UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of General Counsel
P.O. Box 21109
Juneau, Alaska 99802-1109

Litigation Materials for the
December 2023 Meeting of the North Pacific Fishery Management Council:
Association of Village Council Presidents v. NMFS

Parties:

Plaintiffs: Association of Village Council Presidents and Tanana Chiefs Conference.

Plaintiff-Intervenor: City of Bethel, Alaska.

Federal Defendants: National Marine Fisheries Service (NMFS); United States Department of Commerce; Secretary of Commerce, Gina M. Raimondo; Deputy Assistant Administrator for Regulatory Programs, NMFS, Samuel D. Rauch, III.

Defendant-Intervenors: At-Sea Processors Association and United Catcher Boats.

Case Activity:

On April 7, 2023, Plaintiffs filed a complaint in the United States District Court for the District of Alaska challenging NMFS Alaska Region's implementation of the 2023 and 2024 final groundfish harvest specifications for the Bering Sea and Aleutian Islands management area (BSAI), arguing NMFS violated the National Environmental Policy Act (NEPA). Federal Defendants filed the answer on May 30, 2023. The complaint and answer were included in the NOAA General Counsel B3 Report for the June 2023 Council meeting.

On June 23, 2023, At-Sea Processors Association and United Catcher Boats filed a motion to intervene as defendants; on July 13, 2023, the district court granted the request. On July 28, 2023, the City of Bethel, Alaska, filed a motion to intervene as a plaintiff, which the district court granted on September 15, 2023. Federal Defendants filed the administrative record on August 09, 2023, and filed a supplement to the administrative record on September 20, 2023.

Status/Next Steps:

The parties are currently briefing the merits of the case, pursuant to the following schedule:

- Plaintiffs' and Plaintiff-Intervenor's opening briefs were filed on October 9, 2023 (and are attached).
- Federal Defendants' and Defendant-Intervenors' responses are due January 22, 2024.
- Plaintiffs' and Plaintiff-Intervenor's replies are due February 19, 2024.

On November 22, 2023, Ocean Conservancy, SalmonState, Native Peoples Action, Kuskokwim River Inter-Tribal Fish Commission, and Alaska Marine Conservation Council filed a motion for leave to submit an amicus curiae brief in support of Plaintiffs. That motion is still pending before the district court as of November 30, 2023.

Katharine S. Glover
Eric P. Jorgensen
EARTHJUSTICE
325 Fourth Street
Juneau, AK 99801
T: 907.586.2751
E: kglover@earthjustice.org
E: ejorgensen@earthjustice.org

Charisse Arce
Maile Tavepholjalern
EARTHJUSTICE
441 W 5th Avenue, Suite 301
Anchorage, AK 99501
T: 907.277.2500
E: carce@earthjustice.org
E: mtave@earthjustice.org

Attorneys for Plaintiffs Association of Village Council Presidents and Tanana Chiefs Conference

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

ASSOCIATION OF VILLAGE COUNCIL PRESIDENTS and TANANA CHIEFS CONFERENCE, *Plaintiffs*, CITY OF BETHEL, *Intervenor-Plaintiff*, v. NATIONAL MARINE FISHERIES SERVICE *et al.*, *Defendants*, AT-SEA PROCESSORS ASSOCIATION and UNITED CATCHER BOATS, *Intervenor-Defendants.*	Case No. 3:23-cv-00074-SLG

PLAINTIFFS' PRINCIPAL BRIEF UNDER LOCAL RULE 16.3(c)(1)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

REGULATIONS

FEDERAL REGISTER NOTICES

OTHER AUTHORITIES

INTRODUCTION

The Bering Sea and Aleutian Islands ecosystem is one of the most productive ecosystems in the world, but it is undergoing extreme change. After an unprecedented, multi-year heatwave and record low sea ice over the last decade, this ecosystem may be less productive and resilient than it once was.

The National Marine Fisheries Service (Service) manages some of the world's largest fisheries in the Bering Sea, authorizing the removal of 4.4 billion pounds of pollock and other groundfish from the ocean each year. The majority of those fish are caught in trawl nets that bring up everything in their path, including salmon. The tens of thousands of salmon caught as bycatch are casualties of the trawl fishery and never return to their natal rivers to spawn. At the same time salmon from now depleted populations are caught in the trawl fishery, people in western and interior Alaska have been unable to fish for the salmon they have depended on for thousands of years.

This case challenges the Service's annual harvest specifications decision—a decision that establishes parameters for the annual fishery. When the Service adopted the 2023-2024 harvest specifications for the groundfish fisheries, it did not prepare an environmental impact statement (EIS) to analyze the effects of the decision. The Service last analyzed the environmental consequences of its harvest specifications process in an EIS completed in 2007 that, in turn, relies on an even older analysis from 2004. By adopting harvest specifications this year without completing an EIS for this specific decision that considers the effects of the harvest specifications in the context of the

current, radically different environment, or a supplemental EIS for the harvest specifications strategy as a whole that does the same, the Service violated the National Environmental Policy Act (NEPA).

BACKGROUND

I. The harvest specifications decision and the fisheries management process.

The federal pollock trawl fishery off the coast of Alaska is the largest trawl fishery in the world. *See* SUPP00179. It is the largest of the Bering Sea groundfish fisheries, which, combined, catch up to two million metric tons—4.4 billion pounds—of fish each year. NMFS06099. In addition to their commercial value, pollock are an important food source for other groundfish, seals, whales, seabirds, and Chinook and sockeye salmon. NMFS23908; SUPP00165; NMFS05534.

Pollock is caught exclusively with pelagic trawls, NMFS00081, a method of fishing that involves dragging large nets through the ocean. NMFS18089. Pelagic trawls are cone-shaped nets with openings between 160 and 400 feet wide, roughly the size of a football field. NMFS00081. While pelagic trawls are also called mid-water trawls, they frequently contact the ocean floor. *E.g.*, NMFS06770; NMFS24174; NMFS26322; SUPP05184. The nets scoop up everything they encounter, including non-target fish, deep sea corals, crabs, and other invertebrates. *See, e.g.*, NMFS24110-11; NMFS06770; SUPP05184-85. Pollock and salmon swim in the same areas, NMFS18089, and pollock trawls catch tens to hundreds of thousands of Chinook and chum salmon as bycatch every year. SUPP00013 (1991-2022 Chinook bycatch ranging from 8,342 to 130,011 fish);

SUPP00015 (1991-2022 non-Chinook bycatch ranging from 13,283 to 711,520 fish annually);[1] NMFS00078 (majority of non-Chinook bycatch is chum salmon annually); SUPP00062 (Barry, Chum Genetics) (similar).[2] Many of these salmon originate from western Alaska rivers, where multiple stocks of salmon have collapsed. NMFS05453.

In addition, benthic, or bottom-dwelling, species like shellfish and invertebrates are caught in trawls. Even when they are not captured in the nets, they can be injured by the nets. *See*, *e.g.*, NMFS18770-01 (crabs); NMFS24183-84 (damage to seastars, bivalves, and sponges). Trawls disturb spawning and nursery habitat for crabs, NMFS2628-69, and reduce benthic habitat productivity for forage fish important to species ranging from seabirds to marine mammals, *see, e.g.*, NMFS26322-23 (cormorants), NMFS26328 (eiders), NMFS26357 (seals), NMFS26369 (gray whales); NMFS06761 (eider habitat). Damage to long-lived, slow-growing species can be irreversible. NMFS23561, NMFS24569, NMFS26545.

The Service and the North Pacific Fisheries Management Council (Council) jointly manage the groundfish fisheries under the Magnuson Stevens Act.[3] Among the overarching purposes of the Magnuson Stevens Act is to provide for "conservation and

[1] Both charts show "0" fish for 2023 because they are dated January 9, 2023. The vast majority of salmon bycatch is caught by the pollock trawl fishery. SUPP00301.
[2] Four record documents, SUPP00060.pdf through SUPP00081.pdf, have overlapping bates numbers. One of these documents is cited in this brief. It is identified with the following parenthetical: (Barry, Chum Genetics). Counsel for Plaintiffs are working with Counsel for the Service to resolve this issue.
[3] Under the Magnuson Stevens Act, the Council recommends management measures and the Service is responsible for ensuring they comply with the law and approving them. 16 U.S.C. § 1854; 50 C.F.R. § 600.305(a)(2).

management of the fishery resources…." 16 U.S.C. § 1801(a)(6). To that end, the Council and the Service develop fishery management plans employing various tools to control who can fish and where, for what species, and with what gear. NMFS23807; *see also* 16 U.S.C. § 1853; *Ocean Conservancy v. Gutierrez*, 394 F. Supp. 2d 147, 156-57 (D.D.C. 2005).

The groundfish fisheries at issue are managed under the groundfish fisheries management plan for the Bering Sea and Aleutian Islands. NMFS00083. The current fishery management plan, adopted before the changes in the environment of today, set a range for the total annual catch for all groundfish species combined between 1.4 and 2.0 million metric tons. 50 C.F.R. § 679.20(a)(1)(i)(A); NMFS23811.

The Service analyzed the effects of the plan in a 2004 programmatic EIS for the groundfish plan. NMFS23604-26827. It reviewed that analysis in 2015 in a supplemental information report considering whether an update to the 2004 EIS was warranted. In that 2015 supplemental information report, the Service concluded that, although there were some resources for which experts indicated a new analysis could lead to different conclusions about fishery impacts, on the whole, the "status of the resources can be considered within the range of variability analyzed in the 2004 [programmatic EIS]…." NMFS23444.

Each year, the Service and the Council make a variety of fisheries management decisions that implement the groundfish plan and rely on the analysis in the 2004 programmatic EIS that supports it. *See* NMFS26843-45 (describing tiering to

programmatic EIS). The adoption of the harvest specifications each year is one important decision under the plan. This decision follows a process required under the groundfish plan and analyzed in a 2007 EIS that considers alternative "harvest strategies" for the groundfish fisheries. NMFS06536. In that EIS, the Service describes the harvest specifications as "a project-level action within the fishery management program[] under the … [Bering Sea and Aleutian Island] groundfish [fishery management plan]." NMFS06565. The annual specifications establish catch limits and other parameters for the annual fishery. *See* NMFS06556-57, NMFS06563-64; NMFS00018-48.

In March 2023, the Service published the final 2023-2024 harvest specifications for the Bering Sea and Aleutian Islands. NMFS00018-48; NMFS00049-53. The decision set the catch limit, or total allowable catch, for all groundfish at 2.0 million metric tons for 2023 and 2024. NMFS00018. For pollock, the catch limit was set at 1.3 million metric tons, a 17 percent increase above the 2022 limit. *Compare* NMFS0020-21 *with* 87 Fed. Reg. 11,626, 11,628 (Mar. 2, 2022).

The Service did not complete an EIS or environmental assessment for the 2023-2024 harvest specifications decision. Instead, it completed a supplementary information report to consider whether additional NEPA analysis was necessary to support its decision. NMFS00587. In this 2023 supplementary information report, the Service concluded that any new information was either addressed through the annual harvest specifications process or within the scope of effects analyzed in the 2007 EIS. NMFS00635. The Service therefore determined that no further NEPA documentation

was required to support its decision. *Id.*

The 2007 harvest specifications strategy EIS is now 16 years old and the 2004 programmatic EIS that it relies on is nearly two decades old. There has been no cumulative analysis of the effects of the harvest specifications strategy since that time.

II. The rapidly changing Bering Sea and Aleutian Islands ecosystem.

The last decade has been a time of upheaval in the Bering Sea and Aleutian Islands, with significant changes cascading across the ecosystem. The Bering Sea entered a warm period from 2014 through at least 2021 that, according to the Service's own experts, was "unprecedented in terms of magnitude and duration." NMFS05440. The breadth and extent of change is staggering: unprecedented collapse of multiple species of salmon, unprecedented marine heatwaves, disappearance of the cold pool, record low sea ice extent, changes in recruitment, shifts in size and condition of fish, changing physical and chemical ocean conditions, seabird die-offs, and unusual marine mammal mortality events. *See* NMFS05437; NMFS05440; NMFS26855-56; NMFS15080; NMFS06272; SUPP00318-20; SUPP00722; SUPP01060. While ocean temperatures in the last year have cooled somewhat, the changes from these warm years are expected to continue: "[T]here is increasing evidence from ongoing responses of species to the [marine heat wave] that climate shocks and long-term warming are likely to impact future distribution and productivity of stocks in the region." NMFS01280; *see also, e.g.*, SUPP00921 (more normal sea ice extent "appeared to have only minimal mitigating effects on the warmth in the upper water column"). The new, post-heat wave

ecosystem may have "reduced resiliency" and lower carrying capacity. SUPP00337-38, SUPP00335.

Sea ice is an integral part of the resilience of the Bering Sea ecosystem, and its loss is a foundational change. *See* NMFS23887. Sea ice not only affects the temperature of the water column, but also salinity and density, vertical mixing, and nutrient transport. NMFS23888. This affects energy flow within the ecosystem, availability of high-quality prey for fish, including juvenile salmon, seabirds, and marine mammals, and the overall productivity of the ecosystem. NMFS05438-42; NMFS05453-55; NMFS23887-88. Sea ice extent declined steeply in the Bering Sea from 2012 through 2018, with the two lowest years on record in 2017-18 and 2018-19. NMFS05438; SUPP01057. In 2018, there was no cold pool in the southeastern Bering Sea and the two following years it was historically small. SUPP01284; NMF05438; NMFS26855. The Aleutian Islands have similarly experienced persistently warm surface and bottom water temperatures since 2013. NMFS26855; NMFS03404; NMFS01280.

These warmer temperatures increase the metabolic needs of many species, including forage fish. NMFS05442; SUPP00591. At the same time, warmer ocean temperatures result in lower production of zooplankton, a normally abundant food source, and a shift to small, less nutrient-dense types of zooplankton. *E.g.*, SUPP01138-39; SUPP01289; NMFS05439, NMFS05481. These changes in the building blocks of the food chain are important for food web dynamics and carrying capacity. SUPP00335; NMFS05504; SUPP00207-09. The reduction in high-quality food sources means that, at

a time when fish need more food to meet metabolic needs, less food is available and it is of lower quality. SUPP01289; SUPP00338. This can result in a mismatch of prey available for some species, including seabirds and juvenile salmon, "exacerbat[ing] increased metabolic demands under increased thermal conditions." SUPP00337-38; *see also* NMFS03404. The decline in productivity at the base of the food chain is likely to continue in a changing climate "with uncertain outcomes for major fisheries." SUPP00213-14.

These food supply changes also affect forage fish and groundfish. Forage fish biomass "declined steeply" from 2015 through 2017 and was still below average in 2022. SUPP00331; NMFS05435. In 2021, pelagic foragers were at their second lowest biomass. SUPP00338. Pollock biomass dropped by nearly 60 percent between 2014 and 2018, though juvenile biomass increased in 2017. SUPP01284; SUPP00338. Groundfish body condition generally deteriorated between 2019 and 2021. SUPP00338. These declines have cascading effects for other species that prey on forage fish and groundfish. *See* SUPP00337 (shifts in food web decrease resiliency).

While the warming began around 2014, SUPP00334, there was an "abrupt and dramatic change" in the northern Bering Sea in 2017: "2018 was extraordinarily different in the [Northern Bering Sea] than in the past experience of scientists visiting the region or in the oral histories of local residents." SUPP01288; SUPP00335. High numbers of dead pollock washed ashore in Bristol Bay, something that subsistence and commercial fishers had never seen before. SUPP01292-93. With warmer ocean

temperatures, Pacific cod moved north, leading to the first ever stock assessment for northern Bering Sea Pacific cod. SUPP00722-23; SUPP01289. The northward movement of boats following groundfish also led to the first reported interaction between groundfish boats and threatened spectacled eiders. SUPP00336; *see also* NMFS26328-30.

These changes in ecosystem dynamics are linked with seabirds die-offs and unusual mortality events for marine mammals. In 2018 and 2019, there were seabird die-offs "unprecedented in terms of spatial and temporal scale," and, even in colonies where birds survived, catastrophic reproductive failures occurred. SUPP01290, SUPP01293; SUPP01075. Over 11,000 seabird carcasses of multiple species were counted in the region, SUPP01196, with starvation identified as the predominant cause of death. SUPP01290; SUPP01075, SUPP01194.

There were also unusual mortality events for large whales, including fin and humpback whales, in 2015-2016, SUPP03852-53, followed by an unusual mortality event in 2019 for gray whales—an "ecosystem sentinel for the North Pacific"— with 49 found in Alaskan waters, SUPP01083-84; SUPP1060. Preliminary studies identified emaciation as a cause of death for gray whales. SUPP01083. Similarly, an unusual mortality event was declared for ice seals in 2018 and 2019, with 282 seal carcasses counted along the Bering and Chukchi seas. SUPP01060; SUPP01083-84. The loss of sea ice pupping habitat was cited as one factor in the deaths, with "follow-on ecosystem effects such as competition for prey from northward shifts in distribution of large fish

predators" as another possibility. SUPP01084.

Warming ocean conditions further exacerbated western Alaska Chinook salmon declines, which started around 2007, and contributed to the collapse of chum and coho salmon stocks in the last three years. SUPP01995; SUPP00292-97. There have been significant restrictions and closures of subsistence harvests since 2013 in the Yukon, Kuskokwim, and Norton Sound regions, with the lowest Chinook runs on record for the Kuskokwim in 2010-2013. NMFS18165; SUPP00292. In 2022, the Chinook run on the Yukon River was the lowest on record and no escapement goals were met.[4] NMFS06531. Chinook salmon escapement for the Unalakleet River weir was the lowest on record in 2022. NMFS06530-31. Federal disasters were declared in multiple years and amounts necessary for subsistence have not been met since 2010. *See* SUPP00294; NOAA Fisheries, Fishery Disaster Determinations (Oct. 8, 2023), https://www.fisheries.noaa.gov/national/funding-and-financial-services/fishery-disaster-determinations. Several factors contribute to the decline, including marine and river conditions, bycatch in commercial groundfish fisheries, competition with hatchery fish, and nutritional stress. NMFS33837 (Chinook); NMFS05453 (Chinook); NMFS33420 (chum); SUPP00242 (Chinook, chum); SUPP00169 (chum); SUPP00163-69 (Chinook). Juvenile Chinook and chum salmon at sea show poor body condition and empty stomachs resulting from diet shifts forced by warm seas. NMFS0543; SUPP00171-73.

