 99559

March 17, 2015

Dr. Jim Balsiger, Regional Administrator  
National Oceanic and Atmospheric Administration  
Alaska Regional Office  
PO Box 21668  
Juneau, AK 99802-1668

**Re: Tribal Consultation for C-2 Bering Sea Chinook and Chum Salmon Bycatch Management Proposals**

Dear Dr. Balsiger:

Thank you for the opportunity to consult with you prior to the Council's meeting in December 2014. The Tanana Chiefs Conference and the Association of Village Council Presidents respectfully request another tribal consultation about the C-2 Bering Sea Chum and Chinook salmon bycatch management measures proposed for the North Pacific Fisheries Management Council's April 2015 meeting.

In December 2014, the Council released its initial review of Chum and Chinook bycatch measures in the Bering Sea Pollock fishery. The review proposed alternative measures to reduce Chum and Chinook salmon bycatch in the Bering Sea, including incorporating Chum salmon prohibited species catch (PSC) with Chinook salmon incentive plan agreements (IPA); modifying existing Chinook salmon IPAs to include additional incentives to reduce bycatch; revising Bering Sea pollock fishery season dates; and revising federal regulations to lower the performance standard indexed to years of low Chinook abundance.

We are aware that the Council will be considering these proposed measures at the April 2015 meeting, and we agree that it is important for the Council to continue developing Chum and Chinook salmon bycatch measures. We respectfully request an opportunity for tribal consultation

regarding the proposed measures, during the Council Meeting and prior to the Council taking final action on the proposals. For scheduling, please contact Anna Crary at [annac@lbblawyers.com](mailto:annac@lbblawyers.com) or (907) 868-9229.

Sincerely,



Victor Joseph, President  
Tanana Chiefs Conference



Myron Naneng, Sr., President  
Association of Village Council Presidents

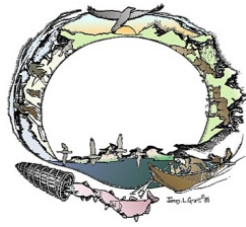
Cc:

The Honorable Julie Kitka

Sam Cotten, Acting Commissioner, Alaska Department of Fish and Game

Dan Hull, Chairman, North Pacific Fishery Management Council





Tanana Chiefs Conference, 122 First Avenue, Fairbanks, AK 99701  
Association of Village Council Presidents, 101 Main Street, Bethel, AK 99559

March 17, 2015

Michael Clark  
Office of Marine Conservation  
Bureau of Oceans & Int'l Environ. & Scientific Affairs  
Department of State  
Room 7820  
Washington, DC 20520

**Re: Tribal Consultation for 2015 C-2 Bering Sea Chinook and Chum Salmon Bycatch Management Proposals and Existing Treaty Obligations**

Dear Mr. Clark:

The Tanana Chiefs Conference and the Association of Village Council Presidents respectfully request an opportunity for tribal consultation about the United States' obligations under the Yukon River Salmon Agreement, and Annex of the Pacific Salmon Treaty and the proposed C-2 Bering Sea Chum and Chinook salmon bycatch management measures the North Pacific Fishery Management Council will consider at its April 2015 meeting. We believe it is important that the Council consider the effect any final action will have on existing treaty rights and obligations, and we believe the Department of State plays an important role in advising the Council that its final action must comply with the Yukon River Salmon Agreement of the Pacific Salmon Treaty.

In December 2014, the Council released its initial review of Chum and Chinook bycatch measures in the Bering Sea Pollock fishery. The review proposed alternative measures to reduce Chum and Chinook salmon bycatch in the Bering Sea, including incorporating chum salmon prohibited species catch (PSC) with Chinook salmon incentive plan agreements (IPA); modifying existing Chinook salmon incentive plan agreements to include additional incentives to reduce bycatch; revising Bering Sea pollock fishery season dates and seasonal allocations; and

revising federal regulations to lower the performance standard and hard cap indexed to years of low Chinook abundance. It is essential that any action taken to reduce Chinook and chum salmon bycatch also consider our treaty obligations under the Yukon River Salmon Agreement of the Pacific Salmon Treaty, and the trust responsibility of the United States to federally recognized tribes.

