



January 17, 2024

The Honorable Gina M. Raimondo, Secretary of Commerce
U.S. Department of Commerce
1401 Constitution Ave NW
Washington, D.C. 20230
Via Email: TheSec@doc.gov

Re: Emergency Petition for Action Related to Chinook Salmon Bycatch in the Bering Sea Pollock Trawl Fishery

Dear Secretary Raimondo,

The Association of Village Council Presidents (AVCP)¹, Kuskokwim River Inter-Tribal Fish Commission (KRITFC)², Tanana Chiefs Conference (TCC)³, Yukon River Drainage Fisheries Association (YRDFA)⁴, and Yukon River Inter-Tribal Fish Commission (YRITFC)⁵ respectfully request that the Department of Commerce (Department) take emergency action pursuant to 16 U.S.C. § 1855(c)(1) and institute a cap of zero on any further Chinook salmon bycatch in the Bering Sea and Aleutian Islands (BSAI) pollock trawl fishery and that the emergency regulation stay in effect for 180 days. Emergency action is necessary to address the severe ecological, economic, social, and public health concerns affecting Western and Interior Alaska, including the region's communities that depend on salmon. Since the submission of an emergency petition

¹ The Association of Village Council Presidents is an inter-Tribal non-profit consortium based in Bethel, Alaska, and is controlled by 56 federally-recognized Tribes. AVCP provides human, social, and other culturally relevant services to its member Tribes, which are located in villages throughout the Yukon-Kuskokwim Delta in an area of approximately 59,000 square miles.

² KRITFC represents the interests of 33 federally recognized Tribes in fisheries management, research, and monitoring, using Yup'ik and Upper Kuskokwim Dené Knowledge and the best available Western science.

³ TCC, organized as Dena' Nena' Henash, or "Our Land Speaks," is a sovereign Tribal consortium with forty-two Tribal members across Interior Alaska, including thirty-seven federally recognized Tribes and two Alaska Native associations. TCC is also an Alaska Native non-profit corporation organized under the Alaska Native Claims Settlement Act ("ANCSA") to provide health and social services for the more than 18,000 Alaska Native people in the Interior Alaska region. TCC provides services for the interior 42 tribal communities, including 37 federally recognized Tribes. The TCC service area spans about 235,000 square miles.

⁴ YRDFA is a recognized 501(c)(3) non-profit association of subsistence and commercial fishers with the mission of protecting and promoting all healthy fisheries and cultures along the Yukon River drainage.

⁵ YRITFC represents 33 tribes along the Yukon River.

in 2021 to this effect, which the Department denied in January 2022,⁶ the situation for Tribes and communities in the Kuskokwim River, Yukon River, and Norton Sound watersheds has continued and even worsened; for example, some areas have seen coho declines on top of the Chinook and chum crashes, compounding the food security and cultural emergency these communities are experiencing.

We additionally request that the Department urge the North Pacific Fishery Management Council (Council) to initiate a regular rulemaking process to scrutinize current Chinook salmon bycatch management while the emergency regulation is in effect to create meaningful and improved long-term Chinook salmon bycatch management following the expiration of the emergency regulation.

We recognize that the Council and the Department are taking steps to produce NEPA analyses and consider regulatory management action to minimize chum salmon bycatch—though as Western Alaska Tribal organizations, including some of our organizations, have communicated elsewhere⁷, we find the current progress on this to be unsatisfactory—and that there are some measures in place to minimize Chinook salmon bycatch. However, more is needed to address the simultaneous Chinook salmon disaster in our communities. The Department must also take emergency action to eliminate Chinook bycatch to address some of the lowest Chinook runs and most restricted subsistence fishing seasons on record. We have attached the 2021 emergency petition for reference, and renew our request for emergency action.

The Tribal organizations submitting this petition represent nearly 100 Tribes and communities in Western Alaska—the communities directly affected by the collapse of salmon runs in these regions. They are supported by additional Tribal governments and allied organizations, who support the request of this petition though they may not be located within these watersheds or directly dependent upon salmon. Each of these Tribal governments work to protect traditional ways of life, culture, access to traditional food resources, and tribal sovereignty.

Background

Many Tribes in Western and Interior Alaska have been unable to meet their subsistence needs for salmon or participate in in-river commercial salmon fisheries for much of the past decade, but this year’s calamitous declines in multiple species of salmon are a disaster that requires emergency action. In particular, the 2023 Chinook salmon returns presented one of the lowest

⁶ KAWERAK, INC. *ET AL.*, 2021 EMERGENCY BYCATCH PETITION (Dec. 21, 2021), <https://www.avcp.org/wp-content/uploads/2021/12/2021-12-22-Emergency-Bycatch-Petition-Final.pdf> (attached); Letter from JANET COIT, Assistant Administrator for Fisheries, National Marine Fisheries Service, to Ms. Melanie Bahnke, President, Kawerak, Inc. (Jan. 25, 2022) [hereinafter “COIT Letter”] (attached). *See also* NOAA FISHERIES, *NOAA Fisheries Denies Request for Emergency Action on Bering Sea Salmon Bycatch* (Jan. 25, 2022), <https://www.fisheries.noaa.gov/feature-story/noaa-fisheries-denies-request-emergency-action-bering-sea-salmon-bycatch>.