Because of the steep decline across multiple species of salmon, western and

[4] Escapement is "the annual estimated size of the spawning salmon stock." NMFS18159.

interior Alaska communities have had to curtail salmon harvests to meet escapement goals and allow stocks to rebuild. Western Alaska communities have depended on salmon for thousands of years; their ways-of-life are intertwined with salmon. Families gather at fish camps each year to process and store fish, while passing down cultural traditions. *See infra* pp. 13-14. This loss of salmon is both a food security crisis and a cultural crisis.

While communities are unable to feed themselves or carry on their cultures, these same salmon are caught as bycatch in the groundfish fisheries. On average, about half the Chinook salmon caught as bycatch in the groundfish fisheries originate from western Alaska rivers. In 2020, over 56 percent of the Chinook salmon caught as bycatch were from coastal western Alaska and the Yukon River. SUPP00009. From 2011 through 2020, the groundfish fisheries caught approximately 77,052 total western Alaska Chinook salmon as bycatch. SUPP00027. Over the same time period, the groundfish fisheries caught an estimated *annual* average of 49,290 chum salmon that originated from western Alaska rivers. SUPP00061 (Barry, Chum Genetics). While all these fish may not have returned to rivers as adults to spawn, bycatch takes several thousand fish out of the spawning stock, a loss of 3,000 to 14,000 eggs for each female Chinook alone. NMFS18156.

Multiple species of crab stocks have also collapsed. Between 2020 and 2023, the Secretary of Commerce approved fishery disaster declarations for the Bristol Bay red king crab, Bering Sea snow crab, and Norton Sound red king crab fisheries.

NMFS18836. Since 2014, Bristol Bay red king crab have been decreasing in abundance. SUPP00471-72; SUPP01280. The Service declared Eastern Bering Sea snow crab overfished in 2021. NMFS18720; NMFS00615. Climate change, reduced ice cover, the smaller size of the cold pool, and distributional shifts all suggest "a challenging future for the [Eastern Bering Sea] snow crab stock," NMFS28974, which "require[s] the use of a forward-looking perspective for managing snow crab and other Bering Sea fisheries…." NMFS18757.

These changes, individually and cumulatively, significantly affect subsistence. Without salmon, communities in western and interior Alaska are unable to meet their subsistence needs or practice long-held traditions. Both seabird eggs and birds are also important for subsistence, but with massive die-offs and reproductive failures, some communities have been unable to gather eggs or harvest birds. SUPP01061; SUPP01290, SUPP1293. On St. Lawrence Island, "local people were stunned and there was a complete lack of harvest" of murres in 2018 because the birds were not there. SUPP01291. Similarly, on St. Paul and St. George Islands, residents could not collect murre eggs or auklets and took only low numbers of kittiwakes for elders. SUPP01293. Likewise, in coastal communities that harvest marine mammals, harvest opportunities are changing as seals are stranded or out of range with decreased ice. *See* SUPP01291.

These changes in the ecosystem present a significantly different picture of the marine and human environment than that analyzed by the Service in 2007 and 2004.

ARGUMENT

I. Plaintiffs have standing.

Association of Village Council Presidents (AVCP) and Tanana Chiefs Conference (TCC) have standing to bring this case because their members have standing in their own right, the interests at stake are germane to AVCP's and TCC's organizational purposes, and the lawsuit does not require the participation of their individual members. *Friends of the Earth, Inc. v. Laidlaw Env't Servs., Inc.*, 528 U.S. 167, 181 (2000).

Members and citizens of AVCP's and TCC's tribes and communities depend on—and will continue to depend on—a healthy Bering Sea and Aleutian Islands ecosystem because their traditions and cultures are intertwined with salmon and the resources of the Bering Sea. AVCP and TCC are Alaska Native non-profit regional tribal organizations that, together, support the interests of 98 member tribes and communities stretching from the southern shore of Norton Sound to Kuskokwim Bay and from Nunivak Island to Eagle, an area with a population of about 45,000 people. *See* Ex. 1, ¶¶6-8; Ex. 5, ¶¶8-9. A central part of AVCP's and TCC's missions is to protect and enhance traditional and cultural values, including subsistence. Ex. 1, ¶¶10, 13, 16, 17-21; Ex. 5, ¶¶10-12, 18-26.

Citizens and members of AVCP's and TCC's tribes and communities are located along the Yukon and Kuskokwim rivers, their tributaries, and the Bering Sea coast. Ex. 1, ¶8; Ex. 5, ¶9. The culture and traditions of citizens and members of AVCP's and TCC's tribes and communities are fundamentally linked with salmon and have been for thousands of years: they are salmon people. Harvesting salmon and other traditional

foods "is fundamental to our cultural traditions, maintaining traditional language, and sustaining communities." Ex. 1, ¶12; *see also* Ex. 2, ¶13; Ex. 3, ¶11; Ex. 4; ¶¶9-13; Ex. 5, ¶37; Ex. 6, ¶¶8-11. Salmon is the most important subsistence fish for households in these regions and the collapse of three species of salmon has had devastating effects. *See* Ex. 1, ¶¶13, 24; Ex. 2, ¶¶19, 21; Ex. 5, ¶12; Ex. 6, ¶15. Citizens and members of AVCP's and TCC's tribes and communities have been unable to meet their subsistence needs for many years, affecting their ability to provide food for their families and pass traditions to their children. Ex. 2, ¶¶19-20; Ex. 4, ¶13; Ex. 5, ¶¶13, 16, 35; Ex. 6, ¶15. It has also led to social and public health issues, including suicide, alcohol, and substance abuse. Ex. 1, ¶¶28, 31; Ex. 2, ¶21; Ex. 3, ¶¶22-23, 31.

In addition to salmon, members of AVCP's and TCC's tribes and communities depend on other marine resources not only as food, but as integral parts of their cultures. Residents of coastal communities hunt seals, walruses, seabirds, crabs, and other animals that depend on the ocean ecosystem. *See* Ex. 1, ¶14; Ex. 3, ¶¶12-13, 18; Ex. 4, ¶¶17-19; Ex. 5, ¶11. They use these marine resources to feed their families and to share with others. Ex. 2, ¶¶16-17; Ex. 3, ¶¶14, 17; Ex. 4, ¶17. The changes in the ocean have negatively affected marine mammals, seabirds, crabs, and other ocean resources on which citizens and members of AVCP's and TCC's member tribes and communities depend. *See supra* pp. 7-12.

The harms to these interests in the Bering Sea ecosystem and the marine wildlife it sustains are imminent, concrete, and particularized. *See Ctr. for Biological Diversity v.*

Kempthorne, 588 F.3d 701, 707-08 (9th Cir. 2009) (standing established where plaintiffs viewed polar bears across broad geographic region affected by regulation).

The Service's decision to authorize the groundfish fisheries across the Bering Sea and Aleutian Islands directly and irreparably harms the subsistence, economic, and cultural interests of citizens and members of AVCP's and TCC's tribes and communities. *See supra* p. 14. For example, citizens and members of AVCP's and TCC's tribes and communities face imminent harm to their interests in salmon because authorization of the groundfish fishery results in bycatch that reduces the number of salmon returning to western Alaska rivers. *See Flaherty v. Bryson*, 850 F. Supp. 2d 38, 48 (D.D.C. 2012) (finding standing in challenge to herring fishery management plan because plaintiffs were less likely to be able to fish for striped bass if fewer herring were available for bass to eat). The decision also affects when, where, and how much fishing is authorized, and those decisions affect marine resources—including salmon, marine mammals, and seabirds—on which citizens and members of AVCP's and TCC's tribes and communities depend. *See* Ex. 2, ¶¶24, 26; Ex. 6, ¶16.

The Service's authorization of the groundfish fishery, including the bycatch of salmon, using outdated analyses means that the Service has not analyzed the effects of its management choices on salmon and other marine resources in the context of today's dramatically changed ecosystem. This uninformed decision-making increases the risk to marine resources, and therefore, to citizens and members of AVCP's and TCC's tribes and communities. *Citizens for Better Forestry v. U.S. Dep't of Agric.*, 341 F.3d 961, 971

(9th Cir. 2003) (recognizing injury in the form of "added risk to the environment" when decisionmakers do not make decisions based on an adequate analysis (quoting *West v. Sec'y of Dep't of Transp.*, 206 F.3d 920, 930 n.14 (9th Cir. 2000))).

These harms constitute concrete injury in fact, are fairly traceable to the actions taken by the Service challenged in this litigation, and are likely to be redressed by the relief sought. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992); *see also Renee v. Duncan*, 686 F.3d 1002, 1013 (9th Cir. 2012) ("Plaintiffs need not demonstrate that there is a guarantee that their injuries will be redressed by a favorable decision.") (quotation marks and citation omitted).

II. Standard of review.

This challenge arises under the Administrative Procedure Act, which directs courts to "set aside" agency decisions that are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or "without observance of procedure required by law." 5 U.S.C. § 706(1), (2)(A) & (D). An agency action is arbitrary if the agency fails to "examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)).

III. The Service violated NEPA because it did not prepare either an EIS for its 2023-2024 harvest specifications decision or a supplemental EIS for the harvest specifications strategy.

By authorizing fishing for up to two million metric tons of fish without completing any NEPA document disclosing the effects of that decision in the context of today's environment, Defendants violated NEPA. The 2023-2024 harvest specifications decision is a major federal action with potentially significant effects on the environment. When the Service adopted that decision, it did not prepare an EIS. Instead, it completed a supplementary information report pointing to the EIS for the 2007 harvest specifications strategy as providing the necessary NEPA analysis. The 2007 EIS does not analyze the effects of the 2023-2024 harvest specifications in the context of today's environment. The Service acted arbitrarily, in violation of NEPA, by adopting the annual harvest specifications without producing an EIS.

Even if the 2023-2024 harvest specifications decision does not, itself, require an EIS, the Service violated NEPA by declining to supplement the 2007 harvest specifications strategy EIS. The annual harvest specifications decision is an implementation of the harvest specifications strategy adopted in 2007. The Service concluded, in its 2023 supplementary information report, that it need not prepare a supplemental EIS because there is no new information not analyzed in either the 2007 EIS or through the harvest specifications process. That conclusion is arbitrary. The dramatic changes in the Bering Sea and Aleutian Islands ecosystem are significant, and must be analyzed in an EIS; considering this substantial new information outside a NEPA

process is insufficient. The Service's adoption of the 2023-2024 harvest specifications decision without either a project-specific EIS or a supplemental EIS for the harvest specifications strategy violated NEPA.

A. The 2023-2024 harvest specifications decision is a major federal action with potentially significant environmental effects and there is no EIS analyzing it in the current environmental context.

The adoption of harvest specifications authorizing the removal of up to two million metric tons of fish from the ocean is a major federal action with significant environmental effects. NEPA requires agencies to prepare an EIS for every major federal action that may have significant effects on the human environment. 42 U.S.C. § 4332(2)(C) (2022). If an action is not categorically excluded from NEPA, an agency must generally either prepare an environmental assessment and determine the effects of the action are not significant or it must prepare an EIS. 40 C.F.R. §§ 1501.3, 1501.4; *Solar Energy Indus. Ass'n v. Fed. Energy Regulatory Comm'n*, 80 F.4th 956, 991-92 (9th Cir. 2023). This requirement serves to ensure that agencies take a "hard look" at the environmental effects of a proposed action, consider alternatives to it, and "inform the public in an EIS of the relevant factors that were considered in the decision-making process." *Nat. Res. Def. Council v. U.S. Forest Serv.*, 421 F.3d 797, 811 (9th Cir. 2005) (citations omitted).

The requirement to complete an EIS is triggered when "substantial questions are raised as to whether a project may cause significant degradation of some human environmental factor." *Klamath Siskiyou Wildlands Ctr. v. Boody*, 468 F.3d 549, 562

(9th Cir. 2006) (quoting *Idaho Sporting Cong. v. Thomas*, 137 F.3d 1146, 1149 (9th Cir. 1998)). It is not necessary to "show that significant effects *will in fact occur*," it is enough that there are "substantial questions whether a project may have a significant effect"; this is a low standard. *Id.* (quoting *Idaho Sporting Cong.*, 137 F.3d at 1150); *see also Solar Energy Indus.*, 80 F.4th at 991 (9th Cir. 2023). "If an agency decides not to prepare an EIS, it must supply a 'convincing statement of reasons' to explain why a project's impacts are insignificant." *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1212 (9th Cir. 1998) (quoting *Save the Yaak Comm. v. Block*, 840 F.2d 714, 717 (9th Cir. 1988)).

1. The harvest specifications decision is a major federal action.

The 2023-2024 harvest specifications decision is a major federal action because it is a final rule approving fishing subject to federal control. Regulations implementing NEPA define a major federal action as "an activity or decision subject to Federal control and responsibility." 40 C.F.R. § 1508.1(q). The definition includes "new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by Federal agencies; [and] new or revised agency

rules, regulations, plans, policies, or procedures…." *Id.* § 1508.1(q)(2).[5] Authorizing commercial fishing is a major federal action. *See Ramsey v. Kantor*, 96 F.3d 434, 443-44 (9th Cir. 1996) (concluding that issuing an incidental take statement for salmon "is functionally equivalent to a permit," allowing fishing to happen and therefore a major federal action).

The Service apparently recognized the adoption of the harvest specifications is a major federal action because it completed a supplementary information report to consider whether NEPA analysis was required, but erroneously concluded there was no significant new information to assess. *See infra* pp. 26-36. The adoption of the harvest specifications each year is necessary to allow fishing to proceed, consistent with the fishery management plan. *See* NMFS00018 (rule "establish[es] harvest limits for groundfish"); NMS06609-10. In this decision, the Service determines how many fish can be removed from the ocean, making adjustments for social and economic factors, NMFS00018; chooses which of six analytical "tiers" to use for determining limits for each stock, *id.*; uses those tiers to set overfishing limits and acceptable biological catch levels, *id.*; divides catch limits among seasons and sectors, NMFS00020-32; may split or combine groupings of fish species, NMFS00119; establishes annual prohibited species

[5] Former NEPA regulations included a similar definition for "major federal action," but specified that "[m]ajor reinforces but does not have a meaning independent of significantly." 40 C.F.R. § 1508.18(2020); *see also id.* § 1508.27 (defining "significantly"). In 2020, the regulations were replaced and the new definition of "major federal action" appears at 40 C.F.R. § 1508.1(q). In adopting the regulations, the Council on Environmental Quality specified that "major" and "significant" should have independent meanings. *See* 85 Fed. Reg. 43,304, 43,345 (July 16, 2020).

catch limits for crab and herring, NMFS00033; and puts into effect the prohibited species catch limit for Chinook salmon based on prior year's abundance estimates.[6] NMF00032-33; *see also* NMFS00119-28 (describing process); 50 C.F.R. §§ 679.20-.26. The harvest specifications process adopted in the fishery management plan establishes a structure for making these decisions, but it leaves the Council and the Service with considerable discretion to make critical choices about what type of boats can fish for how many fish of each kind in a given year. *See League of Wilderness Defs.-Blue Mountains Biodiversity Project v. U.S. Forest Serv.*, 549 F.3d 1211, 1217 (9th Cir. 2008) (where the agency "has statutory authority to regulate the environmental consequences of the Project," it must comply with NEPA).

In other fisheries, the Service has prepared, at a minimum, environmental assessments to consider whether the adoption of catch limits and similar fisheries management tools may have significant environmental effects. *See, e.g.*, *Nw. Env't Def. Ctr. v. Brennen*, 958 F.2d 930, 933, 936 (9th Cir. 1992) (Service prepared EA for amendment to regulations setting abundance-based limits for annual salmon escapement goals); *Oceana v. Locke*, 831 F. Supp. 2d 95, 104, 125 (D.D.C. 2011) (Service prepared EIS for amendment to plan modifying trip limits, establishing mechanism for specifying catch limits, and calculating control rule, but concurrently adopted annual catch limits with an EA); *see also* 75 Fed. Reg. 18,356, 18,356 (Apr. 9, 2010) (final rule and notice of

[6] Salmon bycatch is regulated under 50 C.F.R. § 679.21(f), which sets a range of limits for Chinook bycatch and establishes a savings area, but no overall cap, for chum bycatch

EA for concurrent adoption of annual catch limits and other specifications discussed in *Oceana*); *Greenpeace Action v. Franklin*, 14 F.3d 1324, 1327-28 (9th Cir. 1992) (new EA prepared before reopening fishery for final quarter of a season). In this case, the Service did not even prepare an environmental assessment to consider the significance of the action.

2. The 2023-2024 harvest specifications may have significant effects.

These choices made in the harvest specifications decision have significant effects. To determine whether the effects of an action may be significant, "agencies shall analyze the potentially affected environment and degree of the effects of the action." 40 C.F.R. § 1501.3(b). This requires considering the affected environment and its resources, including short and long-term effects, beneficial and adverse effects, and public health and safety. *Id.*; *see also Blue Mountains Biodiversity Project*, 161 F.3d at 1213 (citing former regulation listing relevant factors for significance under NEPA); *Nat'l Parks & Conservation Ass'n v. Babbitt*, 241 F.3d 722, 731 (9th Cir. 2001), *abrogated on other grounds by Monsanto Co. v. Geertson Seed Farms*, 569 U.S. 139, 157 (2010) (significance requires considering context and intensity). If a project *may* have significant effects, the agency must prepare an EIS. *Klamath Siskiyou Wildlands Ctr.*, 468 F.3d at 562 (citing *Idaho Sporting Cong.*, 137 F.3d at 1150). Authorizing fishing for the largest trawl fishery in the world, SUPP00179, is likely to have significant effects, particularly when considered in the context of a dramatically altered, potentially less-

resilient ecosystem.

The authorization of fishing under the harvest specifications affects targeted and non-targeted fish, habitat, marine mammals, and other ecosystem components. As the Service recognized in its 2007 EIS for the harvest specifications strategy,

> [a]nnual target species harvests, conducted in accordance with the annual specifications, will impact the stocks of the target species themselves. Annual harvest activity may change total mortality for the stocks, may affect stock characteristics through time by selective harvesting, may affect reproductive activity, may increase the annual harvestable surplus through compensatory mechanisms, may affect the prey for the target species, and may alter [essential fish habitat].
>
> The annual target species harvests also impact the environmental components described in this EIS: nontarget fish species, seabirds, marine mammals, living and nonliving benthic habitat, and a more general set of ecological relationships.