The Council will be taking final action on these proposed measures at the April 2015 meeting. We respectfully request an opportunity for tribal consultation regarding the effect of these measures on our treaty obligations, during the Council's meeting but prior to the Council taking final action on the proposals. For scheduling, please contact Anna Crary at [annac@lbbblawyers.com](mailto:annac@lbbblawyers.com) or (907) 868-9229.

Sincerely,



Victor Joseph, President  
Tanana Chiefs Conference



Myron Naneng, Sr., President  
Association of Village Council Presidents

Cc:

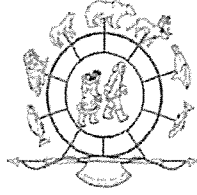
The Honorable Julie Kitka

Sam Cotten, Acting Commissioner, Alaska Department of Fish and Game

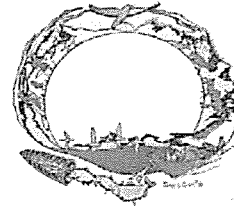
Dan Hull, Chairman, North Pacific Fishery Management Council



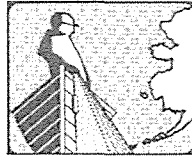
Association of Village  
Council Presidents



Kawerak, Inc.



Tanana Chiefs Conference



Bering Sea Fishermen's Association



March 30, 2015

Mr. Dan Hull, Chair  
North Pacific Fishery Management Council  
605 West 4<sup>th</sup> Avenue, Suite 306  
Anchorage, AK 99501

**Re: Agenda Item C-4 Bering Sea Salmon Bycatch Final Action**

Dear Chairman Hull and Council members:

We are submitting these comments on behalf of the Association of Village Council Presidents (AVCP), Bering Sea Fishermen's Association (BSFA), Kawerak Inc., Tanana Chiefs Conference (TCC) and the Yukon River Drainage Fisheries Association (YRDFA), collectively representing 118 communities in the Arctic-Yukon-Kuskokwim region. AVCP is an ANCSA regional non-profit and tribal consortium of the 56 tribes of the Yukon-Kuskokwim Delta region. BSFA is a non-profit fisheries association serving the needs of Western Alaska commercial and subsistence fishermen. Kawerak is an ANCSA regional non-profit and the tribal consortium in the Bering Strait region of Alaska, where there are 20 federally recognized tribes. Tanana Chiefs Conference (TCC) is an ANCSA regional non-profit and tribal consortium of the 42 villages of Interior Alaska in the Yukon and Kuskokwim watersheds. YRDFA is an association of commercial and subsistence fishers on the Yukon River.

We write today to seek your help in rebuilding the once magnificent Chinook salmon resources in our region by doing everything you can to reduce a source of mortality over

which you have control – salmon bycatch in the Bering Sea pollock fishery. As you know, the Chinook salmon in our region are experiencing a crisis of epic proportions. Our communities are suffering greatly as a critical source of food, economy and culture has all but disappeared. We attempt to explain on paper an overwhelming loss which touches every aspect of the fabric of our communities and cultures. This loss is already being lived by our communities, and we are continuing to sacrifice the little subsistence opportunity that remains to give our precious Chinook salmon stocks a chance at rebuilding. **We ask you to join us in these efforts by reducing one of the only remaining sources of mortality over which we have control – bycatch in the Bering Sea pollock fishery.** In this situation every single Chinook salmon is critical to the future and rebuilding of these historic runs. At this point, it is not only a matter of conservation, but also a matter of equity and basic human rights to food security that bycatch is reduced as well.