⁷ Letter to NMFS from Kawerak, KRITFC, and BSEG on November 14, 2023 pertaining to deficiencies in NPFMC October 2023 action regarding chum bycatch (attached). Kawerak, Inc. Resolution 2023-01, “A Resolution Requesting The North Pacific Fishery Management Council Reduce Chum Salmon Bycatch In The Bering Sea” (attached).

regional abundances on record. Yukon River subsistence salmon fishery closures began on June 2, 2023, in the Coastal District and District 1 and progressed upriver based on Chinook salmon run timing. The State of Alaska projected a Yukon River Chinook salmon run of 62,000 to 104,000 fish for the 2023 season; however, the preliminary estimate of 58,529 fish fell below projections.⁸ Summer subsistence fishing on the Kuskokwim River also faced significant restrictions in the 2023 season due to below average run projections.⁹ Norton Sound subsistence fishing in Subdistricts 5 and 6 faced restrictions owing to escapement concerns, with low king, chum, and pink runs noted as poor during the season, and the Pilgrim River faced restrictions owing to concerns related to sockeye escapement.¹⁰ The people who subsistence fish throughout Western and Interior Alaska continue to sacrifice their catch to allow every possible fish to spawn, yet commercial groundfish trawlers are permitted to continue to catch thousands of salmon, many of which could otherwise reach Western Alaska rivers to help meet escapement goals and rebuild stocks.

Climate change continues to affect food systems and the ecosystem in disastrous ways. Salmon in particular, and especially Chinook salmon, are susceptible to climate change, increasing the necessity to mitigate controllable fishery impacts to these stocks.¹¹ Furthermore, the 2022 Typhoon Merbok, caused by record warm waters in parts of the North Pacific, hit Western Alaska coastal communities and the immediate impacts of the storm included damage to infrastructure, loss of stored subsistence foods, and disruption of the fall subsistence harvest season.¹² Communities are now realizing some of the longer-term impacts of the typhoon on their subsistence ways of life, including loss of fish camps, fishing gear, and plants and small

⁸ ADF&G, Advisory Announcement, *2023 Yukon River Salmon Summer Fishery Announcement #26: 2023 Yukon River Preliminary Summer Season Summary* (November 7, 2023), <http://www.adfg.alaska.gov/static/applications/dcfnewsrelease/1548184795.pdf>

⁹ ADF&G, Advisory Announcement, *Kuskokwim River Fishery Announcement #1: Kuskokwim River Subsistence Fishery Outlook and Front-End Closure, Emergency Order #3-S-WR-01-23* at 1 (May 26, 2023), <https://www.adfg.alaska.gov/static/applications/dcfnewsrelease/1475130212.pdf>; ADF&G, Advisory Announcement, *Kuskokwim River Fishery Announcement #3: Emergency Order #3-S-WR-03-23* (June 8, 2023), <https://www.adfg.alaska.gov/static/applications/dcfnewsrelease/1479583175.pdf>.

¹⁰ ADF&G, Advisory Announcement, *Subsistence Salmon Fishing Schedule for the Nome, Unalakleet, Shaktoolik Subdistricts, and the Pilgrim River Correction* (June 14, 2023), <http://www.adfg.alaska.gov/static/applications/dcfnewsrelease/1481551727.pdf>. ADF&G, Advisory Announcement, *Subsistence Salmon Fishing Informational Update Unalakleet and Shaktoolik Subdistricts* (July 14, 2023), <http://www.adfg.alaska.gov/static/applications/dcfnewsrelease/1511653983.pdf>. ADF&G, Advisory Announcement, *Subsistence Salmon Fishing Informational Update For Unalakleet and Shaktoolik Subdistricts* (July 24, 2023), <http://www.adfg.alaska.gov/static/applications/dcfnewsrelease/1517973740.pdf>.

¹¹ ELIZABETH SIDDON, NOAA FISHERIES, *ECOSYSTEM STATUS REPORT 2022: EASTERN BERING SEA, STOCK ASSESSMENT AND FISHERY EVALUATION REPORT* at 24-26 (2022), <https://apps-afsc.fisheries.noaa.gov/REFM/docs/2022/EBSecosys.pdf> [hereinafter “2022 EASTERN BERING SEA STATUS REPORT”].

¹² 2022 EASTERN BERING SEA STATUS REPORT at 12; RICK THOMAN, *Opinion: Typhoon Merbok pounded Alaska’s vulnerable coastal communities at a critical time*, ANCHORAGE DAILY NEWS (Sept. 19, 2022), <https://www.adn.com/opinions/2022/09/19/opinion-typhoon-merbok-pounded-alaskas-vulnerable-coastal-communities-at-a-critical-time/>.

mammals traditionally harvested before winter.¹³ This recent and unforeseen event has created another harmful circumstance for Western and Interior Alaska communities where subsistence remains “a vital part of [the] cultural, economic, and social aspect[] of community life.”¹⁴