NMFS06621. Some of the effects of fishing may be irreversible. NMFS19126 (biological opinion for fisheries stating models show species will not recover pre-fishing biomass over a 100-year timeframe). These acknowledged effects of harvests conducted under the annual specifications are both short- and long-term effects that may have consequences for marine resources and the people who depend on them, and they should be considered in an EIS. *See Klamath Siskiyou Wildlands Ctr.*, 468 F.3d at 562.

Because, "as a practical matter, the volume of a fishery's total annual catch is inextricably linked to the amount of its bycatch," the authorization of fishing affects the amount of bycatch in the fishery. *Oceana*, 831 F. Supp. 2d at 108. Trawling is non-selective and bycatch is inevitable; at higher levels of fishing, more bycatch is likely.

See NMFS06713 (projecting higher bycatch under higher catch limits); NMFS26847 (similar). Trawling for pollock results in bycatch of tens to hundreds of thousands of Chinook and chum salmon, some of which would otherwise return to western Alaska rivers to spawn and produce more salmon. *See supra* pp. 10-11; *see also* NMFS18142 ("Any additional fish returning to those rivers improves the ability to meet escapement goals, which is necessary for long-term sustainability of the stocks and the people reliant on this fishery."). Crabs, including from stocks that have recently collapsed, are also caught as bycatch. *See supra* pp. 2-3, 11-12. With the collapse of salmon and crab stocks, added bycatch may have a greater impact. *See Pac. Marine Conservation Council v. Evans*, 200 F. Supp. 2d 1194, 1206 (N.D. Cal. 2002) (finding "unpersuasive" the agency's argument that serious decline in a fish population caught as bycatch in groundfish fishery was not significant where fishery contributed to decline).

Trawling and other groundfish fishing can also "influence the structure and function of marine ecosystems," NMFS24544, remove top predators, NMFS26434, change predator-prey relationships, NMFS00233-34, damage bottom habitat and kill benthic organisms, NMFS00234, affect food web dynamics, "alter the amount and flow of energy in an ecosystem," NMFS26436, influence species diversity, NMFS26436-37, and cause direct stress to marine mammals and birds. NMFS00118. While the Service may have concluded that some of these impacts were not significant in 2004 or 2007, it cannot make that conclusion now without analyzing the effects of fishing in the context of today's dramatically changed environment. The removal of 2.0 million metric tons of

fish—without considering spatial shifts, changes in abundance of forage fish, increased metabolic needs, or how these changes affect subsistence—could exacerbate the ecosystem-wide impacts of these changes. *See Or. Natural Desert Ass'n v. Rose*, 921 F.3d 1185, 1190 (9th Cir. 2019) (understanding baseline conditions is critical to assessing effects of agency action); *see also All. for the Wild Rockies v. Cooley*, No. CV 21-136-M-DWM, 2023 WL2522945, at *10-11 (D. Mont. Mar. 14, 2023), *appeal filed*, No. 23-35436 (9th Cir. June 26, 2023) (presence of grizzly bears in locations they previously did not exist was a significant new circumstance).

The agency itself acknowledges, in its 2007 EIS for the harvest specifications strategy, that authorizing fishing under the annual harvest specifications process affects many components of the ecosystem. *See supra* p. 23. These effects are significant and should have been considered in an EIS. *See Klamath Siskiyou Wildlands Ctr.*, 468 F.3d at 562.

B. The 2007 EIS for the harvest specifications strategy does not analyze the effects of the 2023-2024 harvest specifications decision in the context of the current environment.

In an attempt to justify its failure to comply with NEPA, the Service completed a supplementary information report for the 2023-2024 harvest specifications in which it concluded 1) the effects of the 2023-2024 specifications fall "within the scope of those analyzed and disclosed in the [2007 harvest specifications] EIS"; and 2) there is no information or circumstances "not addressed through the annual process of using the preferred harvest strategy to set the harvest specifications." NMFS00592, NMFS00635.

The Service did not actually consider any new information about the status of the ecosystem and explain its significance, or lack thereof, in the supplementary information report, as NEPA requires. *See Warm Springs Dam Task Force v. Gribble,* 621 F.2d 1017, 1024 (9th Cir. 1980). Its explanation does not constitute a "reasoned decision," because 1) new information about collapsing salmon stocks and the state of the ecosystem is not within the scope of effects previously disclosed and, 2) the Service cannot rely on an evaluation outside the NEPA process to consider significant new information. *See Idaho Sporting Cong. v. Alexander*, 222 F.3d 562, 566 (9th Cir. 2000) ("[O]nce an agency determines that new information is significant, it must prepare a supplemental EA or EIS; SIRs cannot serve as a substitute."); *Friends of the Clearwater v. Dombeck*, 222 F.3d 552, 557 (9th Cir. 2000).

The last decade has been a time of turbulence in the North Pacific ecosystem, with unprecedented, record-setting events and the most restrictive subsistence fishing seasons in living memory for salmon-dependent communities in western and interior Alaska. *See supra* pp. 10-11. These events—described as unexpected and unprecedented by the Service's own scientists—did not occur until years after the 2004 and 2007 EISs were

completed and were not analyzed in either of those documents.[7] *See Blue Mountains Biodiversity Project*, 161 F.3d at 1214 (when a significant event occurred several years after the completion of an EIS, the EIS "does not, and could not, evaluate the impacts of" the event).

1. Changed ocean conditions.

Warming ocean temperatures and loss of sea ice over the last decade drove changes in physical oceanography affecting productivity of the overall marine ecosystem and its ability to support a variety of organisms. *See supra* pp. 6-12. The 2004 programmatic EIS and 2007 harvest specifications EIS discuss normal variability in the North Pacific and historical warm and cold periods, but do not analyze the type of upheaval that has characterized the past decade. The 2007 EIS for the harvest

[7] Although, in the 2023-2024 harvest specifications decision, the Service states that the 2004 programmatic EIS is "outside the scope of this action," NMFS00042, the annual harvest specifications decision is a central component of groundfish management that is both an implementation of and constrained by the harvest specifications strategy and the fisheries management plan. NMFS06565 (harvest specifications strategy is "a project-level action within the fishery management programs under the . . . groundfish FMPs"). Further, the 2007 harvest specifications EIS relies extensively on the 2004 programmatic EIS, incorporating it by reference and relying on the 2004 EIS as the "overarching analytical framework" and "baseline analysis for evaluating subsequent management actions." NMFS06565-66; *see also* NMFS06621 (explaining that all future harvest specifications will be part of the management process "subject to" the 2004 programmatic EIS). In the 2007 harvest specifications EIS's analysis of subsistence, for example, the Service stated that a "description of subsistence use of natural resources potentially affected by commercial groundfish fisheries was outlined in detail in the [2004 programmatic EIS]…." NMFS06862; *see also, e.g.*, NMFS06720, NMFS06577, NMFS06645, NMFS06658, NMFS06680, NMFS06684, NMFS06690, NMFS06701, NMFS06705, NMFS06738, NMFS06742, NMFS06752, NMFS06754, NMFS06759, NMFS06761, NMFS06783, NMFS6786, NMFS06790, NMFS06802, NMFS06825.

specifications strategy, for example, includes a short overview of regime shifts, warming ocean conditions, and acidification, but does not anticipate the accelerated rate of change now occurring. NMFS006632-35. It does not, for example, discuss shifts in zooplankton production and corresponding metabolic stress for different species, or shifts in abundance and spatial distribution. *See id.*; *supra* pp. 6-8 (describing these changes).

The 2004 programmatic EIS includes even less information related to today's ocean conditions. In it, the Service similarly describes historical interannual fluctuations in atmospheric and oceanic parameters. NMFS23888-92. The analysis postulates that climate drivers have a greater effect on the ecosystem than fisheries, but also concludes "groundfish management areas generally exhibit sustainable ecosystem-level characteristics with regard to overall productivity and the ability to maintain structural and functional patterns in the face of disturbance." NMFS24555. In the 2015 supplemental information report, the expert analysis of ecosystem factors described then-recent changes as within the "short- or medium-term (3 to 5 year) range of natural variability, as measured over the last 30 years" and concluded that ecosystem indicators were within one standard deviation of the mean. NMFS23435, NMFS23415.

Today, agency reports describe the current warming as "greater in both magnitude and duration than that of the early 2000s," SUPP00723, and explain that recent warm years "have been warmer than average throughout the year," where earlier warming was more limited. SUPP01061. They also show many ecosystem indicators more than one standard deviation above or below the mean, NMFS05437, in direct contrast to the

conclusion in the 2015 supplemental information report that all indicators were within one standard deviation. According to the Service's own reports, the changes suggest that structural and functional patterns of the ecosystem changed during this warming, affecting productivity across all levels of the food web with "ongoing responses" to "climate shocks and long-term warming…." NMFS01280; *see also* SUPP00331-38; NMFS05439-42. These concerns about productivity and never-before-seen events do not fall within the range analyzed in the Service's 2004 and 2007 EISs and call into question the Service's conclusions about the ability of the ecosystem to maintain structural and functional patterns in the face of disturbance. SUPP00337 (discussing inability to recover from heatwave); SUPP00336 ("[S]ome linkages across these collapses may help inform the need for near-term precautionary management decisions."). If considered in an updated EIS, this information could lead the Service to consider changes in the harvests specifications process to mitigate the effects of fishing in this new environment. *See Warm Springs Dam Task Force*, 621 F.2d at 1024-25 (information that undermines agency's assumptions may require supplementation of EIS).

2. Seabird and marine mammal mortality events.

Changes in ocean temperature and productivity are linked with seabird die-offs, "unprecedented in terms of spatial and temporal scale," SUPP01289, and large-scale unusual mortality events for humpback whales, gray whales, and ice seals. SUPP01060; SUPP01289; SUPP03852-53; *supra* p. 9. These recent events are not discussed in either the 2004 programmatic or 2007 harvest specifications strategy EISs because events of

this scale have not occurred previously.

The 2007 harvest specifications strategy EIS recognized that fisheries can reduce or disperse prey species for birds, NMFS06753, NMFS06759-60, result in direct mortality through bycatch, NMFS06753-56, and affect foraging habitat, NMFS06761-62. With respect to habitat, the EIS acknowledged that fishing can affect habitat for spectacled and Steller's eiders that feed on the ocean bottom, but stated that fishing effects were unlikely because there is little spatial overlap between groundfish fisheries and eider critical habitat. NMFS06761.

Since that time, however, seabirds have experienced massive die-offs. *See supra* p. 9. In addition, the Service acknowledged, in a report for the 2020 harvest specifications, that "[s]eabird bycatch rates are influenced, in part, by prey supply and a link exists between poor ocean conditions and peak bycatch years." SUPP00720. In the context of recent die-offs and ongoing disruption in the marine ecosystem, this information could be significant to fisheries management choices. The Service has also recently documented the first interactions between fishing vessels and eider habitat. *See supra* p. 9. This information contradicts the Service's previous analysis and should be considered in an EIS. *See Native Ecosystems Council v. Tidwell*, 599 F.3d 926, 937-38 (9th Cir. 2010) (new information showing sage grouse habitat in project area was significant where agency had previously concluded there was none).

With respect to marine mammals, the 2007 harvest specifications EIS is similarly silent regarding unusual mortality events. *See* NMFS06724-37. It discusses how many

Steller sea lions, seals, whales, and walruses are killed by fisheries annually, either directly or indirectly, and determines fishing is having limited effect on these animals because fisheries do not exceed specified mortality goals for most species. *See* NMFS06725-37. For western North Pacific humpbacks, however, the level of fishery-caused mortality at the time the 2007 EIS was written exceeded this goal. NMFS06737. In 2015, the Service declared an unusual mortality event for large whales that included 22 humpbacks. SUPP03852-53. The deaths were linked with warm ocean conditions. NMFS03853. This information is significant because increased mortality outside of fisheries could affect the Service's assessment of the significance of fishery-related mortalities.

3. Multi-species salmon collapse.

The precipitous decline of Chinook salmon began around 2007, when the harvest specifications strategy EIS was produced, and has steadily heightened with the collapse of chum and coho stocks. *See supra* pp. 10-11.

In contrast with the current situation, when the 2007 harvest specifications EIS was produced, western Alaska Chinook and chum salmon stocks were meeting or exceeding escapement goals. The 2007 EIS stated that western Alaska Chinook and chum salmon met or exceeded escapement goals in 2004, 2005, and 2006 and "escapement in excess of minimum needs has generally increased in recent years as well, allowing for subsistence use, recreational fishing, and commercial fishing activities." NMFS06712, NMFS06704. The EIS characterized Kuskokwim chum stocks as

"rebuilt", NMFS06826, and predicted "continued strong production" of Chinook. NMFS06825. While Yukon stocks were not doing as well, "continued improvement in run size" was expected for chum salmon. NMFS06826.

The 2004 programmatic EIS estimated an annual subsistence harvest of over 50,000 Chinook and 160,000 chum for the Yukon region, NMFS24473, and over 77,000 Chinook and 47,000 chum salmon in the Kuskokwim area. NMFS24474. There were "approximately 300,000 chinook salmon" harvested on average for commercial and subsistence use from 1998 through 2000. NMFS26248. By contrast, in 2022, there were only half as many salmon returning to the Upper Yukon, Unalakleet, and Kuskokwim rivers combined as were harvested on an annual basis when the 2004 programmatic EIS was produced. NMFS06530 (three-system index for 2022 was 158,646 Chinook). In 2022, run sizes were at record, or near record, lows on two of the three rivers. Although the programmatic EIS described western Alaska Chinook salmon as depressed, subsistence and commercial fishing were still happening. NMFS26250, NMFS26253. Today, there is no commercial salmon fishing in the Yukon and Kuskokwim rivers and subsistence fishing is closed or severely restricted.

Both the 2004 programmatic EIS and the 2007 harvest specifications strategy EIS recognized that "[i]f individual stocks become so depressed that full closure of direct fisheries is insufficient to enable a rebound in the population, then any additional mortality, including bycatch, could negatively impact the stock." NMFS24475; NMFS06866; NMFS24544. There have now been full and partial closures of directed

Chinook fisheries for many years in western Alaska rivers. SUPP00228-29. Instead of "continued improvement" or "continued strong production," NMFS06825-26, salmon stocks hit record lows, leading to an ongoing and worsening subsistence crisis. SUPP00292-97; NMFS05453-54. At the same time, juvenile Chinook ocean abundance started declining around 2013, and both Chinook and chum salmon at sea have shown poor body condition and empty stomachs during recent warm years. SUPP00163-68, SUPP00170-73. The precipitous, ongoing decline of salmon stocks is significant information that must be analyzed in a supplemental EIS. *See Friends of the Clearwater*, 222 F.3d at 557 (supplemental EIS is required where new information shows the action "will affect the quality of the human environment in a significant manner or to a significant extent not already considered" (quoting *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 374 (1989))).

4. The need to evaluate fisheries management in light of significant change.

These changes undermine numerous assumptions in the 2007 harvest specifications strategy EIS and the 2004 programmatic EIS. Fisheries management decisions can either exacerbate environmental changes or support a more resilient ecosystem in the face of unprecedented changes. As the Service recognized in 2004, "[b]oth climate and commercial fishing activity currently influence the structure and function of the North Pacific Ecosystem." NMFS24545. If the Service considered the effects of fisheries management decisions in the context of significant changes across the

ecosystem, it could lead the Service to consider new approaches to management to better address these concerns. For example, the information could be important not only for incorporating ecosystem considerations into the existing process for calculating total allowable catch, but also for considering alternatives to that process in an EIS, potentially including spatiotemporal changes to the process for setting catch limits, reconsidering harvest control rules, or changing how subsistence and ecological factors are considered. *See* 50 C.F.R. § 600.310(e)(1)(v)(C) ("ecological and environmental information should be taken into account" in specifying maximum sustained yield); *id.* § 600.310(e)(3)(A)(i), (e)(3)(A)(iii), (f)(4)(iv) (requiring consideration of economic, social, and ecological factors).

C. The Service cannot substitute the harvest specifications process for an analysis of significant information in a NEPA document.

The Service's second conclusion in its 2023 supplementary information report—that it did not need to consider new information because it was considered through the harvest specifications process—is also erroneous. NMFS00590-92. While an agency may use a non-NEPA document to consider the significance of new information, it may not substitute a non-NEPA process or document for a supplemental EIS if the information is significant. *Idaho Sporting Cong. v. Alexander*, 222 F.3d at 566. Allowing agencies to use non-NEPA documents to assess significant information would subvert NEPA's "twin aims" of achieving "active public involvement and access to information." *Price Rd. Neighborhood Ass'n v. U.S. Dep't of Transp.*, 113 F.3d 1505,

1511 (9th Cir. 1997) (citing *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989)).

The stock assessments the Service considers during the annual harvest specifications process are not NEPA documents and are not a substitute for a supplemental EIS. *Idaho Sporting Cong. v. Alexander*, 222 F.3d at 565-66. An EIS provides a detailed discussion of the environmental consequences of a proposed action along with a comparison of alternatives to the action so that the agency and the public can consider the environmental trade-offs of these different approaches. *See Price Rd. Neighborhood Ass'n*, 113 F.3d at 1511; 40 C.F.R. § 1502.14; *see id.* § 1503.1. By contrast, stock assessments consider the status of individual groundfish stocks and are focused on identifying the overfishing limits and catch levels for those stocks, following the parameters of the current harvest specifications process and fisheries management plan. *See, e.g.*, NMFS01264-315 (summarizing stock assessment reports); NMFS06563-64 (describing harvest specifications process). The reports focus on how the ecosystem affects the fishery rather than how the fishery affects components of the ecosystem. The 2022 pollock stock assessment for the Eastern Bering Sea, for example, includes only three paragraphs assessing the effects of the pollock fishery on the ecosystem, while the remainder of the report focuses on how the ecosystem affects pollock. *Compare* NMFS02531 (effects of pollock fishing on ecosystem) *with, e.g.*, NMFS02526 (concluding declining western Alaska salmon stocks could mean less competition for pollock prey); *id.* (suggesting declining fur seal populations could reduce

pollock consumption). This is not a substitute for the effects analysis required under NEPA.

Critically, stock assessment reports do not consider any alternative approaches to the existing harvest specifications process. They do not, for example, consider whether more precautionary approaches to setting catch limits would have ecosystem benefits in light of unprecedented ecosystem change. Nor do they consider how the catch limits they recommend interact with different management measures to affect the ecosystem or whether additional set-asides or reserves may be needed to provide a buffer for decreased resiliency. *See, e.g.*, *Greenpeace v. Nat'l Marine Fisheries Serv*., 55 F. Supp. 2d 1248, 1273-74 (W.D. Wash. 1999) (discussing need to assess interaction of fisheries management measures together in an EIS). The stock assessment reports do not satisfy NEPA's purpose of informed agency decision-making and public participation and cannot be used as a substitute for a supplemental EIS. *Idaho Sporting Cong. v. Alexander*, 222 F.3d at 566.