The ultimate goal of bycatch reduction should be zero, and we should be constantly striving towards this goal. Chum salmon is also of vital importance to subsistence communities in these times of Chinook salmon declines, and ensuring adequate protections are in place for reducing chum salmon bycatch is also critical. **To that end, we ask you to take final action at this meeting to adopt a suite of measures which will both ratchet down the hard cap and performance standard in time of low abundance and adjust Incentive Plan Agreements to achieve the greatest bycatch reduction possible in every year. Specifically, we ask you to select the following Alternatives as your Preferred Alternative:**

- **Alternative 5, option 2 (60% reduction), with the sub-option to apply the 60% reduction to the hard cap; and**
- **Alternative 2; and**
- **Alternative 3, options 1-5.**

In selecting a preferred alternative, we see Alternatives 2 and 5 (with a 60% reduction in both the performance standard and cap) as critical components. As the Council builds a preferred alternative, those options within Alternative 3 and 4 which can work in concert with Alternatives 2 and 5 to achieve the greatest bycatch reduction possible should be selected. A more specific description of our recommendation follows.

#### 1. The Dire Status of Chinook Salmon in Western Alaska

This Council has heard repeatedly in public comment over the past five years and in this analysis about the dire situation surrounding the status of Chinook salmon stocks in Western Alaska. Generally, subsistence fisheries have been severely restricted for years throughout the region. In 2014, the situation reached a new low: “subsistence fishing for Chinook salmon was closed or restricted by reduced fishing time and/or gear restrictions from

Kuskokwim Bay to northern Norton Sound.”<sup>1</sup> On both the Yukon River and Eastern Norton Sound, subsistence was completely closed. The Kuskokwim River was almost completely closed.<sup>2</sup> Despite severe restrictions in 2013, very few escapement goals were met in the region that year. In 2014, escapement goals were met in part of the region, but only with the closures of subsistence and commercial fisheries.<sup>3</sup> On the Yukon River, Canadian escapement goals have only been met in 3 of the last 9 years.

Restrictions and subsistence closures in Western Alaska must be understood in context. In 2012, 77% of the subsistence Chinook salmon harvests occurred in the Yukon, Kuskokwim and Norton Sound-Port Clarence region.<sup>4</sup> Since 1994, over 50% of the subsistence harvest of Chinook salmon has occurred in the Kuskokwim area.<sup>5</sup> Western Alaska is thus highly dependent upon Chinook salmon subsistence harvests, and the region at issue is responsible for the vast majority of the subsistence harvest of Chinook salmon in the state of Alaska.

Chinook salmon is clearly a critically important species by the numbers. It is also important for a number of reasons far beyond a number. Chinook salmon are the first species of salmon to arrive in the summer, and hold an important place culturally and spiritually. Subsistence fishing is critical as a community and family activity. The declines in Chinook salmon have resulted in vacant fish camps up and down the rivers and this important source of culture and intergenerational knowledge transfer is being lost as we speak.

Yet, subsistence needs for this critically important species of Chinook salmon have not been met for years, with the situation worse each year than it was the preceding year. On the Yukon River, Amounts Necessary for Subsistence (ANS) set by the Alaska Board of Fisheries have not been met for the last seven years.<sup>6</sup> On the Kuskokwim, ANS has not been met for the past five years.<sup>7</sup> On the Yukon River, preliminary estimates indicate that the 2013 subsistence harvest was only 12,568 Chinook salmon, compared to an average harvest around 55,000 fish.<sup>8</sup> In 2014, preliminary data estimates subsistence harvest of Chinook

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<sup>1</sup> North Pacific Fishery Management Council and National Marine Fisheries Service, Public Review Draft, *Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis, Bering Sea Chinook and Chum Salmon Bycatch Management Measures 105* (Mar. 2014) [hereinafter *EA/RIR/IRFA*].

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 106.

<sup>4</sup> *Id.* at 114.

<sup>5</sup> *Id.* at 116.

<sup>6</sup> See Fig. 23, *Id.* at 121.

<sup>7</sup> See Fig. 24, *Id.* at 121.