The Department and the Council regulate salmon bycatch in the pollock trawl fishery under amendments 91 and 110 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands. These regulations provide a total cap for Chinook bycatch of 60,000 fish, with a performance standard of 47,591, but reduce that cap when an in-river index composite of returns to the Unalakleet (Norton Sound), Yukon, and Kuskokwim rivers is below 250,000 Chinook.¹⁵ This year, the in-river index totaled 148,443 Chinook—the lowest regional Chinook salmon abundance on record,¹⁶ and well below the 250,000 threshold—and the lower cap therefore took effect.¹⁷

The multi-species collapse of salmon stocks and the resulting restrictions on subsistence fishing in Western and Interior Alaska satisfies all three criteria described in the National Marine Fisheries Service’s (NMFS) Policy Guidelines for the Use of Emergency Rules.¹⁸

Criteria for Emergency Relief

The Department can take emergency action under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to address unforeseen, serious conservation and management problems with Chinook salmon bycatch affecting Western and Interior Alaska. Under the MSA, the Secretary of Commerce is authorized to adopt emergency regulations when an emergency exists in any fishery.¹⁹

The Department’s policy guidelines provide that “an emergency exists involving any fishery” when the situation:

1. “[r]esults from recent, unforeseen events or recently discovered circumstances;” and
2. “[p]resents serious conservation or management problems in the fishery;” and
3. “[c]an be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of

¹³ Emily Schwing, Alaska Public Media, *A year after Typhoon Merbok, some coastal communities struggle to find subsistence foods*, (Oct. 12, 2023), <https://alaskapublic.org/2023/10/12/a-year-after-typhoon-merbok-some-coastal-alaskans-struggle-to-find-beloved-subsistence-foods/>.

¹⁴ See, e.g., CAROLINE L. BROWN *ET AL.*, ADF&G, *SUBSISTENCE HARVESTS IN 8 COMMUNITIES IN THE KUSKOKWIM RIVER DRAINAGE AND LOWER YUKON RIVER*, 2011, Technical Paper 364 at 458 (May 2014).

¹⁵ 50 C.F.R. § 679.21(f); see also 75 Fed. Reg. 53,025 (Sept. 29, 2010) (Amendment 91); 81 Fed. Reg. 37,534 (June 10, 2016) (Amendment 110).

¹⁶ Seafood News, *ADF&G’s Three-River Index Lowest on Record, Pollock Fleet’s Chinook Allocation Unchanged*, (September 20, 2023), <https://www.seafoodnews.com/Story/1261925/ADFGs-Three-River-Index-Lowest-on-Record-Pollock-Fleets-Chinook-Allocation-Unchanged>.

¹⁷ Letter from SAM RABUNG, Director, Division of Commercial Fisheries, Alaska Department of Fish & Game, to Jon Kurland, Administrator, NOAA Fisheries, Alaska Region (Sept. 11, 2023).

¹⁸ NMFS, Procedure 01-101-07, *Policy Guidelines for the Use of Emergency Rules* at 2-3 (Oct. 3, 2018), <https://media.fisheries.noaa.gov/dam-migration/01-101-07.pdf> [hereinafter “NMFS Policy Guidelines”]; 62 Fed. Reg. 44,421, 44,422 (Aug. 21, 1997).

¹⁹ 16 U.S.C. § 1855(c).

the impacts on participants to the same extent as would be expected under the normal rulemaking process.”²⁰

The Department must take action, consistent with its responsibilities to Tribes and its National Standards 2, 8, and 9 obligations, to address conservation concerns for the long-term health of salmon stocks and salmon-dependent communities and to reduce bycatch in the BSAI.

I. An emergency exists if a situation results from recent, unforeseen events, or recently discovered circumstances.

Western Alaska communities have watched as salmon populations have experienced problems over the past three to four decades. In the Kuskokwim region, population declines started with Chinook salmon and now extend to chum and coho salmon within the last three years.²¹ Since 2021, multiple fisheries disasters have been declared by the Secretary of Commerce as a result of poor salmon returns across Western Alaska in multiple seasons and communities.²² Another disaster declaration request for the 2022 Yukon River Salmon Fisheries was approved in October 2023, and a request for the 2022 Kuskokwim River Chinook, Chum, and Coho Salmon Fisheries is pending.²³ However, disaster declarations do not proactively address the causes leading to these catastrophic salmon declines, mitigate the wide-ranging ecosystem impacts due to the lack of spawners and eggs in tributaries, or compensate for the immense cultural, spiritual, and linguistic losses that Tribes experience when they can no longer engage in or pass to new generations their salmon-centered traditions and ways of life. The Department must take emergency action to proactively address the multi-species salmon crisis and not forgo its federal trust responsibility to Tribes while relying on reactive responses such as disaster declarations.

This year, the amount of Chinook salmon caught as bycatch in the BSAI pollock fishery is far above last year’s total annual Chinook salmon bycatch amount. At the close of 2023, 11,855 Chinook salmon have been caught compared to 6,337 Chinook salmon in 2022.²⁴ Recently, over half of all Chinook salmon caught as bycatch in the pollock fishery originated from Western

²⁰ NMFS *Policy Guidelines* at 2-3; 62 Fed. Reg. at 44,422.

²¹ KUSKOKWIM RIVER INTER-TRIBAL FISH COMMISSION, 2022 KUSKOKWIM RIVER SALMON SITUATION REPORT at 3-7 (last updated Feb. 17, 2023) [hereinafter “KRITFC REPORT”] (attached).