IV. The Service violated NEPA by declining to complete a supplemental EIS analyzing the effect of its harvest specifications decision in the current environment.

Even if the Service was not required to complete a NEPA analysis for the 2023-2024 harvest specifications decision, it violated NEPA by failing to complete a supplement to the 2007 EIS for the harvest specifications strategy. When major federal action "remains to occur," an agency must supplement its EIS to address significant new information. 40 C.F.R. § 1502.9(d). In view of NEPA's "'action-forcing' purpose",

Marsh, 490 U.S. at 371, an agency "that has prepared an EIS cannot simply rest on the original document." *Friends of the Clearwater*, 222 F.3d at 557. The agency "must be alert to new information that may alter the results of its original environmental analysis, and continue to take a 'hard look at the environmental effects of [its] planned action, even after a proposal has received initial approval.'" *Id.* (quoting *Marsh*, 490 U.S. at 374). Thus, an agency "[s]hall prepare," 40 C.F.R. § 1502.9(d)(1), a supplement to its EIS when, among other things, "[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." *Id*. § 1502.9(d)(1)(ii). Agency guidance provides that "[a]s a rule of thumb,… if the EIS concerns an ongoing program, EISs that are more than 5 years old should be carefully reexamined to determine if" a supplemental EIS is needed.[8] 46 Fed. Reg. 18,026, 18,036 (Mar. 23, 1981) (question 32); *see also Kunaknana v. U.S. Army Corps of Eng'rs*, 23 F. Supp. 3d 1063, 1070-71 (D. Alaska 2014); Env't Prot. Agency, *Reviewing Environmental Impact Statements for Fishery Management Plans* at 20 (Sept. 2005). An agency may not rely on or tier to an *outdated* programmatic EIS to support a site-specific or project-level action. *W. Org. of Res. Councils v. Zinke*, 892 F.3d 1234, 1245 (D.C. Cir. 2018); *see also Blue Mountains Biodiversity Project*, 161 F.3d at 1214.

The harvest specifications strategy is an ongoing action that provides direction for

[8] This has now been codified at 42 U.S.C. § 4336b (2023), which provides that agencies may rely on programmatic environmental reviews after five years only if "the agency reevaluates the analysis in the programmatic environmental document and any underlying assumption to ensure reliance on the analysis remains valid."

the annual harvest specifications decisions. *See Marsh*, 490 U.S. at 374 (agency need only supplement an EIS if there "remains federal action to occur"). While agencies may not need to supplement environmental analyses for actions, like land use plans, that are complete when approved, they must supplement environmental analyses for ongoing actions where there is remaining federal action. *See Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 73 (2004). When an agency retains ongoing oversight in administering the action, there is action remaining to occur. *See Sierra Club v. Bosworth*, 465 F. Supp. 2d 931, 939 (N.D. Cal. 2006). A management plan that requires an agency to take specific actions, in contrast to a policy-level document, is ongoing. *See Cottonwood Env't L. Ctr. v. Bernhardt*, 796 F. App'x 368, 370-71 (9th Cir. 2019) (distinguishing between bison management plan and policy-level land management plan); *see also All. for the Wild Rockies v. U.S. Dep't of Agric.*, 772 F.3d 592, 606 n.10 (9th Cir. 2014) (assuming, without deciding, that bison management plan is ongoing action).

The harvest specifications strategy "is the choice of a harvest strategy for the federally managed groundfish fisheries" and "determine[s] annual harvest specifications in compliance with" federal laws and the fishery management plans. NMFS06556. It is a "project-level action," NMFS06565, "that will take place in every one of the years considered" in the 2007 harvest specifications strategy EIS. NMFS06620; *see also* NMFS00586 (description of process). The harvest specifications strategy is not a policy-level document like the land use plan considered in *Norton*. It creates a specific process and defines the parameters within which the Service must make its annual management

decisions. *See* NMFS06577-78. To operate the fishery, the Service must continue to make distinct decisions on an annual basis: "A harvest strategy is needed for the management of the groundfish fisheries and the conservation of marine resources…. Each year the harvest strategy uses the best scientific information available in the annual [stock assessment and fishery evaluation] reports to derive the annual harvest specifications…." NMFS00041. Recognizing the ongoing nature of the action, the Service completed a supplementary information report for the 2023-2024 harvest specifications decision, relying on the 2007 harvest specifications strategy EIS to support its annual decision.[9] *See* NMFS000584.

In deciding whether to prepare a supplemental EIS for an ongoing action, the agency "must 'ma[ke] a reasoned decision based on … the significance—or lack of significance—of the new information'…." *Friends of the Clearwater*, 222 F.3d at 557 (quoting *Marsh*, 490 U.S. at 378). An agency may prepare a supplemental information report to determine whether new information requires the preparation of a supplemental EIS, but if the information is significant, it must prepare a supplemental EIS. *Idaho Sporting Cong. v. Alexander*, 222 F.3d at 566; *see also Price Rd. Neighborhood Ass'n*, 113 F.3d at 1510. "If an agency decides not to prepare an EIS, it must supply a 'convincing statement of reasons' to explain why a project's impacts are insignificant." *Blue Mountains Biodiversity Project*, 161 F.3d at 1212 (quoting *Save the Yaak Comm.*,

[9] By contrast, the Service argued that the 2004 programmatic EIS is outside the scope of the annual decision. NMFS00042; *but see supra* n.9.

840 F.2d at 717).

The changes to the Bering Sea and Aleutian Islands ecosystem in the last decade constitute significant changes to every aspect of the marine ecosystem. *See supra* pp. 25-34. They are relevant to fisheries management decisions, including the harvest specifications strategy, and, if considered in a supplemental EIS, could lead the Service to consider different approaches to setting the harvest specifications, including more precautionary management. *See supra* pp. 33-34. The Service's reasons for not completing a supplemental EIS—that any new information is not significant or that it was considered in the harvest specifications process—are arbitrary for the reasons described above. *See supra* pp. 25-36. The Service therefore violated NEPA.

CONCLUSION

The Service's refusal to complete any NEPA analysis to analyze the effects of its fisheries management choices in the context of today's environment was arbitrary and violates NEPA. Plaintiffs ask the Court to remand the 2023-2024 harvest specifications decision to the Service and order the parties to submit supplemental briefing to address the appropriate remedy. *See* Doc. 25 at 2.

Respectfully submitted this 9th day of October, 2023.

s/ Katharine S. Glover

Katharine S. Glover (Alaska Bar No. 0606033)
Eric P. Jorgensen (Alaska Bar No. 8904010)
Charisse Arce (Alaska Bar No. 2303017)
Maile Tavepholjalern (Alaska Bar No. 1611094)
EARTHJUSTICE

Attorneys for Plaintiffs Association of Village Council Presidents and Tanana Chiefs Conference

CERTIFICATE OF COMPLIANCE WITH WORD LIMITS

I certify that this document contains 9,997 words, excluding items exempted by Local Civil Rule 7.4(a)(4), and complies with the word limits of Local Civil Rule 7.4(a)(1).

Respectfully submitted this 9th day of October, 2023.

s/ Katharine S. Glover
Katharine S. Glover

CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2023, a copy of foregoing PLAINTIFFS' PRINCIPAL BRIEF UNDER LOCAL RULE 16.3(c)(1), with attachments, was served electronically through the CM/ECF system on the following counsel of record: Jennifer Sundook, James C. Feldman, Jeffrey M. Feldman, and Elizabeth M. Bakalar.

s/ Katharine S. Glover
Katharine S. Glover

TABLE OF EXHIBITS

Exhibit No.	Description
1	Declaration of Vivian Korthuis
2	Declaration of Jennifer Hooper
3	Declaration of Thaddeus Tikiun Jr.
4	Declaration of Joseph Joseph
5	Declaration of Brian Ridley
6	Declaration of Karma Ulvi

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

ASSOCIATION OF VILLAGE COUNCIL PRESIDENTS and TANANA CHIEFS CONFERENCE, *Plaintiffs*, CITY OF BETHEL, *Intervenor-Plaintiff*, v. NATIONAL MARINE FISHERIES SERVICE *et al.*, *Defendants*, AT-SEA PROCESSORS ASSOCIATION and UNITED CATCHER BOATS, *Intervenor-Defendants.*	Case No. 3:23-cv-00074-SLG

DECLARATION OF VIVIAN KORTHUIS

I, Vivian Korthuis, hereby declare as follows:

1. I am Yup'ik, and a member of Emmonak Village, a federally recognized Tribe, which is one of the member Tribes of Association of Village Council Presidents (AVCP). I was born in Bethel and raised in Emmonak, on the Yukon River. I went to high school in Sitka, hold a bachelor's degree from Dartmouth College, and a master's in education from the University of Alaska Fairbanks.

2. I have been the Chief Executive Officer of AVCP since 2016. Prior to that, I served AVCP for 18 years in several capacities including Vice President of Programs. Before I joined AVCP, I worked in a leadership capacity at the Yukon-Kuskokwim Health Corporation and as a teacher.

3. I serve on several boards including the Inuit Circumpolar Council Executive Board, the Alaska Federation of Natives Board of Directors, and the Yuut Elitnaurviat Board of Directors.

4. I have been a lifelong advocate for the Yukon-Kuskokwim (Y-K) Delta region and have more than 30 years of experience working to improve education, health care, and social services delivery within the region and to protect and uplift our Way of Life. AVCP's subsistence advocacy is very important to me personally, because subsistence is foundational to our Way of Life.

5. In my capacity as Chief Executive Officer, I am familiar with all aspects of AVCP's activities and its interests in protecting our natural resources, subsistence practices, and the environment. This includes my work with the AVCP Executive Board

of Directors and its Subsistence Committee; my work with and support of our Lands and Cultural Resources Division and Natural Resources Department; and in the priorities set by our Tribes around protecting natural resources, subsistence, and the environment and our internal efforts to do so.

6. AVCP is a regional non-profit tribal consortium dedicated to supporting the interests of its 56 member Tribes[1] in the YK Delta. AVCP is based in Bethel, Alaska, and is controlled by our 56 federally recognized member Tribes.

7. As shown on the below map, the geographic boundaries of AVCP's region extend from the Yukon River village of Russian Mission downstream to the Bering Sea coast, north up through Kotlik and south along the coastline to Platinum, and then extend up the Kuskokwim River to Stony River, including Lime Village on the Stony River

[1] Akiachak Native Community, Akiak Native Community, Village of Alakanuk, Algaaciq Native Village, Yupiit of Andreafski, Village of Aniak, Asa'carsarmiut Tribe, Village of Atmautluak, Village of Bill Moore's Slough, Village of Chefornak, Chevak Native Village, Native Village of Chuathbaluk, Chuloonawick Native Village, Village of Crooked Creek, Native Village of Eek, Emmonak Village, Native Village of Georgetown, Native Village of Goodnews Bay, Native Village of Hamilton, Native Village of Hooper Bay, Iqugmiut Traditional Council, Kasigluk Traditional Elders Council, Native Village of Kipnuk, Native Village of Kongiganak, Village of Kotlik, Organized Village of Kwethluk, Native Village of Kwigillingok, Lime Village, Village of Lower Kalskag, Native Village of Marshall, Native Village of Mekoryuk, Native Village of Napaimute, Native Village of Napakiak, Native Village of Napaskiak, Native Village of Nightmute, Newtok Village, Nunakauyarmiut Tribe, Native Village of Nunam Iqua, Native Village of Nunapitchuk, Village of Ohogamiut, Orutsararmiut Traditional Native Council, Oscarville Traditional Village, Native Village of Paimiut, Pilot Station Traditional Village, Pitka's Point Traditional Council, Platinum Traditional Village, Native Village of Kwinhagak, Village of Red Devil, Native Village of Scammon Bay, Village of Sleetmute, Village of Stony River, Tuluksak Native Community, Native Village of Tuntutuliak, Native Village of Tununak, Umkumiut Native Village, Village of Kalskag.

tributary. The area encompasses approximately 6.5 million acres, or 55,000 square miles, about the size of the state of New York.

8. AVCP's member Tribes are spread across 48 communities and have a population of 27,000 primarily Yup'ik, Cup'ik, and Athabascan peoples. The communities are located along the Yukon River, Kuskokwim River, and the Bering Sea coast. All 48 communities are only accessible via air, snowmachine, and boats. The communities are not connected to each other or the rest of Alaska by road.

9. AVCP has an Executive Board whose members are elected by our 56 member Tribes. Member Tribes are organized into units. Each unit elects a representative to serve on our Executive Board. Member Tribes also elect one at-large

member of the Board, who serves as our chairperson. At the time of elections, Executive Board members must be tribal members of an AVCP member Tribe and an elected tribal governmental official. AVCP's Traditional Chief and Second Traditional Chief serve the Board and member Tribes in an Elder role.

10. AVCP is dedicated to supporting the interests of its member Tribes, including through community development, education, essential social and human services, culturally relevant programs, and advocacy. As described in AVCP's Articles of Incorporation, AVCP's purpose is to promote the common good and social welfare of the region by establishing and maintaining services—including environmental services—and acting to represent the villages in the region. AVCP promotes self-determination and protection and enhancement of cultural and traditional values. AVCP's mission statement is: Working together with Tribes to enhance sovereignty, self-sufficiency, and Our Way of Life. As part of its mission, AVCP has long been committed to advocating for the protection of the Bering Sea and its resources. An important focus of AVCP's mission is to advocate for the protection of subsistence.

11. AVCP represents the interests of its member Tribes for protection of subsistence and protection of the North Pacific ecosystem in many different capacities, including as a member of the Northern Bering Sea Climate Resilience Area Tribal Coalition, the Arctic-Yukon-Kuskokwim Tribal Coalition, the Bering Sea Tribal Coalition, and others. AVCP routinely provides testimony and engagement in federal listening sessions and consultations related to subsistence and natural resources and

before management bodies such as the North Pacific Fishery Management Council (Council).

12. Subsistence harvesting of animals, plants, and sea creatures provides a critical economic resource for AVCP's tribal communities. These healthy and plentiful local foods form the main part of many residents' diets. Subsistence foods are superior to purchased imported foods, which are often expensive and less healthy, not least due to the need for long shelf-lives. Artists and craftspeople use materials gained through subsistence harvesting for carving ivory, weaving grass baskets, and creating other items and works of art. Subsistence harvesting is one of the ways our people maintain the traditional relationship between people, land, and animals; it is fundamental to our cultural traditions, maintaining traditional language, and sustaining communities. The Alaska Department of Fish and Game, Division of Subsistence, reported in December 2018 that about 70 percent of households in western Alaska participate in harvesting game, while 98 percent participate in harvesting fish. The same report estimates households in western Alaska harvested an average of 379 pounds of annual wild foods per person each year; if replaced with non-wild foods, this regional harvest would be valued at between $47 million and $94 million total each year, assuming the replacement value of the food was between $5 and $10 per pound, respectively. Subsistence activities require cash resources to purchase fuel, bullets, snowmachines, skiffs and other equipment, which must be factored into replacement value.

13. The subsistence Way of Life is critical to the health and wellbeing of the

Tribes of the Y-K region. For communities in the region, reliance on the land is not just a way of life, it is a necessity. The people of the region—including individual citizens of AVCP's member Tribes—have a connection to the land and waters that is deeply rooted in culture and traditions. Most communities in the region are located along either the Yukon or Kuskokwim rivers and originated from traditional hunting areas or fish camps. The rivers are important resources that connect communities in the region and provide invaluable natural resources. Salmon is the main fish that families rely on to feed them through the winter. We are Salmon People. It is foundational to the cultures and ways of life of citizens of AVCP's member Tribes.

14. AVCP member Tribes and their citizens also depend heavily on other marine resources, especially in communities located closer to the coastal areas. Salmon and large marine fish are seasonal and harvested during the summer. There are other smaller species, including herring, smelt, tomcod, whitefish, and pike, that are harvested through the ice and at different times of the year. Marine mammals – the four ice seal species, harbor seals, beluga whales, and walrus – provide the traditional meat proteins, similar to moose and caribou for communities more inland. When salmon return each spring and summer after maturing in the ocean, their migration paths parallel the coastline and provide seasonal fresh protein for people and the Tribes as they venture home. They have a specific place they are returning to and follow that set path without changing course. Other marine resources, including seabirds and ducks, crab, and other crustaceans, are also important to the AVCP member Tribes and their citizens depending

on the availability of those resources and the traditions and use patterns of the communities. Traditionally, and still today, many marine resources are shared or traded among AVCP member Tribes and their citizens. These sharing networks are an important part of our food security and Way of Life.

15. Traditional and family knowledge is incredibly important to possess and understand, as it helps us prepare and plan for the coming months and the times ahead. It is also critical to make sure that our children and younger generations continue to have access and understanding of that traditional knowledge – it must be passed down and shared. The men have their roles and types of information as do the women. There are different settings where different kinds of information are shared – in the home, at fish camp, out on the water, in active hunting and fishing, while processing, and so on. It is almost as if there was a curriculum that is followed, depending on the season and the activity.

16. AVCP's Natural Resources Department helps to protect the Y-K region's natural resources and unique subsistence Way of Life for both present and future generations. AVCP partners with Tribes and tribal groups to advocate for protection of subsistence rights and sustainable management of salmon, marine mammals, and waterfowl, including seabirds, that takes into account the needs of Tribes. It also consults with federal agencies and collaborates with state, federal, tribal, and international policy makers to provide a voice for Tribes in the Y-K Delta.

17. AVCP and its member Tribes participate actively in federal and state

processes related to salmon and fisheries management. AVCP has been engaged in advocating for sustainable fisheries management through the Council and the National Marine Fisheries Service's (Service) process for decades and has actively participated in state and federal working groups, government-to-government consultation, and public comment processes related to salmon and fisheries management. Most recently, AVCP submitted written comments regarding the 2023-2024 groundfish harvest specifications decision at issue in this lawsuit. It has also submitted letters and oral and written comments asking the Council and the Service to supplement the programmatic environmental impact statement for the groundfish fisheries management plans, participated in tribal consultations and listening sessions, and engaged in advocacy to change state fisheries management to better account for subsistence.