<sup>8</sup> *Id.*

salmon on the Yukon River was 3,400 Chinook salmon.<sup>9</sup> It is important to note that 855 of those fish were Chinook salmon caught in ADF&G test fisheries and given away to subsistence users.<sup>10</sup> The few Chinook which were harvested were caught in chum salmon fisheries which were opened at the end of the season after 90% of the Chinook salmon run had passed.<sup>11</sup>

The declining Chinook salmon stocks have also impacted commercial fisheries, creating an economic crisis. No directed commercial fishery for Chinook salmon has been allowed on the Yukon since 2007. The impacts from commercial fisheries can clearly be seen in terms of income – in the Wade Hampton census district (which includes the lower Yukon and Kuskokwim) Chinook salmon fisheries provided 90-100% of the salmon revenue prior to 2006. Since 2011, it has been 0%.<sup>12</sup>

The declines in Chinook salmon have had and continue to have broad negative impacts – on subsistence and commercial fisheries, on our community members’ nutrition, on the tradition of fish camps, and on the very social fabric of these communities.

2. Bycatch must be reduced to rebuild salmon stocks and to meet the Council/NMFS’s legal obligations.

Western Alaska Chinook stocks are at all-time lows. The causes of the decline are unclear, and fisheries managers are left to manage that which they can control to rebuild the stock. Sources of mortality in-river have already been reduced to the maximum extent possible. In times of low abundance, it is critical that the pollock fishery is reduced as well to provide for rebuilding. Rebuilding is no new concept to this Council. In fact, if Western Alaska salmon were a federally managed species, a rebuilding plan would be in place and bycatch reductions would have been required long ago. According to the analysis, “Chinook salmon stocks in western Alaska continue to fail to meet escapement goals, and consequently all sources of mortality must be reduced. This is similar to reducing all known sources of mortality when a fish or crab stock under federal management is declared overfished and subject to a rebuilding plan.”<sup>13</sup> According to the most recent genetic stock identification, over 65% of the Chinook salmon caught as bycatch in the Bering Sea are of

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<sup>9</sup> Stephanie Schmidt, Alaska Department of Fish and Game, Report to the Eastern and Western Interior Federal Subsistence Regional Advisory Councils, Transcript at 181 (Mar. 4, 2015), *available at* <http://www.doi.gov/subsistence/library/transcripts/upload/Region-6-Region-9-04-Mar-15.pdf>.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> EA/RIR/IRFA, *supra* note 1, at 232.

<sup>13</sup> *Id.* at 18.

Western Alaska origin.<sup>14</sup> Thus bycatch has a direct impact on Chinook salmon and to aid in rebuilding, must be reduced.

The Council is also obligated to reduce bycatch under National Standard 9 of the Magnuson Stevens Act, which requires that NMFS and the Council minimize bycatch to the extent practicable. The current cap levels do not meet this obligation and are simply too high to adequately protect salmon and meet the obligations of National Standard 9.

While reducing bycatch of any species is important, reducing bycatch of salmon is particularly so. As a keystone species for the ecosystem and for subsistence users, saving salmon is not just about dollars, jobs or protein. Subsistence users, most of whom are members of federally-designated tribes, depend on Chinook salmon for their sustenance, cultures and economies, as described above. The United States government has a trust responsibility to ensure the health and welfare of the tribal members of the Alaska Native Villages in the Yukon and Kuskokwim drainages.<sup>15</sup> The Department of Commerce acknowledges the federal fiduciary relationship with Alaska Natives through its Administrative Order 218-8 and Tribal Consultation and Coordination Policy. Upon passage of the Alaska Native Claims Settlement Act, the congressional Conference Committee specifically reported that it “expects both the Secretary [of the Interior] and the State to take any action necessary to protect the subsistence needs of Alaska Natives.”<sup>16</sup> Additionally, when Congress enacted the Alaska National Interest Lands Conservation Act (ANILCA) it stressed that subsistence “is essential to Native physical, economic, traditional, and cultural existence....”<sup>17</sup> The Federal Subsistence Board, charged by the Secretaries of Interior and Agriculture to implement Title VIII of ANILCA are on record as recommending a hard cap of no more than 30,000, and that recommendation was made before the dismal returns of the last several years, and before genetic studies demonstrated that over 65% of the bycatch was from Western Alaska stocks. The management decision to allow the pollock fishery to discard 60,000 Chinook as bycatch while the subsistence harvest is closed violates the trust responsibility of the federal government to ensure Alaska Native subsistence needs are met.