²² There have been four disaster declarations specific to Western Alaska salmon fisheries in the last three years: 2020 Alaska Norton Sound, Yukon River, Chignik, Kuskokwim River and Southeast Alaska Salmon Fisheries; 2021 Yukon River Salmon Fishery; 2021 Alaska Norton Sound Salmon Fisheries; 2021 Alaska Kuskokwim River Salmon Fishery. See NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, Fishery Disaster Determinations, ## 110, 118, 121, <https://www.fisheries.noaa.gov/national/funding-and-financial-services/fishery-disaster-determinations> (last visited July 17, 2023).

²³ *Id.*, #127 and #136.

²⁴ NMFS, ALASKA REGION, BERING SEA CHINOOK SALMON BYCATCH REPORT (INCLUDES CDQ) (Jan. 16, 2024), https://www.fisheries.noaa.gov/sites/default/files/akro/car180_bs_with_cdq2023.html; compare with NMFS, ALASKA REGION, BERING SEA CHINOOK SALMON SEASONAL BYCATCH REPORT (INCLUDES CDQ) (Dec. 31, 2022), https://www.fisheries.noaa.gov/sites/default/files/akro/car181_bs_with_cdq2022.html.

Alaska rivers.²⁵ Over a 10-year average, genetic analysis of Chinook salmon captured as bycatch in the BSAI pollock trawl fishery indicates 45% originated from Western Alaska rivers.²⁶

At the same time, Chinook salmon returns in river systems in Western and Interior Alaska have remained severely depressed. The 2023 end-of-season cumulative catch per unit effort of Chinook salmon at the Bethel test fishery, at a mere 382 fish, was the lowest in the last five years and 37% below the 2018–2022 average; and it is the third lowest in the recent ten-year time series, falling 32% below the 2013–2022 average.²⁷ The 2023 preliminary estimated cumulative passage of Yukon River Chinook salmon past Pilot Station Sonar was 58,529 fish (90% C.I. 41,191 to 72,867), which was the second lowest on record and only slightly better than 2022, but still approximately 67% below the 2003 - 2022 average of 177,431 Chinook salmon. The average length of Chinook salmon observed at Pilot Station was the third smallest on record since 1995 at only 721 mm and well below the historical average of 743 mm, which suggests continued ecosystem stress in BSAI marine waters.²⁸ In Canada, these catastrophically low runs have led to calls to recognize Chinook as “functionally extinct” in the Yukon River, with ecosystem-wide implications.²⁹ Historically low Chinook escapement numbers were reported in many rivers in the Norton Sound-Port Clarence region, including the Kwiniuk (second lowest since 1985), Nome (lowest since 1993), North (lowest since 1984), Pilgrim (lowest since 1997), Shaktoolik (third lowest since 2014), Snake (fourth lowest since 1996), Unalakleet (lowest since 2010), and Ungalik (lowest since 2020) Rivers.³⁰

²⁵ See, e.g., JAMES IANELLI *ET AL.*, CHAPTER 1: ASSESSMENT OF THE WALLEYE POLLOCK STOCK IN THE EASTERN BERING SEA at 8 (Dec. 2022) (“The majority (about 56%) of Chinook salmon caught as bycatch in the pollock fishery originate from western Alaskan rivers.”); COUNCIL, BERING SEA SALMON BYCATCH UPDATE (Nov. 2022), <https://www.npfmc.org/wp-content/PDFdocuments/bycatch/BeringSeaSalmonBycatchFlyer.pdf> [hereinafter “2022 BERING SEA SALMON BYCATCH UPDATE”] (estimating origin of Chinook salmon bycatch in pollock fishery); COUNCIL, SALMON BYCATCH COMMITTEE, SUMMARY OF SUBSISTENCE HARVESTS IN THE YUKON AND KUSKOKWIM MANAGEMENT AREAS at 1 (Mar. 2023), https://meetings.npfmc.org/CommentReview/DownloadFile?p=b4c2eb40-2c3a-4cd5-b2b1-c7bd6f7798e4.pdf&fileName=4.%20Yukon%20Kuskokwim%20Subsistence%20Harvest%20Overview_SBC_Marc h2023.pdf [hereinafter “SUMMARY OF SUBSISTENCE HARVESTS IN THE YUKON AND KUSKOKWIM”] (approximately 54% percent of Chinook bycatch in 2020 were caught in Bering Sea pollock fishery).

²⁶ C.M. GUTHRIE III *ET AL.*, *Genetic Stock Composition Analysis of the Chinook Salmon (*Oncorhynchus tshawytscha*) Bycatch from the 2021 and 2022 Bering Sea Pollock Trawl Fishery* at iii (Apr. 2023) (proportional contribution of Western Alaska stocks from 2011-2020).

²⁷ ADF&G, *AYK Database Management System, Project: Bethel Test Fishing*, https://www.adfg.alaska.gov/CF_R3/external/sites/aykdbms_website/OBIRreportView.aspx?origin=~//ProjectInformation.aspx (last visited November 30, 2023).