18. Advocacy around the salmon crisis is currently a primary focus for AVCP and has been a priority issue for years. AVCP's Natural Resources Department expends considerable resources and staff time engaging with federal fisheries management bodies. AVCP also engages with the Alaska State Board of Fisheries and Alaska Department of Fish and Game about salmon management and works closely with member Tribes to share information and elevate tribal concerns and priorities. Our advocacy related to salmon reduces the resources and staff time we have available to engage in other matters essential to our mission.

19. As part of its advocacy, AVCP communicates to Congress, the White House, the Governor, and the Legislature. AVCP publishes op eds in media

outlets. AVCP participates on panels and round tables, writes white papers and letters, and collaborates with partners via phone, zoom, etc. AVCP also publishes newsletters and posts information on Facebook.

20. AVCP has advocated for the protection of subsistence rights related to fisheries for many decades. It has passed numerous resolutions related to salmon and fisheries management issues, including resolutions specific to the bycatch problem. For example, in 2008, after another poor Chinook run, AVCP adopted two resolutions requesting action from the Council and the Service. One of the resolutions requested the Council and the Service, through emergency authority, close the Bering Sea trawl fishery to protect the Western Alaska Chinook, including fish from the Yukon and Kuskokwim river systems, until such time that the fishery can be prosecuted without causing harm to non-target species. The second resolution requested the Council and the Service to implement effective management regulations to reduce the amount of salmon bycatch taken in the Bering Sea pollock fishery before the start of the start of the 2010 pollock fishery. In 2012, several resolutions also involved the salmon crisis. One of them requested the federal and state governments to declare a Chinook fisheries disaster throughout the Arctic-Yukon-Kuskokwim region. It also asked for federal appropriations directed to Arctic-Yukon-Kuskokwim's Sustainable Salmon Initiative, a collaborative multi-stakeholder organization addressing pressing salmon research needs in the region, of which AVCP is a founding member. After the Council adopted measures to allow bycatch of up to 60,000 Chinook in the Bering Sea pollock fishery despite the near

unanimous tribal position that the bycatch should be capped at half of that, another resolution requested the Council to establish at least one Tribal seat on the Council. Also in 2012, a resolution requested the Council adopt management measures to protect Western Alaska chum runs at levels that would ensure abundant and sustainable harvests sufficient to provide for the nutritional, cultural, and economic needs of the customary and traditional users of these salmon stocks. This resolution also authorized AVCP to take action to initiate a Council review of the Chinook bycatch management measures associated with Amendment 91 and to consult and work with the region's CDQ organizations to try to reduce Chinook bycatch. In 2013, the dire salmon situation prompted AVCP to adopt a resolution calling on the state to pursue legal or other actions to challenge the Council's bycatch cap of 60,000 Chinook in Bering Sea pollock fisheries. Later in 2013, a resolution requested state and federal in-season fisheries managers take significant conservation measures prior to the start of the 2014 Chinook salmon fishing season to protect the Kuskokwim Chinook stock and subsistence needs. In October 2020, AVCP resolution 20-10-02 supported efforts to declare salmon fisheries disasters for the Yukon and Kuskokwim rivers. AVCP resolutions have also objected to efforts to address the salmon crisis by further restricting subsistence salmon fishing in the region.

21. In December 2021, AVCP, along with other regional Tribal organizations, submitted an emergency petition to the Secretary of Commerce asking her help to address the severe and unforeseen ecological, economic, social, and public health concerns

affecting Western and Interior Alaska communities due to the salmon crisis. Specifically, the petition asked the Secretary to take emergency action to eliminate Chinook salmon bycatch and set a cap on chum salmon bycatch in the Bering Sea pollock trawl fishery in the 2022 season. It also asked the Secretary to engage in meaningful consultation with Western and Interior Alaska Tribes to develop long-term measures to reduce salmon bycatch, ensure the long-term health of salmon stocks in Western and Interior Alaska, and meet the subsistence needs of communities in the regions. The Secretary denied our request for emergency regulations on January 25, 2022.

22. AVCP provides information and education to its member Tribes on subsistence and natural resources issues, and how they impact our region through its Communication Department and Natural Resources Department, including through social media, its website, emails, press releases, and the media.

23. AVCP's efforts to protect the salmon, other marine resources, and the Bering Sea and Aleutian Islands ecosystem include participation in the Arctic-Yukon-Kuskokwim Consortium, the Indigenous People's Council for Marine Mammals, the Ice Seal Committee, and the Alaska Beluga Whale Committee. AVCP is also involved in the Bering Intergovernmental Tribal Advisory Council of the Northern Bering Sea Climate Resilience Area. This Area, which was first established by the White House in 2016, covers large swaths of the Bering Sea between Kuskokwim Bay and Kotzebue Sound. Members of the Advisory Council include seven AVCP communities, which are charged with providing input and recommendations on activities, regulations, guidance, or policy

that may affect actions or conditions in the Area, with attention given to climate resilience; the rights, needs, and knowledge of Alaska Native tribes; the delicate and unique ecosystem; and the protection of marine mammals and other wildlife.

24. The Y-K Delta region is currently experiencing a multi-year, multi-species salmon crisis. This crisis has been devastating for families and communities in the region who rely upon salmon for nutritional, spiritual, and cultural wellbeing.

25. Low salmon return numbers, including for Chinook and chum salmon, have resulted in severe restrictions on subsistence fishing in the region.

26. In other years, AVCP communities have relied on chum salmon to make up for low Chinook harvest, but now both salmon species are in severe decline and management restrictions are necessary. Coho declines on both the Yukon and Kuskokwim have further exacerbated the problem.

27. In 2021, the chum salmon runs on both the Yukon and Kuskokwim were the lowest on record and significant chum salmon management restrictions were put in place for the first time to preserve the salmon stock.

28. The Chinook and chum salmon management restrictions have prevented AVCP member Tribes and federally qualified subsistence users from harvesting sufficient fish for subsistence, and are contributing to cultural, ecological, economic, social, and public health problems in the region. The Y-K Delta region already experiences greater food insecurity than other areas of the state and a lack of access to salmon only exacerbates this inequity.

29. Traditional foods, including Chinook and chum salmon, are the healthiest food sources for Alaska Native people and have been shown to lower the risk of a variety of chronic diseases for people in our region. The food that is sold in stores in the Y-K region arrives by barge or plane and is generally processed and rarely fresh.

30. The inadequate subsistence harvest of salmon has also created a cultural crisis as Tribes are unable to practice their traditional ways of life. Harvesting and sharing salmon is core to our Traditional Knowledges and practices. Families along the Yukon and Kuskokwim usually gather at fish camps to share their Traditional Knowledge. With fewer fish in the Yukon and Kuskokwim, our meals are incomplete, our physical and mental health suffers, and our families and communities are negatively impacted. Without salmon, AVCP's member Tribes are deprived of kinship, generational learning, cultural enrichment, and essential nutrition.

31. AVCP and its member Tribes have serious concerns about the role that salmon bycatch in the Bering Sea and Aleutian Islands groundfish fisheries, especially the pollock fishery, has on Western and Interior Alaska salmon. As authorized, the Service's 2023-2024 harvest specifications decision ignores the dire status of Chinook, chum, and coho salmon in our region and is allowing groundfish fishing and bycatch at levels that threaten the survival of our salmon and our subsistence Way of Life.

32. In addition to the bycatch, we are concerned about the enormous amounts of fish that are annually removed from the North Pacific Ocean by these fisheries. Everything in the ocean is interconnected and we fear that the large-scale removal of fish

affects the entire ecosystem, including its ability to support our salmon and other marine species. We are also concerned about the fisheries' role in reducing the ocean's resiliency in the face of climate change. During the past two decades, the North Pacific Ocean has undergone major changes and is exhibiting signs of significant stress: productivity had decreased, many forage fish populations are declining, some crab populations have collapsed, there have been seabird die-offs and unusual mortality events in seals and whales, and many marine mammal species are in decline. The Service cannot ignore these changes. Its decision to continue authorizing groundfish fisheries as if nothing had changed in the North Pacific Ocean since it last analyzed the state of the ocean and the fisheries' impacts on it harms the interests of AVCP, its member Tribes, and the individual members of those member Tribes.

33. AVCP and its member Tribes have an interest not just in the health of the Bering Sea and the species that depend on it, but also in the rule of law and the expectation that federal agencies, including the Service, will comply with laws enacted to protect the region's environment. These laws include the National Environmental Policy Act (NEPA), which requires the Service to analyze all potential environmental impacts, including cumulative impacts, of its actions. The Service's decision to adopt the 2023-2024 harvest specifications for the Bering Sea and Aleutian Islands without updated NEPA analyses undermines AVCP's ability to advocate for its interests, including providing our member Tribes accurate information about the impacts of these decisions on our Way of Life, which depends on salmon and other marine resources of the Bering

Sea and Aleutian Islands ecosystem. Without this up-to-date information, it is impossible for AVCP to fully achieve its organizational mission and purposes. The interests and organizational purposes of AVCP are therefore directly injured by and traceable to the Service's actions in this case. Only a ruling setting aside these illegal and unwise decisions will prevent harm to AVCP and its member Tribes.

34. AVCP has a broad and deep interest in protecting the food security, sovereignty, and Traditional Knowledge of its member Tribes and their continued ability to practice traditional lifeways and maintain our traditional subsistence economies. When relying on outdated environmental impact statements, including ones that do not incorporate Traditional Knowledge, the Council and the Service cannot make informed decisions about how their fisheries management decisions cumulatively affect the ecosystem we call home.

35. Food security means having reliable access to a sufficient quantity of affordable, nutritious food. For the last few years, I have received almost daily phone calls and emails from elders, grandmothers, parents, and tribal leaders all telling me that people are not secure. They don't have enough fish to feed their families. Their freezers are empty. Ensuring our elders can continue our Way of Life, that parents can feed their children, and that children know and understand their roots is why I advocate on behalf of AVCP to protect our resources.

36. As a child growing up on the Yukon River and Bering Sea coast, my first memories include hunting and fishing with my extended family. I remember my

grandmother's smokehouse where she and my aunties hung fish to dry. As a child, my world revolved around my family's subsistence Way of Life. As an adult, I find myself in the middle of the Yukon and Kuskokwim River salmon disaster. The idea that our families, including mine, will no longer be able to create memories for our children of living our Way of Life is not acceptable.

I declare under penalty of perjury that the foregoing declaration is true and correct.

Dated: 09/26/23 By: Vivian Korthuis
Vivian Korthuis

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

ASSOCIATION OF VILLAGE COUNCIL PRESIDENTS and TANANA CHIEFS CONFERENCE, *Plaintiffs*, CITY OF BETHEL, *Intervenor-Plaintiff*, v. NATIONAL MARINE FISHERIES SERVICE *et al.*, *Defendants*, AT-SEA PROCESSORS ASSOCIATION and UNITED CATCHER BOATS, *Intervenor-Defendants.*	Case No. 3:23-cv-00074-SLG

DECLARATION OF JENNIFER HOOPER

I, Jennifer Hooper, hereby declare as follows:

1. I live in Bethel, Alaska. I was born and raised here and have lived here all my life except when I went away for college.

2. Bethel is the regional hub for the Association of Village Council Presidents (AVCP).

3. I am a tribal member of Orutsararmiut Native Council (ONC), which is one of the AVCP member tribes. I am a shareholder of the Calista Corporation.

4. My father is from Nunapitchuk, which is also part of the AVCP region. He is a member of Native Village of Nunapitchuk.

5. My husband is also from the AVCP region, from Nelson Island, which is on the Bering Sea coast. My husband is a member of Native Village of Tununak.

6. I have two daughters aged 14 and 20. Like me, they have lived in Bethel all their lives. My daughters are also ONC tribal members. My oldest daughter is currently working at ONC's fisheries program.

7. I have a B.S. in marine biology, with a focus on marine mammals, from Texas A&M University at Galveston.

8. I am the Natural Resources Program Director at AVCP. I first joined AVCP in 1997 as a fisheries biologist. I held various positions within AVCP's Natural Resources Program until I became the director in 2001. In 2010, I transferred to AVCP's education and employment department for six years. In 2016, I returned to the Natural Resources Program as Director and have worked in that role ever since. In that role, I

engage in advocacy, track regulatory processes at both the state and federal levels, and engage with various regional advisory bodies. AVCP is a formal partner of many other organizations, including those related to co-management of migratory birds, seals, and beluga, and I assist AVCP in all that work. A big part of my work relates to AVCP's role as a liaison between all these organizations and our member tribes. This involves relaying information both to and from our member tribes.

9. I rely on AVCP to represent my interests in subsistence and subsistence resources, including salmon and other marine resources dependent on the Bering Sea and Aleutian Islands ecosystem.

10. Before joining AVCP, I worked seasonally for the Alaska Department of Fish and Game for many years. I was a Fish & Wildlife Technician II and assisted with logistical support for various fisheries field camps and filling in at times at some of those camps. One of my primary duties was organizing, compiling, and entering the data from individual commercial fisheries permit holders on the sale of their salmon harvests during commercial fishery openers on the Kuskokwim River.

11. I am an advisor on the Yukon River Panel, the international body established under the Yukon River Agreement to the Pacific Salmon Treaty. I started with the Panel in 1998 and have been there most years since then. The Panel is comprised of members and advisors from both the United States and Canada who either live on or are from the Yukon River and have knowledge or experience of the Yukon River, the communities, and fisheries. Bilateral meetings occur twice a year, pre-season

and post-season and include annual assessments, project reviews, and forecasts. The Panel is also tasked with setting escapement goals for Chinook salmon and fall chum salmon returning to Canadian waters.

12. I have learned about the life cycle of salmon and the threats that salmon face during their journey from rivers to the ocean and back through both personal and professional experience. I have learned about these things first-hand by growing up and living on the Kuskokwim River all my life. I remember spending summers at our family's fish camp 25 miles downriver from Bethel, near Napakiak. This was when members of my extended family still moved seasonally. I used to go to fish camp with my grandmother who directed the fishing activities at camp. We fished whenever we needed to, 24-7, until everyone was told we had enough. I remember playing in the smoke house as a kid, getting splattered by fish oil. The camp was multi-generational. The camp served a big educational function and was an important part of establishing and maintaining cultural connections. The experience that salmon and fish camps provided is an important part of life on the Kuskokwim. I remember all of that.

13. For me, fishing is a way of life, not a lifestyle. As a mother, I wanted to have this way of life for my daughters, too. But we no longer have the family fish camp; it began to erode away, families slowly moved out, and everything at the camp eventually got washed away. Developing a new fish camp of my own is difficult because of land ownership and access issues near Bethel: the Bethel Native Corporation owns much of the land around here and they no longer offer permits for fish camps. Jobs have also

affected fish camps. Instead of relocating seasonally, many people now stay put and have fish racks at home instead. I wish my girls would have experienced the fish camps like I did. But, even without a physical place to go for fish camp, catching and processing salmon is still a very important part of our lives and we actively fish each summer when we have the opportunity. We've learned how to adapt "in town" to meet our needs for having salmon available year-round, from subsistence fishing dictated by severe restrictions at times to the processing our fish – drying, jarring, or freezing fresh.

14. While I am most familiar with the Kuskokwim River, I have also learned about Yukon River salmon. Through my time and employment with AVCP and active engagement in many different groups and forums, I have made friends and contacts from communities from the Yukon Delta going all the way up into Canada. I've learned that family and cultural foundations are the same when it comes to salmon and the critical importance salmon is for food and more. The people of the Yukon have faced an even larger crisis than us on the Kuskokwim – their fisheries have been completely shut down for several years now and they have had no opportunity to fish.

15. Besides all five species of Pacific salmon, residents of communities in our region, including AVCP's and ONC's members, depend on many other Bering Sea-dependent species. These include various birds, including sea birds, ducks, geese, and dozens of others. People collect the eggs as well as hunt for the animals. Birds and eggs are incredibly important, sought-after food sources on the Yukon-Kuskokwim Delta. People also harvest ice seals—bearded, ringed, spotted, and ribbon seals—as well as

walrus and beluga whale. People fish for halibut, herring, smelt, and various resident freshwater species, including whitefish, pike, burbot, black fish, and sheefish.

16. I did not personally grow up harvesting or using other resources directly from the Bering Sea or the coast. However, for my husband, being from Nelson Island, using the Bering Sea and the coastal areas is his way of life. He used to make regular trips back home, to visit family and to fish and hunt. He fished for halibut, which he brought home and allowed us to stock up for winter. He would also trade or barter for traditional foods, including seal, which he still does today. His family in Tununak sometimes also gives food to us. More recently, between his job and his father passing away, my husband has not gone home or done as much hunting and fishing out on the coast. The cost of traveling to the villages has increased dramatically. He recently went home for a family member's funeral and the ticket price was $450 roundtrip.

17. I intend to continue to live in Bethel with my family and plan to continue to rely on salmon. I will continue to reinforce the cultural and traditional importance of salmon to my daughters and to teach them everything my husband and I have been taught. My father also comes back home to Bethel every so often and maintains a strong need for his traditional native foods harvested from the Kuskokwim. I have to make sure he still has access to those foods, including salmon.

18. I am very concerned about the state of the Kuskokwim and Yukon River salmon. While the Kuskokwim sockeye run is still there, the other runs, especially chinook and chum have crashed. The Yukon River situation is even worse.

19. Closures to subsistence salmon fishing have hurt everyone's ability to put food on the table and to feel secure and fulfilled, knowing they are providing for their family. For my family, both immediate and extended, we've had to adjust our traditional and "normal" practices processes. Family members living outside the region have not been able to come and participate in fishing activities (federal management allows only federally qualified users – local residents – to come and actively participate). We've had to adjust how and when we process the salmon we harvest. Restrictions to time and area affect how we have to process our fish. Weather was always a critical determining factor when we went fishing – you need to make sure you have the right weather for processing and drying. If it's rainy and cool, you have to alter your methods. Then, the lack of or reduced quantity of fish available has forced us and others to rely on other resources and more store-bought food.

20. Today's situation is so different from how it was when I grew up. We fished all summer long, all day long then. We did not have to worry about where and when we fished or what gear we used. Those were the good days, with free access to subsistence foods. The commercial salmon fishing was still happening then, too. Japanese boats, including large cargo ships, came here and waited to buy our fish and eggs. I remember the lines of boats on the river, waiting to deliver their fish. The commercial fishery was very important financially to many members of my family, and to hundreds of families in the region. The income earned from commercial fishing would support a household's annual expenses and would provide gas, gear, and other supplies to

engage in other subsistence activities throughout the year. There was a lot less reliance on food stamps or other services then.