In addition, NMFS and the Council are also bound by international law to reduce salmon bycatch. Under the terms of the Yukon River Salmon Agreement, an annex of the Pacific Salmon Treaty, the U.S. agreed to “increase the in-river run of Yukon River origin salmon by reducing marine catches and by-catches of Yukon River salmon. They shall further

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<sup>14</sup> EA/RIR/IRFA, *supra* note 1, at 110.

<sup>15</sup> *Alaska Chapter, Associated General Contractors v. Pierce*, 694 F. 2nd 1162, 1169 n. 10 (9th Cir. 1982).

<sup>16</sup> S. Rep. No. 581, 92d Cong., 1st Sess. 37 (1971).

<sup>17</sup> See *Native Village of Quinhagak v. U.S.*, 307 F.3d 1075, 1082 (9<sup>th</sup> Cir. 2002) quoting 15 U.S.C. § 3111(1).

identify, quantify and undertake efforts to reduce these catches and by-catches.”<sup>18</sup> The treaty also commits the U.S. to meet escapement goals, allowing sufficient Chinook salmon to reach Canada each year. Amendment 91, which allows for bycatch levels of 60,000 Chinook salmon in some years, and 47,591 Chinook salmon in all years, does not represent a “reduction” in bycatch from historical levels. The bycatch of Yukon River Chinook salmon also contributes to repeated failures to meet the United States’ treaty obligation via the mandated escapement goals. This not only violates the obligations of the United States under the treaty, but places the entire burden of meeting the treaty obligation on the backs of in-river subsistence and commercial fishers.

3. Alternative 5 with a 60% reduction of both the cap and performance standard should be included in the preferred alternative.

It is critical that the Council adopt Alternative 5 to reduce the overall cap and performance standard by 60% in times of low salmon abundance. In this regard, it is important to note the background and history of the current cap levels. The cap and performance standard originally set under Amendment 91 were set at a time when Yukon River Chinook salmon runs were struggling, but before the widespread Chinook salmon declines and severe subsistence restrictions and closures were yet to be realized. Even at that time, an astoundingly broad number of managers and groups recommended the Council adopt an overall cap at half the level of the cap which the Council ultimately selected. In fact, the Federal Subsistence Board, the Yukon River Panel, the Alaska Federation of Natives, numerous Federal Subsistence Regional Advisory Councils, our groups and many tribes and individuals all recommended a cap in the 30,000-32,500 range.

The overall caps set in Amendment 91 were set far too high to ensure a healthy future for our salmon runs. Given the significant changes in the stock status of Western Alaska Chinook salmon since these caps were set, the current cap numbers are particularly egregious. We see Alternative 5 as the minimum step the Council can and must take at this time to fulfill your numerous legal responsibilities described above and take steps to reduce the allowable salmon bycatch in the pollock fishery. Alternative 5 does not lower the performance standard or cap permanently. It merely puts a system in place under which in times of extremely low Chinook salmon abundance across three of the major river systems in Western Alaska, these caps would be lowered. Under Alternative 5, this lower cap would only have been in effect in 2000 and from 2010 to 2014.<sup>19</sup> This encompasses the years in which escapements have not been met and subsistence has been severely restricted – the worst of the worst. Taking action now to lower the caps in these years of extremely low

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<sup>18</sup> Pacific Salmon Treaty, Annex IV Chapter 8 (27)(Yukon River Salmon Agreement)(2002).

<sup>19</sup> EA/RIR/IRFA, *supra* note 1, at 63.



abundance is a critical step for the Council to ensure that bycatch is reduced in the years when every source of mortality must be reduced.

Based on our understanding of the incentive plan structure, lowering the performance standard would lower the the bycatch “target” for the pollock industry. Lowering the performance standard will, we expect, serve to ensure that bycatch remains below this number. However, under the structure of Amendment 91, the pollock fleet can fish up to the overall cap in any two out of seven years *without consequence*. That means it currently remains possible and perfectly legal for the pollock fishery to catch up to 60,000 Chinook salmon. This level of bycatch would be absolutely devastating at the current levels of Chinook salmon abundance. It would be equally devastating to the rebuilding of the run to have this level of bycatch occur just when it is starting to recover. Therefore reducing the overall cap by 60% is essential.