²⁸ ADF&G, Advisory Announcement, *2023 Yukon River Salmon Summer Fishery Announcement #26: 2023 Yukon River Preliminary Summer Season Summary* (November 7, 2023), <http://www.adfg.alaska.gov/static/applications/dcfnewsrelease/1548184795.pdf>

²⁹ LAWRIE CRAWFORD, *Chinook salmon now ‘functionally extinct,’* PENTICTON HERALD (Jan. 5, 2023), https://www.pentictonherald.ca/spare_news/article_451af66a-d3b3-5805-8f99-3b886d47d167.html#:~:text=At%20the%20post-season%20Yukon,to%20fulfill%20their%20ecological%20function.

³⁰ ADF&G, *Escapement Monitoring Inseason and Historical Data; Norton Sound & Kotzebue Management Area Commercial Salmon Fisheries*, https://www.adfg.alaska.gov/index.cfm?adfg=commercialbyareanortonsound.salmon_escapement

II. An emergency exists if a situation presents serious conservation or management problems for the fishery.

The collapse of Chinook salmon runs in multiple river systems presents a serious conservation concern for salmon stocks as well as a management problem not only for the pollock fishery, but also for subsistence and directed salmon fisheries.

Communities in Western and Interior Alaska continue to endure some of the most restrictive subsistence fishing seasons on record.³¹ Even with significant restrictions on subsistence fishing and closures of commercial salmon fisheries, meeting escapement goals for Chinook salmon in Western Alaska has been challenging, and, in some cases, escapement goals have not been met.³² These stark statistics demonstrate that there is a serious conservation concern for Western Alaska Chinook salmon and a management concern with bycatch that contributes to the conservation concern.

For example, treaty obligations of the United States of America to Canada concerning Yukon River Chinook salmon highlight the serious conservation and management problems associated with Prohibited Species Catch of Chinook salmon in the BSAI pollock fishery. Only 27,800 Yukon River Chinook salmon of Canadian origin passed the Pilot Station Sonar, with only 14,752 Chinook salmon enumerated passing the Eagle Sonar at the Canadian border, which is 70% below the historical average passage and the second lowest on record, above only 2022. During the 10-year period 2013-2022, Pacific Salmon Treaty obligations of the United States to Canada were achieved only 50% of the time; Pacific Salmon Treaty border passage obligations continued to go unmet in 2023. The Treaty, as amended through June 2023, states, “The Parties [U.S. and Canada] shall maintain efforts 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 identify, quantify and undertake efforts to reduce these catches and by-catches.”³³

The loss of salmon in the Kuskokwim River, Yukon River, and Norton Sound watersheds is not just an emergency—it is a crisis. Every fish caught as bycatch eliminates significant genetic potential and opportunities for vulnerable stocks to rebuild. The loss of even one spawning female Chinook salmon is a loss of several thousand potential salmon in the next generation; each spawning female can produce between 3,000 and 14,000 eggs.³⁴ Emergency action is

³¹ KRITFC Report at 3-4; *see also supra* p. 2 nn.2 & 3 (ADF&G Advisory announcements showing recent restrictions on subsistence salmon fishing).

³² *See, e.g.*, ADF&G, *2022 Yukon River Salmon Summer Fishery Announcement #19, 2022 Yukon River Summer Season Summary* at 4 & 7, Tbl. 1 (Nov. 21, 2022), <https://www.adfg.alaska.gov/static/applications/dfnewsrelease/1445996671.pdf> (last visited Aug. 2, 2023) [hereinafter “2022 Yukon River Summer Season Summary”] (in 2022, escapement goals were not met for Chinook salmon on the Yukon River).

³³ Pacific Salmon Commission Treaty Between the Government of Canada and the Government of the United States of America Concerning Pacific Salmon, as amended through June 2023, Chapter 8, p. 117.

³⁴ NMFS, *Final Environmental Assessment/Regulatory Impact Review for Proposed Amendment 110 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area* at 95, (March 2016) [hereinafter “Final Environmental Assessment”].

necessary to prevent further serious damage to the fishery resource for not only the survival of these species, but for the future of our communities and Tribes.

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 normal Council and MSA rulemaking process for addressing broad changes to Chinook salmon bycatch management is not available in time for the 2024 BSAI pollock A and B seasons. The need for immediate action to protect subsistence needs and salmon populations significantly outweighs the benefit of advance notice and public comment through a normal rulemaking process.

Immediate action is needed to address these serious conservation and management concerns because, if the Department does not act, the pollock trawl fleet will continue to catch thousands of salmon as bycatch, leading to continued restrictions on subsistence and commercial salmon fishing in Western and Interior Alaska in 2023 and beyond. Immediate action to eliminate Chinook salmon bycatch will have conservation and community benefits by allowing more fish from these severely stressed populations to reach their spawning rivers so that they have a chance to begin recovering, and provide greater opportunities for subsistence-dependent communities to harvest the salmon that are central to their ways of life and livelihoods. Impact rates of bycatch in the BSAI fleet cannot calculate the genetic and cultural value of a single fish that returns to its natal stream; every fish that reaches the rivers is critical.