21. I am very worried that we don't have even a small part of that on the Kuskokwim anymore. My understanding is that there has been a significant drop in families that still have and maintain fish camps on the river. For the most part, this is because of the collapse of salmon, although there are other factors that contribute as well. Nobody is at fish camps on the Yukon anymore – fish racks and smokehouses are empty. This has affected a key protein source, which is important for our health and wellbeing. It is also affecting our people in significant other ways. I think men are especially affected because their role as providers has changed. This has led to behavioral and mental health issues, suicide, alcohol, and substance abuse. The family units have been weakened because families are no longer brought together at fish camps for a common purpose. These are not positive changes. I have seen the direct impacts on some of my family members and friends and it is very difficult to find solutions or ways to be supportive.

22. I am concerned about climate change and how that is further harming salmon and our way of life. In 2019, chum salmon died on the Kuskokwim and the Yukon because of very warm waters. On the Yukon, a parasite is also higher in prevalence and is likely affecting the survival of Chinook salmon. There have been a few years where there has been a discrepancy of 20,000 or more Chinook salmon in the fish counted at the Pilot Station sonar after entering the Yukon River and the numbers

expected to cross the border into Canada. Where did the fish go? Did they die because of warm waters or because of the parasite? We don't know these things and we need research to occur to start helping to answer questions. Climate change is not the only factor affecting salmon, and we need to address every stressor within our control – including bycatch – to maximize the chance for salmon stocks to recover in a changing environment.

23. Except for the communities directly south of the Yukon Delta – Hooper Bay, Scammon Bay, and Chevak – most Bering Sea coastal communities are currently not affected by the in-river subsistence fishing closures. Those who reside there and others who have the means to travel to those areas can still fish for salmon. It's an area that is accessible and available, but it can be very expensive to travel there.

24. I am concerned about what is happening to salmon in the Bering Sea. Salmon survival in the ocean is critical so that fish will return healthy and get up the rivers to spawn. That includes ensuring that fisheries management decisions support a stable environment and consistent food availability for salmon to survive at sea. We are in a situation where every fish matters; it is critical that every fish that survives the majority of their life cycle in the ocean gets through and returns. Salmon bycatch at sea undermines salmon survival. We are doing everything we can in-river and it's unbelievable that protections are not in place for them as they grow and migrate through the ocean. It is hard for me to understand why it is acceptable to jail our people who subsistence fish on the river during fishing closures when the fish face destruction – are

being caught as bycatch in the commercial groundfish fisheries – at sea.

25. People still have hope that the salmon will bounce back. But I do worry about the worst-case scenario where the salmon can no longer sustain themselves and the fish won't come back. What would that mean to us? You hear our people refer to themselves as salmon people, and the whole region as a salmon region. Our whole identity is connected to salmon and the salmon seasons. If there is no salmon, I fear that would mean we have no hope of survival as salmon people, we will lose that part of our identity. I am not sure what people would do then. It is hard to comprehend what that would be like for us.

26. I have recently learned more about the National Marine Fisheries Service's environmental impact statements (EIS) that the agency uses to make decisions about the Bering Sea and Aleutian Islands groundfish fisheries. I am concerned that these old EISs are not taking into account the changed circumstances in the North Pacific. Since the EISs were completed, climate change has greatly altered the ecosystem. Not only have the Western Alaska salmon runs crashed and affected our subsistence fishing but we have seen increases in seabird die-offs, unusual mortality events in the ice seals and a whole host of climate-induced environmental changes, challenges we have to face on a daily basis. It is a big concern to me that the agency is basing its decisions on outdated information and allowing "business as usual" to continue. I've heard family members ask, who are we sacrificing for and conserving the salmon for – is it so they can be caught in the trawl fisheries or somewhere else?

27. When we don't have salmon, we have to start relying on other resources. We will have to rely on store-bought foods, which are expensive. People who do not have jobs will have to rely more on food stamps. Knowing how our families and communities used to be, this is a sheer 180-degree turn for us.

28. If we do all that we can to support salmon, as we have done for generations, I think we still have hope for our families and our communities to come back to what we remember. We understand the natural variations and fluctuations of our lands and resources, but we practice sustainability and know we have to provide for the sustainability of the resources and the future – it is the foundation of our culture and our core.

I declare under penalty of perjury that the foregoing declaration is true and correct.

Dated: 9-14-23 By: _____
Jennifer Hooper

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

ASSOCIATION OF VILLAGE COUNCIL PRESIDENTS and TANANA CHIEFS CONFERENCE, *Plaintiffs*, CITY OF BETHEL, *Intervenor-Plaintiff*, v. NATIONAL MARINE FISHERIES SERVICE *et al.*, *Defendants*, AT-SEA PROCESSORS ASSOCIATION and UNITED CATCHER BOATS, *Intervenor-Defendants.*	Case No. 3:23-cv-00074-SLG

DECLARATION OF THADDEUS TIKIUN JR.

I, Thaddeus Tikiun Jr., hereby declare as follows:

1. I live in Bethel, Alaska. I was born and raised here. I have never lived elsewhere, except during a year-long military service, and would not live elsewhere. My family lives here, including my three adult children and most of my grandchildren. All my family members in the Bethel area live a subsistence way of life. My grandmother is Yup'ik from the Eek area, near the Bering Sea coast.

2. I am currently serving as the chair of Association of Village Council Presidents' (AVCP) Executive Board. I am also on AVCP's Natural Resources Committee. I have been involved with AVCP since approximately 2017.

3. I am a tribal member of Orutsararmiut Native Council (ONC), one of the member tribes of AVCP. I am a current member of the Traditional Council and I have served on ONC's Traditional Council for 32 years. I was one of the original Traditional Council members when ONC was first incorporated. Over the years, I have served in various Traditional Council positions, including Treasurer and Secretary. I rely on AVCP to represent my personal interests and the interests of ONC in taking care of the region, including our subsistence resources.

4. ONC is the federally recognized governing body for the Native Village of Bethel. ONC provides many services for its tribal members, including natural resource management, housing, energy assistance, education assistance, social services, and Tribal Justice. ONC also provides some services to the City of Bethel, including assisting with making improvements to city roads. ONC's mission is to promote the general welfare,

enhance independence, encourage self-sufficiency/self-motivation, enhance quality of life, and preserve cultural and traditional values of the Tribe, and to exercise tribal authority over resources through educational, economic, and social development opportunities.

5. ONC has a Natural Resources Department whose mission is to "Preserve and enhance the integrity of regional fish, wildlife, or other populations, and habitat to fully provide for subsistence use needs in perpetuity." The department works closely with ONC members, Alaska Department of Fish & Game (ADF&G), U.S. Fish & Wildlife Service (USFWS), and with the Kuskokwim River Inter-Tribal Fish Commission (KRITFC) on issues related to fish and game resources. The department provides services as a central clearinghouse on resource questions within the Bethel area. The Natural Resources Director and Fisheries personnel attend all regulatory meetings of the Alaska Boards of Fisheries and Game, Federal Subsistence Board, and the Alaska Migratory Bird Co-Management Council to pursue ADF&G regulatory actions to help ease restrictions/requirements on the customary and traditional hunting, fishing, and gathering activities compatible with the desires of ONC.

6. ONC's Natural Resources Department assists ONC tribal members in various ways. For example, when ADF&G conducts the summer test fisheries in Bethel, the pre-season fisheries that determine when the Kuskokwim River will be opened for fishing, ADF&G gives the fish to ONC and we then distribute it to elders. When tribal families are impacted by a loss of a family member and need assistance to provide

subsistence foods during ceremonial potlaches, we write letters to ADF&G to allow the large game to be caught just for those purposes.

7. ONC's Natural Resources Department has a Subsistence Committee. I was first appointed to the Subsistence Committee in 1987 and have served on it for many years, including currently. The committee works on various issues, including federal and state fisheries regulations and proposals. The committee has proposed various subsistence-related resolutions for adoption by the ONC Traditional Council. These include three resolutions passed by the council related to Area M salmon fisheries, which intercept salmon destined to Yukon and Kuskokwim rivers. The resolutions have focused on reducing catches there to aid escapement. Last winter, the committee also nominated a member to the North Pacific Fisheries Management Council, which currently has no representatives from our region. Without a member, we have little to no say in Council decisions. Based on the information I have, I don't think our nominee was selected.

8. ONC has one member on the Executive Council of the KRITFC that represents the interests of 33 federally recognized tribal governments in sustainable fisheries management on the Kuskokwim River. According to KRITFC's constitution, the purpose of KRITFC is for the member tribes to act with a unified voice for the conservation and restoration of Kuskokwim River fisheries to promote, protect, and preserve our customary and traditional way of life and well-being; ensure tribal management and co-management in all aspects of fisheries management; and establish

comprehensive fisheries co-management plans and programs, which include allocation, based upon indigenous knowledge systems and scientific principles. KRITFC has a memorandum of understanding with the USFWS that gives KRITFC a voice in setting openings, catch limits, and other management rules for the Kuskokwim fisheries, and they also do research, monitoring, and advocacy.

9. ONC also has members on ADF&G advisory boards to protect our interests in fishing and hunting.

10. ONC submits comment letters related to subsistence issues, including fisheries, to government agencies. Historically, most of these letters involved state-managed fisheries, but more recently, with the low salmon numbers, we've engaged more on federal fisheries. For example, in October of 2022, ONC participated in a tribal consultation with the National Oceanic and Atmospheric Administration and the Department of the Interior about fisheries and the declining salmon populations in the Yukon and Kuskokwim regions. Overall, ONC has invested and currently invests a significant amount of time on fisheries-related issues, including efforts to reduce salmon bycatch in federally managed groundfish fisheries.

11. Fishing has always been part of my way of life. I was raised at fish camp. As a young man, as soon as school was out, we left for our camp. There were 12 kids in my family. The camp was 8 miles up the Kuskokwim River from Bethel. We fished all summer long. At camp we would take the boat out and fish all night with my brothers and other people in the area. As soon as we brought the fish up, we would start

processing it, gutting and heading it, getting it ready for my mom and sisters who would slice and hang the fish for smoking. We fished for kings and chum that were for eating. When we had extra chum, we tied them in bundles and traded or bartered them with the tundra people. The chums were the biggest run when I was young, there were a lot of them. We also got some cohos. The number of reds (sockeye) was not high then, they are higher today. When we got reds, we would cut the gristle part on the bridge of the nose, slice it, sprinkle it with some salt, and eat it raw; we would then process the rest for later eating. We processed fish all summer long.

12. We also used to go to spring camp with our grandparents to hunt muskrats and birds, including geese, and look for swan, geese, and duck eggs. While there, we also fished for whitefish and pike headed for the lakes.

13. When I was younger, I used to go seal hunting on Eek Island, which is in Kuskokwim Bay, near the mouth of the Kuskokwim River. We looked for harbor and spotted seals that were abundant in that area. Seal hunting was very important to us, including me. Traditionally seal skins were used to make various pieces of clothing; some people still use them today to make mittens.

14. People from Nunivak Island used to come to Bethel in the summer in big boats to barter with us. They would bring not just seal meat but also walrus that we traded for fish and such. Some families still engage in bartering with Nunivak Island but on a smaller scale.

15. In the 1970s, when the salmon runs were strong, a company—Yugtak Fish

Company—was formed to sell fish to Japan. I was hired to run the company. We sold salted fish and roe, all processed in the building where AVCP's main office is in Bethel. We bought fish all the way from Tuluksak, 60 miles up the river, to Goodnews Bay, south of here, along the Bering Sea coast. We hired all local help. We received costs plus 25 percent of the profits. Eventually the company was shut down.

16. People from our region used to camp in family groups that promoted kinship. It is more individual, less communal, these days. Many people still go to their fish camps, but many no longer smoke fish there; instead, they have their smokehouse in their villages, on their own lots. I think these changes are due to many reasons. It is harder for some to go back and forth between the village and the camp. Maybe it is also because people have started working more. Like my dad, who took a job with the state. Of course, fishing is not like it used to be either. While some of the younger people are more into jobs and making a living than subsistence these days, subsistence is still important to people in my region, including young people, it just looks and feels different than in the past.

17. Sharing is a big part of our life, my life. I always share subsistence harvested fish, eggs, and birds both with family and other people. I also receive food from others. I receive or barter seal meat from Hooper Bay, northwest of Bethel, near the Bering Sea coast. These sharing practices were important in the past and they continue today; they foster kinship and they are important to me.

18. Today I still fish, hunt for birds, including seabirds such as scouters or

black ducks, and look for eggs of all kinds. One of the places I go is near the mouth of the Kuskokwim, near Eek. In addition to egging and bird hunting, I also pick berries there.

19. I plan to continue to do all these things, including with my family. Except fishing it is not the same as it used to be. Like this year, we had an early opening for salmon, on June 3. We were allowed to fish every four days or so. Last year we had an early opening, too, and were able to fish for a week or so. These early fishing opportunities do not amount to much fish. I reflect back how during the fish camp days we ate so much fish and fished until we had the fish we needed; now, with the fish shortage and severe fishing restrictions, I fish as much as I can, but I still find myself not having enough, find myself craving fish.

20. What I see now is that fishing is reduced to just these short periods. It is really frustrating to me. I can barely wait to get out to fish but the time limits set for fishing now mean everyone is forced to go out fishing at the same time. This results in combat fishing which can affect that entire pulse of fish that makes it up the river. Even then, no one gets many fish. This is not how I was taught to fish, including by my mom. I wish there was a way to alleviate it.

21. Because there are so few fish now, ONC members and other people in the region are restricted to these short windows for fishing, and those windows are not during the ideal time of the year. They happen early, before there are many fish to catch, and at the end of the run, when it is hard to preserve the fish for the winter because of rain and

flies. Every year we are asking for more time for fishing, especially before rain and flies settle in; there is no use trying to get fish if they spoil on us.

22. ONC tribal members, including myself, are affected by the salmon declines. The Kuskokwim still gets some fish whereas things are much worse in the Yukon. The reduced fish affects sharing among our people; people are more likely to keep all the fish they get for themselves. Also, some of the rules, notably the 804 "subsistence priority," mean that only those folks who live year-round in the region can fish for salmon. This means that family members, like my uncle, that live elsewhere can't come home and fish. They are now considered outsiders. They can be in the boat and help in the camp, but they cannot pull nets. This hurts families, causes relationships to break down. At the same time, within the region, there is increased pressure placed on families trying to meet their subsistence needs and increased pressure placed on the few fish that are left. Unlike in the past, some people are now forced to go elsewhere to get their fish. For example, when fishing is closed in Bethel, some people go down to lower Kuskokwim, because there is still more fish there. Some people from the Yukon are coming to the Bethel area and also going to other areas, like the Southeast, that still have fish. This is very different from the past and it is causing hardship for many families.

23. The salmon crash here has also resulted in people stealing other people's catch in fish camps. Sometimes only some of the fish are stolen, other times the entire catch. This never used to happen. It is causing resentment. People now set up cameras at their fish camps. I once lost three rows of drying fish.

24. Reduced salmon is also affecting ONC's Natural Resources Department's work, including its ability to distribute fish to elders.

25. I have learned about the pollock fisheries managed by the National Marine Fisheries Service (NMFS) where salmon, chinook and other salmon, are caught as bycatch. I have a recollection that ONC sent a letter to NMFS about this but was told that the pollock fisheries catch only a small number of salmon. That small number is big to us, we need every fish.

26. The trawl fishing boats catch more than the fish they are harvesting; they also catch salmon, cod, halibut, and other fish that are wasted. In addition, old people say the trawlers are raking up and destroying the garden, harming the food chain, including what other fish and marine mammals eat. I keep hearing from coastal people that they are seeing trawler boats coming closer to shore, too, including this year. They talk about halibut and cod numbers dropping after the trawlers have been through the area. Even though I am not out there in the ocean, I am affected by these fisheries. I worry about the impact that these big fisheries have on the ecosystem, the animals they support, and our future. The trawl fisheries catch the salmon that would otherwise return to our rivers and affect conditions for salmon in the ocean. In addition to reducing the amount of bycatch, I think we need to establish buffers or otherwise protect the areas where salmon move through on their way to the Kuskokwim and Yukon rivers.

27. I have been to the Board of Fisheries meetings in Anchorage. I have learned about the numbers of fish that are caught in Area M fisheries, which are managed

by the state. I worry that those state fisheries may add to the problems caused by the federal fisheries.

28. I don't consider myself an elder. Life in town is different than life in the villages. My perspective is different from those who live in villages. Loss of salmon and other subsistence resources hurts me, but it hurts people in the villages even more. That includes people in the villages that AVCP serves.

29. There are so many changes in our environment now, including with climate change. In the face of these changes, fish managers should take a more cautious approach, because it could make a difference. They should gather and use the most current information when making decisions about fisheries. Without current information, I believe it is impossible to make good decisions, to regulate fisheries of any kind. By relying on old environmental analyses, I worry NMFS is doing just that.

30. Before authorizing more groundfish fishing and bycatch, fisheries managers have to understand why salmon runs are getting smaller. Just one factor could tip things the wrong way. Also, the agencies need to talk with each other, work with each other. NMFS can't just be worried about pollock and ignore salmon.

31. Our region is in the middle of a major salmon crisis that is having a profound effect on AVCP, ONC, and its tribal members, including me. The loss of salmon affects our food security, kinship, and the very fabric of our communities. NMFS's decisions to continue to authorize fishing in a way that is not protective of our salmon, other marine resources of the Bering Sea, and our way of life harms my interests

and makes me very worried for our future. I worry that the salmon numbers will never rebound enough and that my kids and my grandkids will never be able to experience the kinds of salmon runs that I saw when I grew up.

I declare under penalty of perjury that the foregoing declaration is true and correct.

Dated: 25 September 2023 By: _____
Thaddeus Tikiun Jr.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

ASSOCIATION OF VILLAGE COUNCIL PRESIDENTS and TANANA CHIEFS CONFERENCE, *Plaintiffs*, CITY OF BETHEL, *Intervenor-Plaintiff*, v. NATIONAL MARINE FISHERIES SERVICE *et al.*, *Defendants*, AT-SEA PROCESSORS ASSOCIATION and UNITED CATCHER BOATS, *Intervenor-Defendants.*	Case No. 3:23-cv-00074-SLG

DECLARATION OF JOSEPH JOSEPH

I, Joseph Joseph, hereby declare as follows:

1. I am Yup'ik. I live in Kongiganak (Kangirnaq), which is located on the Bering Sea coast by Kuskokwim Bay, at the mouth of the Kuskokwim River.