Beyond the necessity based on salmon recovery alone to reduce the hard cap, it is also important to reduce the performance standard and hard cap together. Reducing the performance standard without a comparable reduction in the hard cap creates a situation where the incentive to remain under the performance standard is greatly reduced, as vessels have much more to gain by exceeding the performance standard: “An increased gap between the performance standard threshold and hard cap would encourage vessels to be more likely to risk exceeding the lower level in those years and if so revise the IPA for the resulting hard cap of their portion of the 47,591, and/or respond slowly to the need to operate under the lower performance standard as the hard cap would not be imposed until the third of 7 years.”<sup>20</sup> The analysis refers to the benefits of a larger gap between the performance standard and overall cap (e.g. lowering the performance standard but not the cap) as providing an “insurance policy” or “buffer.”<sup>21</sup> This concept completely ignores the context of this action – which is to create a salmon bycatch management program which is appropriate to the circumstance of lower Chinook abundance. There are no buffers or insurance policies for in-river users, and if Chinook salmon should return to higher abundances, any surpluses must first go to rebuilding the run and to meeting subsistence needs. Creating a buffer or insurance policy for the pollock fishery simply assures that the pollock fishery continues to be first in-line for any returning Chinook salmon, granting it an inequitable priority above that of the recovery of the resource and of subsistence users. Prioritizing bycatch usage in this manner is counter to the law, and to basic principles of equity.

The maximum reductions proposed in Alternative 5 (60%) still provide broad opportunity for the pollock fishery to prosecute their fisheries. A 60% reduction results in a

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<sup>20</sup> EA/RIR/IRFA, *supra* note 1, at 184.

<sup>21</sup> *See Id.* at 176, 177.

hard cap of 24,000 and performance standard of 19,036. Looking at the years since Amendment 91 was in place (2011-2014), the lower hard cap would only have been reached in 2011.<sup>22</sup> Going back to 2008, 2011 is still the only time the 24,000 Chinook salmon hard cap would have been exceeded.<sup>23</sup> The 19,036 performance standard number has also only been exceeded one time since 2009, again in 2011. This means that even these lower hard cap and performance standards will not result in economic loss to the pollock fishery. It's important to note that the year 2011, the only year in excess of these levels, was the year in which extensive pollock fishery occurred in October when Chinook salmon bycatch is known to be high. Many elements and options which the Council has developed in this amendment package are specifically designed to ensure that what happened in 2011 does not happen again.

Overall, when Chinook salmon stocks are at a level of low abundance, as they currently are, it is critical that all sources of mortality are reduced. In-river harvests are reduced as Chinook salmon returns decrease, and at present this means there are very little or no Chinook salmon harvests allowed on many Western Alaska rivers. Bycatch in the pollock fishery must be lowered at these times as well. The current system in which subsistence fisheries can be completely closed in-river while bycatch limits are unchanged is not only inequitable, but seems to violate the "subsistence first" provisions of ANILCA in spirit if not in law. Alternative 5 with a 60% reduction of the hard cap and performance standard is a critical step towards righting this imbalance and should be included as part of the Council's preferred alternative.

4. Alternative 2 should be included in the Council's preferred alternative.

Alternative 2 proposes a means to further chum salmon bycatch reductions measures. By integrating chum salmon bycatch measures with Chinook salmon bycatch measures this provides a mechanism for ensuring that chum salmon bycatch reduction measures do not inadvertently increase Chinook salmon bycatch. With declines in Chinook salmon, chum salmon are important for both subsistence and commercial fisheries, and are all that many Western Alaska communities have had an opportunity to harvest in recent years. Therefore it is essential that we have strong chum bycatch reduction measures in place.

With the changes made to Alternative 2 at the last Council meeting to retain the chum salmon savings area as a backstop for vessels which do not participate in the Rolling Hot Spot program, we support this alternative and ask the Council to include it in their Preferred Alternative. Accountability and transparency in this industry-run program are critical. To

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<sup>22</sup> EA/RIR/IRFA, *supra* note 1, at 166.