Requested Action and Duration

We ask the Department to adopt an emergency regulation instituting a cap of zero on any further Chinook salmon bycatch in the Bering Sea and Aleutian Islands (BSAI) pollock trawl fishery and that the emergency regulation stay in effect for 180 days. In addition, we request that the Council and the Department consider regulatory approaches to create meaningful, improved long-term Chinook salmon bycatch management solutions along with the current chum salmon bycatch rulemaking.

Response to Previous Denial

Despite the significant portion of Chinook salmon bycatch originating from Western and Interior Alaska rivers, the Department denied the 2021 petition for emergency action to limit chum and Chinook bycatch because, in its view, “[t]he best available scientific information indicates that Chinook salmon bycatch in the Bering Sea pollock fishery comprises less than three percent and chum salmon bycatch comprises less than one percent of the returns to Western Alaska river systems.”³⁵ Narrowly focusing on the proportion of salmon that would have returned to spawn in a given year is not helpful to understanding the overall effect of bycatch on Western Alaska salmon stocks. Chinook salmon, in many places, are not meeting state or federal “sustainable escapement goals.”³⁶ Therefore the Department has an obligation to make sure every possible

³⁵ COIT Letter at PDF 2.

³⁶ See e.g., 2022 Yukon River Summer Season Summary at 7, Tbl. 1 (showing no escapement goals met for Chinook salmon at selected Yukon River tributaries in 2022); ADF&G, Memorandum, *Arctic-Yukon-Kuskokwim*,

fish makes it back to the rivers so vulnerable fish stocks can recover to a point that they are once again sustainable. Bycatch or waste of any amount of dwindling salmon stocks are catastrophic and the Department must take emergency action to proactively “ensure the sustainability of fishery resources and associated ecosystems for the benefit of future, as well as current generations.”³⁷

The Department cannot rely on the notion that action cannot be taken because “[c]losure of the Bering Sea pollock trawl fishery [...] is unlikely to result in meeting escapement goals or substantively increase the likelihood of improving subsistence and commercial harvests” this year.³⁸ The immediate benefits of stopping bycatch outweigh the value of advance notice because every fish matters—not only for this year’s harvest, but for the future of these distressed fish stocks. As previously mentioned, a single female Chinook salmon and thousands of her eggs removed from the ecosystem robs the potential of thousands of salmon smolt to rebuild stocks, with rippling effects for generations of a population.³⁹ Western and Interior Alaska communities have sacrificed their salmon catch to help meet escapement goals for future runs, and the Department must act to ensure that bycatch by the BSAI pollock fleet does not continue because it could diminish any hopes of recovery for the struggling stocks. Further, the Council and the Department cannot favor economic gain over conservation.⁴⁰ The harm this salmon crisis is causing to our communities is incalculable. The Council and the Department have a responsibility to manage the entire BSAI ecosystem in a sustainable way and for the Tribes and communities that depend on it, not solely to produce the highest economic value for one group.

The Department likewise has a federal trust responsibility to ensure the well-being of Tribes and protection of Tribal resources.⁴¹ Notably, President Biden recently reaffirmed his “commitment to fulfilling Federal trust and treaty responsibilities to Tribal Nations.”⁴² The Department cannot

Salmon Escapement Goal Review (Mar. 17, 2022),

<https://www.adfg.alaska.gov/static/regulations/regprocess/fisheriesboard/pdfs/2022-2023/ws/2022%20AYK%20EG%20Review.pdf> (defining “sustainable escapement goal”).

³⁷ COUNCIL, Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area at ES-2, Tbl. ES-1 (Nov. 2020), <https://www.npfmc.org/wp-content/PDFdocuments/fmp/BSAI/BSAIfmp.pdf> [hereinafter “Fishery Management Plan”].

³⁸ COIT Letter at PDF 2.

³⁹ NMFS, *Final Environmental Assessment* at 95.

⁴⁰ *See, e.g.*, 16 U.S.C. § 1801(b)(1) (explaining that the purpose of the MSA is to “conserve and manage” fishery resources); *id.* § 1851(a)(5) (National Standard 5 encouraging “efficiency in utilization of fishery resources,” but also cautioning that conservation and management measures may not be adopted for the sole purpose of economic allocation); *id.* § 1851(a)(8) (the Department must consider economic impacts on fishing communities); 50 C.F.R. § 600.345(b)(1) (consideration of the importance of fishery resources to fishing communities is done “within the context of the conservation requirements of the Magnuson-Stevens Act” and may not “compromise the achievement of conservation requirements and goals.”)

⁴¹ THE SECRETARY OF THE INTERIOR, Order No. 3335, *Reaffirmation of the Federal Trust Responsibility to Federally Recognized Indian Tribes and Individual Indian Beneficiaries* (Aug. 20, 2014), <https://www.doi.gov/sites/doi.gov/files/migrated/news/pressreleases/upload/Signed-SO-3335.pdf>.

⁴² PRESIDENT JOSEPH R. BIDEN JR., *Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships* (Jan. 26, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-tribal-consultation-and-strengthening-nation-to-nation-relationships/>. *See also* Exec. Order No. 13175, 65 Fed. Reg. 67,249 (Nov. 6, 2000) (Memorandum acknowledging American Indian and Alaska Native Tribal Nations are sovereign governments requiring “regular, meaningful, and robust consultation”

meet its obligations to Tribes or to ecosystem-based fisheries management⁴³ while disclaiming responsibility for catastrophic salmon declines. The Department must take action to address the causes of these declines that are within its control. In this case, that includes taking action to eliminate Chinook bycatch to allow critical salmon escapement that will help rebuild stocks and protect traditional and cultural practices that depend on salmon.