2. I was born and raised in Tuntutuliak, which is about 30 miles northeast of Kongiganak, along the Kuskokwim River.

3. I am currently serving my second term on the Association of Village Council Presidents' (AVCP) Executive Board. I represent Unit 7, which includes Kipnuk, Kongiganak, Kwigillingok, and Tuntutuliak. AVCP recently formed a subsistence committee and I co-chair that committee to represent the Kuskokwim side of issues.

4. I am a tribal member of Native Village Kongiganak. My wife and our six adopted children, ages 4-18, are also tribal members of Native Village Kongiganak. Native Village Kongiganak is one of the member tribes of AVCP.

5. I served as a president of the Native Village Kongiganak Tribal Council for 9-10 years, until about a year ago. I was appointed again and became a member of the Council. The Council is the governing body of our village. Under our constitution, the Council's many powers include consulting and negotiating with federal and state governments on activities that may affect the village and protecting the welfare of the Tribe's members. The Tribal Council's responsibilities also include guarding the traditional practices of the Kongiganak people and protecting the natural resources that the Tribe's members rely on for subsistence.

6. My tribe depends on AVCP to help us with things that we don't have capacity to do ourselves. When we do have knowledge and capacity, we try to do things ourselves. AVCP does a good job representing our interests in the Yukon-Kuskokwim Delta, including in subsistence.

7. We have approximately 300 people living in our small community right now. The tribe has approximately 700 members. Almost all are Yup'ik and primarily speak the Yup'ik language. There are no jobs in our village beyond seasonal jobs. About 90 percent of our community members are unemployed. Approximately 40-50 percent have jobs during the summer, the rest of the year our people are on their own.

8. The tribal council provides assistance to our tribal members. We have some grant money that we use to help pre-pay electricity and groceries for our people; we also give 500 dollars per household per month toward electricity or fuel.

9. Subsistence fishing and hunting are critical to our people, including me.

10. When I was growing up, my family had a fish camp below Napakiak. Napakiak is located up-river from here, or about 7-10 river miles downriver from Bethel. That is where we did our subsistence salmon fishing. We all looked forward to the fish camp for many reasons. That is where everything we ate was fresh. After catching a fish, we cut it up and shared it with elders first. It was not until after that that we ate ourselves and started processing fish, which involved cutting, cleaning, washing, and hanging them to dry. Once dry, we took the fish to the smoke house and smoked them. We stored smoked fish in old 55-gallon drums for the winter.

11. Besides fishing and fish processing, it was at fish camp where I watched the older generation also hanging and repairing nets, patching boats, and so on. That was the best learning experience. No TV, no internet.

12. My in-laws still have a fish camp on the Kuskokwim River, upstream of Bethel, but they have not gone there for the last four or five years because of all the fish closures. They have a drying rack and a small smokehouse near their house in the village.

13. All the salmon closures have been hard on our people, including me and my family. What little fishing openings we get are not nearly enough to provide us with enough fish. I, like almost all our people, live below the poverty line. I am not going to let my family go hungry. These closures force our people to make choices we would not otherwise do; they make our people poachers. Even then, we only take about 15-20 kings because we want the rest to go by. This is what I understand.

14. When I was sitting in a fish commission meeting in Anchorage, I told them what an elder once told me: when greed takes over, you will lose vision what is happening around you. I am afraid that is what all big fisheries, including the federal groundfish fisheries, are currently doing.

15. My oldest child, the 18-year-old, has a mental disability he got from his biological mother. Because of this, I fear he is not going to survive in the modern, technological world. I decided to teach him subsistence because I think that if he knows it, at least he will have a chance to survive. I think I made the right decision. He now

goes out hunting and fishing. The second and third oldest boys also engage in subsistence activities. I don't quite trust the youngest boys with knives yet. The oldest daughter is also learning subsistence ways.

16. During my time fishing with my parents when they were still alive, I remember we used to take 50-60 kings, then we were done. We took about 80-90 chums and reds. In August, we did the first dip to take 50-60 silvers, which were the last ones to come. We would then turn to lake fish, whitefish and blackfish, that we caught in lakes upriver. We always limited ourselves, only taking what we needed, that was our way. Now I am fishing with my kids, except with the poor salmon runs and all the closures fishing is not the same anymore.

17. Sharing is part of our way of life. Some people in our community volunteer to fish for other families. When we get a walrus, they are towed up into the village, butchered there, and then shared with the whole community. It is the same thing with the belugas. Just this month, people in my village harvested two belugas. My wife and I were out of town when the first one was landed, and we did not get our share of it. We were here when the second one was brought in, and we got our share of that. The belugas were caught southwest of our village. I have not been lucky enough to see or harvest any belugas myself. If we have enough in our freezers, we share our marine resources with others, including inner Kuskokwim people who live further away from the sea.

18. Our subsistence harvesting cycle covers much of the year. Before birds

arrive in the spring, we hunt bearded and spotted seals near the mouth of the Kuskokwim River. Then the birds, including seabirds, come; we take a few of them as they are fatter in the fall. We also collect eggs, including ptarmigan, duck, swan, sandpiper, and seagull egg; the seagull eggs are the best. Then the herring arrive. If I have time and a chance, I also go halibut fishing. During halibut fishing I often also catch cod. Then the salmon comes. After salmon, toward the end of silver salmon season, we have another window of seal hunting again. After that, moose hunting starts. And, in mid-September, if people have enough gas left, it is whitefish season. But to get whitefish, we have to go somewhere in the Eek area, about a 50-60 river-mile trip, which is a long way. Walrus hunting is next. We hunt walrus about 15-20 river miles downriver toward the ocean. We take 3-4 walrus a year for the whole community. After walrus, it is time to set traps for black fish. Ptarmigan hunting starts after that; I will take ptarmigan any time. If you make enough money and can afford it, there is also a winter moose hunting season in Yukon, but only a few people in our community have money left to do that.

19. Most of the species I harvest depend on the Bering Sea and Aleutian Islands ecosystem in one way or another. I am worried about the future of the ocean and how it will affect our next generation. If we must put in place emergency closures to protect our resources, what are we going to eat, what are my kids going to eat? If we get to a point where the only thing left to do is to shut subsistence fishing and harvesting down, that will have devastating effects on us. The government really needs to make sure the big fishing companies do their part. They need to do it before the situation

becomes critical. And the situation is critical right now. The big fishing companies can stay idle for a couple of years, which would allow the system to recover, give the salmon a chance to rebound.

20. The elders tell us that the animals, like humans, go to where the food is. Some of the places in the ocean food has gotten depleted and thus the animals seek food elsewhere. We used to see killer whales only once in every 10 years or so; now it is more frequent, every 6 years or so. They have moved here for a reason. Just like us, if we want particular food, like moose, we travel hundreds of miles to get it; it is a 300-mile river trip for us to get moose. Where there is food, that is where the animals go. I fear the orca's hunting grounds elsewhere are getting depleted and that is why we see them more often now. The big companies take so many fish out of the ocean, it has to have an impact on the rest of the animals.

21. I worry about climate change and its impact on seals and walrus and other species. A couple of years ago, our summer was so warm the fish, pike and others were dying in the lakes. If these things are happening in the lakes, why would they not affect the marine environment, too?

22. We know many things are affecting salmon. There is climate change. There are other factors, too, like predators and food supply, that are affecting them. And then there is commercial fishing. I know I am doing my part to help the salmon, I am not catching as much as in the past. I am doing my part while living below the poverty line. Are the big commercial fishing companies doing their part? I don't think so.

23. When the salmon numbers are low, the government needs to start limiting the hours and times that the commercial fishing industry is fishing. Some of the areas where salmon migrate should also be closed to help salmon get through. That is the key to sustaining both subsistence and commercial fisheries. One the commercial side, I think greed has now taken over, just like an elder told me. We in the subsistence communities are doing our part, we are not taking many fish; now the commercial fishing industry and their managers need to do their part. Some of our people are also commercial fisherman or depend on those fisheries, including fleets that are out in the Bering Sea. Everyone should do their part. If we all do our part, in the long run, it will pay off by sustaining us all.

24. When I was growing up at fish camp doing subsistence activities, we always limited ourselves, we did not overtake. During that time, the commercial salmon fishing industry started. When they started, they had the more-the-merrier attitude. The more they caught, the bigger the smiles on their faces. And then there was the other commercial fishing industry. Our people know that when we take too much of fish, fish will decline, fish will get decimated. Because of mismanagement by both federal and state governments, we are now standing here with hands in our pockets. The AVCP region is below poverty level. Whether they like it or not, the federal and state governments make poachers of us. With salmon gone, they tell us to fish for other things, like pike, but there is only so long you can eat pike or any one thing. Different types of flavors and nutrients are important to us.

25. At the last meeting I went to in Anchorage I learned that the National Marine Fisheries Service is using old environmental analysis when authorizing fishing in the Bering Sea. At the meeting, the agency had a sign "Trust Science" on the wall. I say, what science? 15-year-old science? The least they could do is use current data when making decisions. But I don't think the fishery managers really want to hear from me. I have a nephew, who works on the Kuskokwim fishing issues and he tells me I should write up my thoughts and send them to a newspaper instead.

26. The state and federal governments should both fully recognize that Native Village of Kongiganak as a federally recognized tribe. If they fully recognized us, we would work together to resolve some of the issues related to fisheries, including federal commercial fisheries. We would sit down together to work things out. This is needed because decisions made about those fisheries affect us.

27. When people go hungry, there will be conflict. People will fight over a bowl of food. I worry that my kids and my whole community will face this situation, if the state and federal governments won't act now.

28. I plan to continue to live in the Kuskokwim River region and continue to practice my traditional way of life dependent on salmon, other marine and freshwater fish, birds, seals, walrus, beluga, and moose. Living here will also be important for my kids, especially for three of my boys, who have been affected by alcohol through their biological mothers. I fear that if they get a taste of alcohol or drugs, they will die. I hope to keep them as safe as possible here, living a subsistence lifestyle.

29. Thank you for allowing me to tell my story, and to hear my side of story, my side of the "pancake," as we say here. I think it is important to always look at and consider both sides of every "pancake."

I declare under penalty of perjury that the foregoing declaration is true and correct.

Dated: 10-3-23 By: _____
Joseph Joseph

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

ASSOCIATION OF VILLAGE COUNCIL PRESIDENTS and TANANA CHIEFS CONFERENCE, *Plaintiffs*, CITY OF BETHEL, *Intervenor-Plaintiff*, v. NATIONAL MARINE FISHERIES SERVICE *et al.*, *Defendants*, AT-SEA PROCESSORS ASSOCIATION and UNITED CATCHER BOATS, *Intervenor-Defendants.*	Case No. 3:23-cv-00074-SLG

DECLARATION OF BRIAN RIDLEY

I, Brian Ridley, hereby declare as follows:

1. I am a tribal member of the Native Village of Eagle, which is one of the member Tribes of Tanana Chief Conference (TCC).

2. I am a Han Gwich'in, which means "People of the River, *i.e.* Yukon River." I was born and raised in Eagle Village, which sits on the banks of the upper Yukon River, in the Han traditional territory near the U.S-Canada border. While I currently reside in Fairbanks, my family and I spend a significant amount of time in Eagle and I am an active member in my village council.

3. I received a bachelor's degree in business finance from the University of Alaska Fairbanks and have more than 20 years of experience in the finance industry, as an expert in both commercial banking as well as federal oversight and financial management for Tribal health and social service programs.

4. I am the Chief/Chairman of TCC and have served in this role since March 2022. I previously served as Chief Finance Officer of TCC from 2008-2021. I currently also serve as vice president of Hungwitchin Corporation, an Alaska Native Corporation that supports and encourages the economic, social, cultural, and personal well-being of all Alaska Native people enrolled in Eagle Village and its surrounding area. I have previously served on the Doyon, Limited Board of Directors, as treasurer for the Morris Thompson Cultural and Visitors Center and Dillingham Chamber of Commerce, and the Copper Valley Economic Development Council.

5. In my capacity as Chief/Chairman, I am familiar with all aspects of TCC's

priorities, programs and both state and federal advocacy initiatives. My responsibilities include making sure TCC's Tribes and beneficiaries are provided quality health care, social services, and tribal government technical assistance.

6. Growing up in the Native Village of Eagle, our community and people depend on the Yukon River as our lifeline. The river serves as our guide and our source of sustenance. Our village has historically relied on the salmon harvested from the Yukon River to feed our families over the long winter months. My mother shared that some of her earliest memories include stories of her as a young child, and frying salmon hearts while the men and women cut fish. As a young child, I would cut, hang and dry the fall chum that my family would catch in our fish wheel. In the summer, harvesting salmon was essential to ensure that we had food over the long winter months for my family and for our sled dog team. As a child, I can remember seeing King Salmon in the 100-pound range pulled from the Yukon. Today, there are almost no Kings in the river and many have given up on them ever coming back. It is a heartbreaking reality that we are facing.

7. These generational practices bring our community together and contribute to our overall wellness. Sharing our food with our neighbors, elders and communities is a sign of love and respect. It connects us on a level that most people cannot comprehend. Salmon is an essential resource that we are losing. When we lose our salmon, we are not just losing a food source, we are losing our culture, our wellbeing and our connection to our land and each other. Our Tribes have been saying this for many years. Our elders

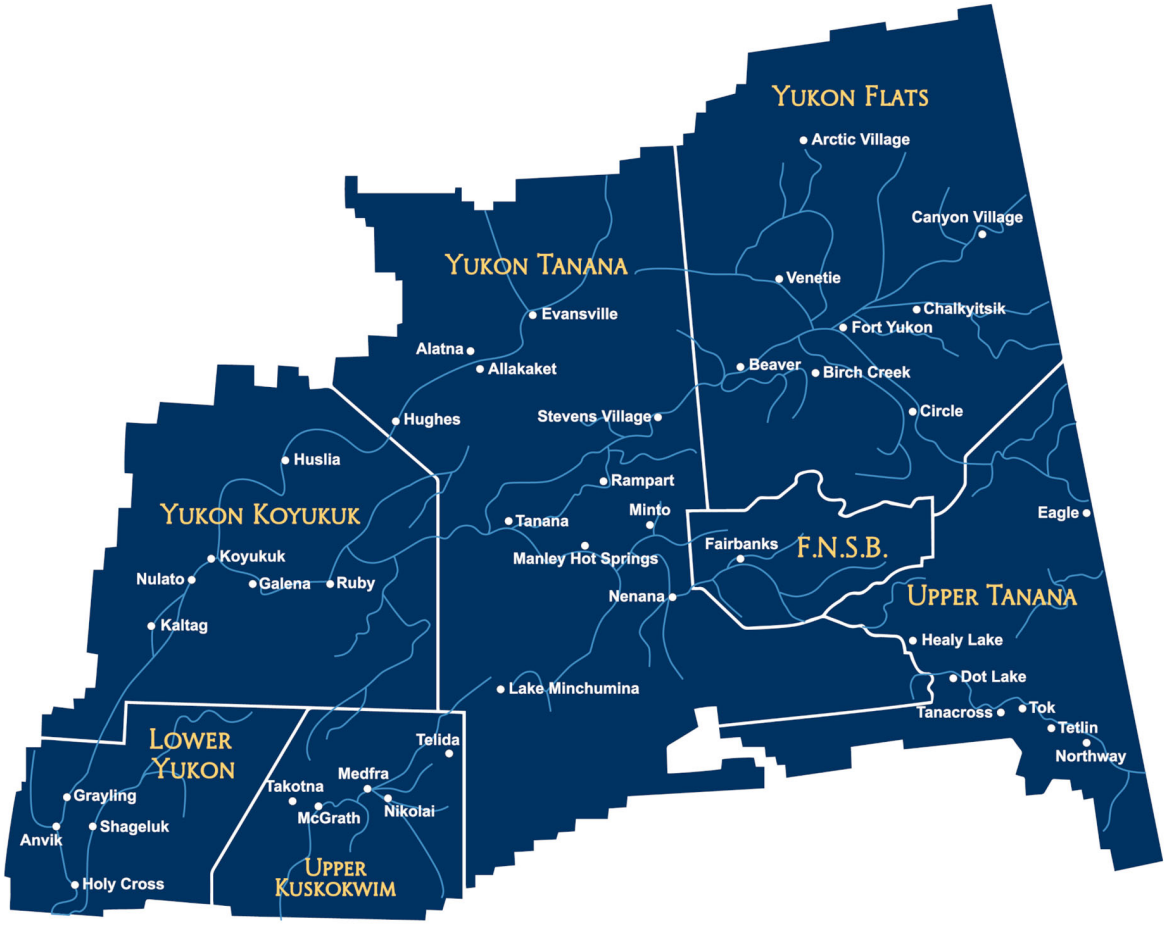
warned us about the decline long before western science identified the Salmon crisis, and our Tribal voices continued to be ignored and unheard. As my three boys are now young men, they have not been able to share any of these traditions with their grandmother and other elders for many years. Similar to many youth, a large part of my childrens' family history, culture and wellbeing has been absent and will continue to impact many generations.

8. TCC, organized as Dena' Nena' Henash or "Our Land Speaks," is a sovereign tribal consortium with a board of directors consisting of 42 Tribal members across Interior Alaska, representing 37 federally recognized tribes.[1] TCC is an Alaska Native non-profit corporation that provides health and social services for the more than 18,000 Alaska Native people in the Interior Alaska region. TCC was formed in 1962, but its history dates back over 100 years, when tribal chiefs from throughout the region banded together to protect their Native land rights. TCC's main office is in Fairbanks.

9. TCC region covers 235,000 square miles of Interior Alaska, which is equal to about 37 percent of the entire state, and just slightly smaller than the state of Texas. The region is divided into six subregions: Yukon Koyukuk, Yukon Tanana, Lower Yukon, Upper Kuskokwim, Yukon Flats, and Upper Tanana. The subregions and TCC

[1] The 42 communities are Alatna, Allakaket, Anvik, Arctic Village, Beaver, Birch Creek, Canyon Village, Chalkyitsik, Circle, Dot Lake, Eagle, Evansville, Fairbanks, Fort Yukon, Galena, Grayling, Healy Lake, Holy Cross, Hughes, Huslia, Kaltag, Koyukuk, Lake Minchumina, Manley Hot Springs, McGrath, Medfra, Minto, Nenana, Nikolai, Northway, Nulato, Rampart, Ruby, Shageluk, Stevens Village, Takotna, Tanacross, Tanana, Telida, Tetlin, Tok, and Venetie.

communities are shown on the following map.