<sup>23</sup> National Marine Fisheries Service, BSAI Chinook Salmon Mortality Estimates 1991-present (Sept. 29, 2014) available at [http://alaskafisheries.noaa.gov/sustainablefisheries/inseason/chinook\\_salmon\\_mortality.pdf](http://alaskafisheries.noaa.gov/sustainablefisheries/inseason/chinook_salmon_mortality.pdf).

that end, we support inclusion of the suggested reporting requirements in Table 17, particularly items 1-5.<sup>24</sup> With the rolling hot spot program as the primary management measure for chum salmon bycatch reduction, it is important that the public is provided adequate information to monitor the functioning of this program.

#### 5. Alternatives 3 and 4

Alternatives 3 and 4 provide a variety of tools to further reduce bycatch. We support Alternative 3, Options 1-5 to utilize changes to the incentive plan agreements to ensure increased bycatch reduction at all levels of abundance. We see these as useful tools to fine-tune the IPAs to mandate greater bycatch reduction. While we see these as means to reduce bycatch, it is very difficult to assess what the precise bycatch reduction effects will be from the IPAs. This is confounded by the structure of Amendment 91 in which the specific details of the IPAs are left to industry. While this provides for maximum flexibility, it does not provide a high degree of transparency. Therefore, while we support moving forward with Alternative 3, it is critical that Alternative 3 is not selected as the only additional measure for Chinook salmon bycatch. Given the degree of crisis across Western Alaska Chinook salmon stocks, industry IPAs alone cannot provide the level of bycatch reduction needed—and surety that we will achieve the reduction. In conjunction with Alternatives 2 and 5, however, Alternative 3 can contribute to bycatch reduction.

Alternative 4 would shorten the pollock fishing season to avoid fishing in times of historically high Chinook salmon bycatch. We have concerns about the potential impacts of this alternative on Western Alaska chum salmon. We also question whether shortening the season in regulation, and thus providing less flexibility for the fleet to choose when to fish, will necessarily result in greater bycatch reduction. High bycatch in September/October may be better addressed through the IPA changes in Alternative 3. Alternative 4 also provides an option to shift pollock catch from the B to the A season. It is not clear from the analysis if this will result in significant reductions in bycatch.

Overall, in selecting a preferred alternative, we see Alternatives 2 and 5 (with a 60% reduction in both the performance standard and cap) as critical components. As the Council builds a preferred alternative, those options within Alternative 3 and 4 which can work in concert with Alternatives 2 and 5 to achieve the greatest bycatch reduction possible should be selected.

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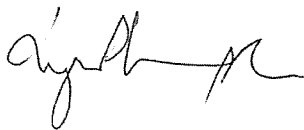
<sup>24</sup> EA/RIR/IRFA, *supra* note 1, at 83.

## 6. Conclusion

The action before the Council under this agenda item is about reducing salmon bycatch and contributing to rebuilding of critically depressed salmon stocks. Much more is at stake than dollars or jobs. Western Alaska is facing a severe loss in terms of cultures, economies, nutrition and tradition. Reducing salmon bycatch in the Bering Sea pollock fishery is one important piece to rebuilding these Chinook salmon stocks and eventually repairing these losses. **We ask the Council to comply with your legal mandates and to fulfil your obligation as managers to rebuild these stocks by taking final action at this meeting and selecting Alternatives 2, 3 and 5, option 2, with the sub-option to reduce bycatch caps in times of low abundance by 60%.**

The current crisis for Western Alaska and the extreme sacrifices being made by in-river users demand fast and meaningful action from this Council to ensure that bycatch is reduced. Given the dire situation of the Chinook salmon stocks, we ask you to urge NMFS to implement these regulations in 2016, using your emergency regulatory authority if necessary, to ensure that these new measures are in place quickly. Thank you for your continued attention to this issue of great importance to Western Alaska.

Sincerely,



Myron P. Naneng, Sr., President  
Association of Village Council Presidents



Art Nelson, Executive Director  
Bering Sea Fishermen's Association



Melanie Bahnke, President  
Kawerak



Victor Joseph, President  
Tanana Chiefs Conference



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