Deficiencies in Fisheries Management that have Contributed to this Emergency

The Department has not fulfilled its duty to ensure a fair and equitable allocation of resources throughout the ecosystem and among fishing communities. Further, the Department is required by law to meet all of its MSA National Standard obligations.⁴⁴ National Standard 2 requires that management measures be “based upon the best scientific information available.”⁴⁵ Further, the consideration of Traditional Knowledge (TK) is required under National Standard 2’s inclusivity criteria,⁴⁶ but has not been meaningfully incorporated into the Alaska federal fishery management process.⁴⁷ For example, it is a widely held tenet of Western and Interior Alaska Traditional Knowledge that waste—which salmon bycatch in the BSAI pollock fishery embodies—has significant negative impacts on natural resources, with which humans exist in a reciprocal relationship. Additionally, TK holders in the Norton Sound region have documented that problems with salmon populations began approximately three to four decades ago, and the impacts of bycatch have been implicated in problems with salmon populations.⁴⁸ Information such as this exists and has been available for years but has not been used in management.

The Department is failing to meet its National Standard 9 objective by setting catch allowances based on historical bycatch numbers without accounting for drastically low salmon populations or the needs of Tribal communities. NMFS again set the 2023 Chinook salmon prohibited species catch limit at 45,000 because it determined that 2022 was a low Chinook salmon abundance year, based on the State of Alaska’s estimate that Chinook salmon abundance in Western Alaska is less than 250,000 Chinook salmon.⁴⁹ Historical bycatch levels have not reached this cap since 2007 and likely never will in the foreseeable future, not because of efforts to avoid salmon, but due to low salmon abundance.⁵⁰ The bycatch limits are effectively no cap

especially as the “Nation faces crises related to health, the economy, racial justice, and climate change – all of which disproportionality harm Native Americans.”)

⁴³ NOAA Fisheries, “*Understanding Ecosystem-Based Fisheries Management*,”

<https://www.fisheries.noaa.gov/insight/understanding-ecosystem-based-fisheries-management> (last visited Aug. 1, 2023).

⁴⁴ 16 U.S.C. § 1851.

⁴⁵ *Id.* § 1851(a)(2); 50 C.F.R. § 600.315(a).

⁴⁶ 50 C.F.R. § 600.315(a)(6)(ii)(C).

⁴⁷ JULIE RAYMOND-YAKOUBIAN *ET AL.*, *The incorporation of traditional knowledge into Alaska federal fisheries management*, 78 MARINE POLICY 132 (2017), <http://dx.doi.org/10.1016/j.marpol.2016.12.024>.

⁴⁸ KAWERAK, INC., “*Always taught not to waste*”: *Traditional Knowledge and Norton Sound/Bering Strait Salmon Populations*, 2015 Arctic-Yukon-Kuskokwim Sustainable Salmon Initiative Project 1333, Final Product (2015), <https://kawerak.org/wp-content/uploads/2018/04/TK-of-Salmon-Final-Report.pdf>.

⁴⁹ Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands; Final 2023 and 2024 Harvest Specifications for Groundfish, 88 Fed. Reg. 14,926, 14,941 (Mar. 10, 2023).

⁵⁰ NMFS, ALASKA REGION, Chinook salmon mortality in BSAI groundfish fisheries (including pollock) (Nov. 13, 2023), https://www.fisheries.noaa.gov/sites/default/files/akro/chinook_salmon_mortality2023.html [hereinafter “BSAI Chinook Salmon Mortality Estimates”].

at all—bycatch is below the cap because fish populations have declined so much that there are not as many fish to catch. The Department and the Council need to acknowledge that the downward trend in bycatch directly correlates with decreasing Chinook salmon in the BSAI and adjust management practices accordingly.

The Department’s current management practices are failing to meet many of the objectives of the BSAI Fisheries Management Plan.⁵¹ A non-exhaustive list of objectives which have not been met include ensuring sustainable opportunities for subsistence,⁵² promoting management that does not disrupt existing social and economic structures,⁵³ incorporating ecosystem factors and considerations,⁵⁴ reducing waste to biologically and socially acceptable levels,⁵⁵ incorporating and enhancing collection of Traditional Knowledge for use in fishery management,⁵⁶ and increasing Alaska Native participation and consultation in fishery management.⁵⁷

The Council and the Department are also failing to properly conceptualize and address climate change in terms of management of the BSAI pollock fishery. While particular aspects and effects of climate change are affecting salmon stocks, climate change must also be understood as a context in which the Council and the Department are required to manage, not simply something to blame for fishery problems and an excuse for not managing appropriately in light of them. Climate change is an added stressor on salmon and other marine species, and the Council and the Department should change management—including management of salmon bycatch—to support a more climate-resilient ecosystem. If climate change is leading to reduced salmon numbers, the Council and the Department must reduce the amount of salmon bycatch being taken in that changed environmental context in order to ensure sustainability of salmon stocks. It is notable that the Council only has one small body devoted to climate change—the Bering Sea Fishery Ecosystem Plan Climate Change Taskforce—and even that body has essentially languished for years.

The Council is also failing to meet important policies that are intended to help guide and define its approach to conservation and management of the fisheries. For example, the 2014 Ecosystem Policy states:

The Council intends that fishery management explicitly take into account environmental variability and uncertainty, changes and trends in climate and oceanographic conditions, fluctuations in productivity for managed species, and associated ecosystem components, such as habitats and non-managed species, and relationships between marine species. Implementation will be responsive to changes in the ecosystem, and our understanding of those dynamics, incorporate the best available science,

⁵¹ See Fishery Management Plan at 4-7 (Management Objectives in the Fishery Management Plan for Groundfish of the BSAI Management Area).

⁵² *Id.* at 5, #6.

⁵³ *Id.* at 5, #7.

⁵⁴ *Id.* at 5, #13.

⁵⁵ *Id.* at 5, #21.

⁵⁶ *Id.* at 6, ##36 & 37.

⁵⁷ *Id.* at 6, #38.

including local and traditional knowledge, and engage scientists, managers, and the public.⁵⁸

The cumulative impacts over time of waste on the ecosystem are not being taken into account. For instance, over one million Chinook have been wasted as bycatch in approximately the last three decades, in addition to many millions more chum.⁵⁹ Bycatch is now scraping away at what little remains, wasting the survivors of climate change, and demonstrating that the resources Tribal people depend on are acceptable to be viewed and treated as waste in comparison to the directly harvested fish which create enormous profit and feed other populations. This all suggests continued colonial federal fishery management as part of a long chain of Federal actions treating Tribes as inconvenient obstacles to be overcome.

Collectively, these are systemic scientific, policy, management, and moral failures which have reached emergency levels, and are chronic failures unequivocally indicating that the normal rulemaking process is incapable of adequately addressing these issues. We urge you to uphold your “commit[ment] to a comprehensive review of our current salmon bycatch management measures.”⁶⁰

Conclusion

Chinook salmon stocks and the communities that rely on them in Western and Interior Alaska are in crisis, and bycatch in the pollock fleet takes a significant portion of the fish that would otherwise be available to meet escapement goals, allow for the recovery of salmon stocks, and provide for subsistence and commercial salmon fishing in these regions. The past year’s three river index was the lowest on record, demonstrating the need for urgent action to prevent the loss of Chinook salmon across Western and Interior Alaska. Delaying action will allow the continued bycatch of these fish, meaning that subsistence fishing will continue to be severely restricted, salmon will suffer severe ecological consequences, and Western and Interior Alaska communities will suffer economic, social, and public health consequences. Chinook salmon stocks have reached a crisis point where all agencies must take every action within their authority to ensure that every possible fish makes it back to the rivers to support the recovery of these depleted stocks. The Department has the authority to take immediate action to address bycatch in the pollock fishery until a permanent rule can be implemented and we request that you do so to prevent further catastrophic and irreparable harms. Further, any efforts in addressing Chinook salmon bycatch should not diminish the Department and Council’s current efforts addressing limits to chum salmon bycatch given that our communities are living through a multi-species, multi-year salmon collapse with severe threats to our food, cultural, spiritual, and economic security.

⁵⁸ COUNCIL, Ecosystem Policy (2014), <https://www.npfmc.org/management-policies/>.

⁵⁹ BSAI Chinook Salmon Mortality Estimates; NMFS, Non-Chinook salmon mortality in BSAI groundfish fisheries (including pollock) (2023), https://www.fisheries.noaa.gov/sites/default/files/akro/chum_salmon_mortality2023.html.

⁶⁰ COIT Letter at PDF 3.

Sincerely,



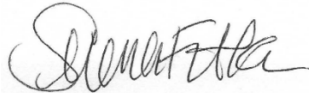
Vivian Korthuis
Chief Executive Officer
Association of Village Council Presidents



Kevin Whitworth
Executive Director
Kuskokwim River Inter-Tribal Fish Commission



Brian Ridley
Chief/Chairman
Tanana Chiefs Conference



Serena Fitka
Executive Director
Yukon River Drainage Fisheries Association



Karma Ulvi
Chair
Yukon River Inter-Tribal Fish Commission

Attachments:

- KAWERAK, INC. *ET AL.*, 2021 EMERGENCY BYCATCH PETITION (Dec. 21, 2021)
- Letter from JANET COIT, Assistant Administrator for Fisheries, NMFS, to Mr. Mike Williams Sr., Chair, Kuskokwim River Inter-Tribal Fish Commission (Jan. 25, 2022)
- KUSKOKWIM RIVER INTER-TRIBAL FISH COMMISSION, 2022 KUSKOKWIM RIVER SALMON SITUATION REPORT (last updated Feb. 17, 2023)
- Letter from KAWERAK, INC., KUSKOKWIM RIVER INTER-TRIBAL FISH COMMISSION, AND BERING SEA ELDERS GROUP to JON KURLAND, Regional Administrator, NMFS Alaska Region (Nov. 14, 2023)
- KAWERAK, INC., RESOLUTION 2023-01 (March 15, 2023)