10. TCC is charged by its member Tribes with advancing tribal self-determination and enhancing regional Native unity. Its mission is to provide a unified voice to advance sovereign tribal governments through the promotion of physical and mental wellness, education, socioeconomic development, and culture of the Interior Alaska Native people. TCC's strategic plan calls for strong tribes, educated and empowered tribal members, healthy people, safe and strong communities, economic sovereignty, and stewardship of its lands and resources. TCC works toward meeting the

health and social service needs of tribal members and beneficiaries throughout the region. Its programs and services range from direct healthcare services to tribal development services, natural resources management, public safety, community planning, and transportation. Protecting hunting and fishing resources for our people is a TCC priority to ensure the survival of our villages and our Tribal way of life.

11. TCC was formed to represent our member Tribe's interests, including initiatives related to salmon, subsistence fishing, and fisheries management. TCC also partners with its member Tribes and other Native organizations to advance our mission to protect our food security and way of life.

12. TCC member Tribes and beneficiaries live off the land, the ocean, and the rivers, and our traditional waters have sustained us for generations. Many villages are far removed from well-stocked grocery stores. Access to fresh fruit, vegetables, and healthy meat and fish are limited, too expensive to purchase, and not a replacement for harvesting wild foods. Securing healthy food requires the ability to hunt, fish, harvest, and share. The availability of salmon is particularly critical for our coastal and river communities, where more households report food insecurity than in other areas of the state and nation. Similar to TCC Tribes, over half of Alaska tribal communities in our Western and Interior regions rely on salmon for the mainstay of our diet, but in recent decades, plummeting salmon stocks have resulted in repeated fishing closures and our nets, our tables, and our freezers have been empty. Village residents continue to witness increased numbers of outside hunters in their traditional use areas, impacting traditional hunting

opportunities for species that would be targeted in years of poor salmon runs. Therefore, the salmon crisis that our Tribes and tribal members have faced for years is a food crisis.

13. TCC's member tribes and beneficiaries depend on all species of salmon that mature in the North Pacific and return to the Yukon and Kuskokwim rivers each year. Traditionally, TCC's member tribes and beneficiaries depended on salmon as a significant portion of their diets, but it has been increasingly difficult for us to meet our needs because of the collapse of multiple species of salmon in Western and Interior Alaska. The Eastern Interior Regional Advisory Council includes 20 TCC member tribes, and during the 1980s and 1990s, salmon species made up 68 percent of their subsistence harvest, which was equivalent to 1,051,366 edible pounds. In the 2000s and 2010s, salmon species made up 62 percent of their subsistence harvest, which was equivalent to 368,677 edible pounds. The Western Interior Regional Advisory Council includes 19 TCC member tribes, and during the 1980s and 1990s, salmon species made up 55 percent of their subsistence harvest, which was equivalent to 974,385 edible pounds. In the 2000s and 2010s, salmon species made up 44 percent of their subsistence harvest, which was equivalent to 200,199 edible pounds. It can be estimated that salmon comprised 53 percent of the diets of tribal community members in the TCC region. For the past few years, TCC has spent a half million dollars or more each year to ship salmon that was commercially caught elsewhere to villages to ensure residents do not starve during the area's harsh winters.

14. Sustainable salmon management is critical for the ecosystems upon which

our indigenous ways of life and food security depend. Salmon plays a vital role in nutrient distribution. Tree growth can be almost completely dependent on fish, as they carry considerable quantities of nitrogen and phosphor. During salmon runs, bears will selectively eat the fattiest parts of the salmon, leaving the carcass behind that provides food to other species, like wolves, fox, birds, and insects. Nitrogen from salmon is further spread to trees through feces expelled from wildlife. Lastly, nutrients not absorbed flow back in the stream to the ocean, where tiny organisms eat and regenerate the ocean's ecosystem.

15. Salmon fishing since time immemorial, was a customary summertime activity where our people lived in fish camp for summer months. In the mid-20th Century, fish wheels were the main gear used for continuous harvest of summer chum. Men worked to prepare chum for the dog teams. Women prepared fish for human consumption, working on Chinook salmon, shee fish, white fish, lush, pike, and Coho by the hundreds in late summer. In the 1960's, the advent of snow machines reduced the number of dog teams and the high need for summer chum, and increase in harvest of Chinook salmon for human consumption. With the decline in Chinook, our people have relied on all salmon species to meet their consumption needs.

16. Fishing for salmon goes beyond health and nutritional value, it is central to maintaining education, cultural norms and language, and subsistence economy. At its basis, fishing provides access to healthy nutrients and fats that help combat food related diseases, such as diabetes, heart disease, and stroke. Fishing reinforces the deeply

embedded value of a shared sense of community and responsibility for the welfare of others. The act of fishing is educational and a way to pass traditional knowledge and resource management skills that has allowed Alaska Native people to steward the resources for thousands of years. The annual harvest of wild foods is ceremonial. What is eaten, and what is left untouched are often life lessons retold from the elders to their young through storytelling. Traditional hunting, fishing, and gathering embodies who our Tribes are as people, and provides our way of life.

17. Protecting the wellbeing of our people and their hunting and fishing rights has been and continues to be a priority for TCC. In 2013, TCC established the Hunting and Fishing Task Force to direct advocacy efforts to protect Alaska Native hunting and fishing rights central to our traditional way of life and wellbeing. The traditional hunting and fishing practices, which include the ceremonies that accompany these practices, provide for the social, cultural, spiritual, and economic wellbeing and survival of our people and communities. In 2014, TCC's Full Board of Directors passed a resolution to support the development of inter-tribal fish commissions for both the Yukon and Kuskokwim Rivers. The goal of the commissions is to ensure tribal positions are carried forward in management and allocations of fish. This work founded the Yukon River Intertribal Fish Commission that commits to conserve, restore, and provide for tribal use of fisheries based on indigenous knowledge systems and scientific principles. Understanding the importance of the work in Tribal Resource Stewardship, the TCC Executive Board has contributed over $2 million, Doyon, Limited contributed $300,000,

and our Tribes contributed just under $800,000 since 2014. TCC recently reorganized its programs to better support addressing fishing and subsistence issues. TCC organized the Tribal Resource Stewardship Division that brings together the work of the Hunting and Fishing Task Force, Yukon River Intertribal Fish Commission, and Fisheries to establish a unified effort in addressing subsistence issues. Additionally, TCC is hiring a high-level director to support and advance the work in protecting subsistence resources.

18. TCC has long advocated for sustainable management of fisheries to support the subsistence needs of citizens of its member tribes and beneficiaries, which is in alignment with the strategic priority of stewardship of its lands and resources. TCC's fisheries program works to build educational capacity and expertise in fisheries, using western science and traditional knowledge to enable sustainable fisheries and advocate for fishing and hunting rights throughout the region. Through the fisheries program, TCC works in collaboration with the United States Fish and Wildlife Service to operate a weir to collect abundance estimates and run timing for salmon; manages a Yukon River salmon genetic stock identification project for Yukon River chum and Chinook stocks to assist in-season and post-season management and evaluation of Yukon River salmon runs; provides summer science camps for youth to learn about traditional knowledge and western science related to fisheries; and conducts aerial surveys and remote sensing to characterize spawning habitat use for the Teedraanjik and Coleen River Chinook and chum salmon stocks. TCC is developing a middle river Yukon River sonar cooperatively with the United States Fish and Wildlife Service and Alaska Department of Fish and

Game to own and operate to provide data for fisheries management purposes. Approximately 1,000 miles go unmonitored, which results in 30,000 unaccounted salmon and in-river management decisions that left mid and upper Yukon River communities without harvest opportunities.

19. TCC has engaged extensively in both federal and state advocacy on fisheries management that impact salmon and other subsistence resources. As to federal advocacy, TCC has advocated for sustainable fisheries management through the North Pacific Fishery Management Council's and the National Marine Fisheries Service's (Service) processes for years and has actively participated in committees, government-to-government consultation, and public comment processes related to salmon and fisheries management. TCC has testified at listening sessions with multiple federal agencies, including the Service; met with federal officials to discuss food security and fisheries management; invited fishery managers to listen to tribal members' concerns and priorities on sustainability and management; conducted trainings for tribal members to testify at the Federal Subsistence Board; and provided written and oral comments at Council meetings regarding salmon bycatch and fisheries management. TCC has advocated at all levels and in many forums regarding the need for action and precautionary management measures to ensure a sustainable yield of salmon that meets escapement goals and allows TCC's tribal members in the Yukon-Kuskokwim region to fish.

20. As part of its federal advocacy, in December 2021, TCC, along with other regional Tribal organizations, submitted an emergency petition to the Secretary of

Commerce asking her help to address the severe and unforeseen ecological, economic, social, and public health concerns affecting Western and Interior Alaska communities due to the salmon crisis. Specifically, the petition asked the Secretary to take emergency action to eliminate Chinook salmon bycatch and set a cap on chum salmon bycatch in the Bering Sea pollock trawl fishery in the 2022 season. It also asked the Secretary to engage in meaningful consultation with Western and Interior Alaska Tribes to develop long-term measures to reduce salmon bycatch, ensure the long-term health of salmon stocks in Western and Interior Alaska, and meet the subsistence needs of communities in the regions. The Secretary denied our request for emergency action on January 25, 2022. The petition and the denial letter are posted on TCC's website here: https://www.tananachiefs.org/emergency-petition-to-reduce-salmon-bycatch-denied/.

21. In April 2022, TCC hosted a meeting with Interior Secretary Deb Haaland to discuss several issues, including the Yukon River salmon crisis. TCC used this time to reiterate its continued request for changes to the Code of Federal Regulations pertaining to fish and wildlife management under ANILCA. In addition to myself and other TCC staff, several Chiefs from TCC member Tribes participated in this meeting.

22. In October 2022, TCC and member Tribes participated in a tribal consultation meeting with the Department of the Interior and the National Oceanic and Atmospheric Administration on fisheries protection and restoration issues. During the consultation, tribal leaders and subsistence users throughout the region stepped forward to demand action from the federal and state governments for the devastating salmon

decline that has been impacting Tribes on the Yukon River.

23. In November 2022, TCC participated in the 2022 White House Tribal Nations Summit hosted by the Department of the Interior. During engagement sessions, tribal leaders were able to engage with government officials, ask questions, and seek support for issues impacting their communities. The Yukon River salmon decline was among the topics that TCC leadership spoke about during these sessions.

24. TCC also participated in the Tribal consultation with the Service in February of this year. During that meeting, we demanded the Service engage in government-to-government meetings before making decisions about fisheries in the ocean that affect our lives. We expressed our frustrations over bycatch, waste of fish, and the fact that fisheries that feed the rest of the world are allowed to proceed when we are not allowed to catch anything for our families. We also urged the Service to update its environmental analyses.

25. TCC has passed several resolutions related to the salmon crisis and federal and state fisheries management. During the Alaska Federation of Natives' (AFN) 2022 Annual Convention, TCC submitted, and AFN adopted, a resolution requesting the North Pacific Fisheries Management Council to address salmon bycatch and salmon mortality issues in fisheries of the Bering Sea/Aleutian Islands affecting coastal Western and Interior Alaska salmon stocks. The same resolution was submitted to and adopted by the National Congress of American Indians and can be viewed here: https://ncai.assetbank-server.com/assetbank-ncai/assetfile/3167.pdf. The resolution requests the North Pacific

Fisheries Management Council to fulfill its obligations under Amendment 110 by implementing measures that increase incentives to the Pollock fleet to reduce Chinook and Chum bycatch in times of low salmon abundance, and to conduct extensive ecosystem review of the effect of productivity of wild salmon stocks within the Bering Sea/Aleutian Islands.

26. TCC supports our member Tribes and tribal members to attend meetings and advocate to better protect salmon and our way of life. TCC paid for ten tribal member attendees and the Executive Board to attend the December 2022 North Pacific Fisheries Management Council, 21 tribal members and the Executive Board to attend the January 2023 Board of Fish meeting, 16 tribal members and the Executive Board to attend the February 2023 Board of Fish meeting, and 2 tribal members and the Executive Board to attend the April 2023 North Pacific Fisheries Management Council.

27. TCC has also passed resolutions and otherwise advocated for changes in state fisheries management to better protect salmon and our salmon-dependent ways of life. In 2017, the Board of Directors unanimously adopted a resolution "Changing State Law to Protect our Salmon and Way of Life" at the annual convention in Fairbanks in 2017, in support of the Board of Fish recommendations to change Title 16, Alaska's Fish Habitat Permitting Law, to proactively protect salmon habitat, preserve our cultures, and sustain our way of life. In 2020, TCC adopted a resolution to support the Stand for Salmon ballot initiative to amend the State of Alaska Title 16 habitat laws clarifying important habitat characteristics to support salmon runs. During AFN's 2022 Annual

Convention, TCC submitted a resolution requesting the Alaska Department of Fish and Game support measures that decrease intercept of Chinook and chum Salmon in Area M affecting the Western and Interior Alaska salmon crisis; this resolution was passed. In June 2022, a coalition of organizations, including TCC, asked Area M Seiners Association to stand down all June commercial salmon openers to prevent the interception of Arctic-Yukon-Kuskokwim-bound chum stocks. In February 2023, when the Alaska Board of Fisheries failed to adopt Proposal 140 that aimed to reduce the allowed commercial fishing times and area in the Area M during the month of June to protect Arctic-Yukon-Kuskokwim chum salmon from severe commercial interception, Alaska Native peoples from throughout the Arctic-Yukon-Kuskokwim walked out of the meeting.

28. Despite all these and other asks by TCC and the Interior Alaska Tribes calling on the federal and state governments for action on the salmon decline, no significant action has taken place.

29. TCC communicates with and educates its member Tribes about salmon decline and fisheries issues in various ways, including by publishing articles, hosting webinars and summits, posting updates about the salmon and bycatch-related issues, and issuing action alerts on its website. Several of TCC's action alerts have been specific to the salmon decline and have encouraged our region's subsistence users to advocate for salmon and the protection of our ways of life. These alerts have urged them to write to decision makers and participate in meetings, including those of the North Pacific

Fisheries Management Council. For example, in June 2022, TCC posted on its website an alert "How to Testify on Salmon Bycatch" calling people in Western and Interior Alaska to engage in the June 2022 North Pacific Fisheries Management Council meetings to urge the Council "to take every action at its disposal to reduce Chinook and chum salmon bycatch immediately and work toward zero bycatch." https://www.tananachiefs.org/events/how-to-testify-on-salmon-bycatch/.

30. In February/March 2022, TCC hosted the "Yukon Salmon Summit," a summit "led with indigenous knowledge and tribal governance to build ecosystem stewardship from the ocean to the head waters." The summit brought together all voices on the Yukon, including fishing families, scientists, and policy makers.

31. In May 2022, TCC hosted a webinar about the lifecycle of salmon. Earlier this year, TCC posted an article "Salmon in the Trees" about the role of salmon in nutrient distribution between the ocean and the terrestrial environment.

32. In 2022, TCC, in collaboration with the Yukon River Drainage Fisheries Association and in partnership with the Tribal Councils of Chalkyitsik, Venetie, and Gwichyaa Zhee, collaborated on a project that documented the local and traditional knowledge of salmon and whitefish in the Yukon Flats region, focusing on the Draanjik Black River subbasin. Ethnographic interviews were used to learn local and traditional knowledge identifying potential spawning and rearing habitats used by salmon and whitefish and then fisheries techniques were used to verify the habitats identified by the local and traditional knowledge. This project was created because of concerns relating to

population declines in Yukon River salmon species and the need to include the most up-to-date information in the Anadromous Waters Catalogue.

33. TCC has spent a significant amount of time on protecting salmon of Alaska and this has affected our ability to provide other services. The funding TCC uses to send advocates to meetings, support the Tribal Resource Stewardship Division, and purchase salmon is funding TCC allocates each year, and could be used to cover other priorities, such as behavioral health, substance abuse, housing, public safety, education, and other items. TCC staff often burn out working on protecting our salmon, because there are multiple tribal partner meetings, and many state and federal consultations and meetings to advocate, which often are over 12-hour days and scheduled on holidays and weekends. Additionally, many high level TCC employees have invested hours of their time focusing on protecting salmon, including the Executive Director of Tribal Government and Client Services, General Counsel, Executive Director of Communications, Government Legal Affairs Director, and myself as the Chief/Chairman.

34. TCC understands the salmon lifecycle and the importance of protecting the salmon rivers, streamways, ocean habitat, and spawning grounds. TCC has engaged in other efforts that protect the waters of salmon in the Yukon River that include focusing on development projects and land management plans. TCC is heavily involved in the Ambler Road Project, which is a proposal for a 211-mile industrial access road that would penetrate undeveloped lands in Northwestern Alaska that is home to dozens of Alaska Native communities, and would cross many major river systems and thousands of

smaller streams and wetlands, requiring about 48 bridges and nearly 3,000 culverts. TCC supports the Bering Sea Western Interior Tribal Commission and supports member Tribes of the commission to strengthen tribal involvement in Bureau of Land Management planning and decision making process on 26.5 million acres of public lands that affect the way of life of many Alaska Native Villages. Tribes advocate for Areas of Critical Environmental Concern to protect waters and spawning grounds among other areas that are critical to salmon and preserving their way of life. The Service's fisheries management to increase groundfish cash limits will increase bycatch of salmon, and cause irreversible harm to the sustainability of the salmon population. The salmon population is facing extremely challenging environments. A variety of factors are impacting our salmon, including warming ocean and river temperatures, water levels, bycatch of salmon in the commercial fisheries in the Bering Sea, disease and parasites, and poor diet among other stresses. Salmon cannot recover if they cannot make it to the spawning grounds. Increasing the incidence of bycatch by increasing groundfish catch limits will increase the stress on salmon and not allow them to recover. Every salmon counts and there is a need to err on the side of conservation during severely depressed escapements to ensure their livelihood for future generations.

35. The Service's fisheries management to increase groundfish catch limits will harm the Tribal members that live and depend on the Yukon River salmon. The Yukon River salmon have been depended on for sustenance, exchange and maintenance of cultural tradition for multiple generations. Tribal members live in a mixed economy of

both wild foods and cash income, mostly depending on locally available wildlife and fish. With no salmon, families are not going to fish camp that served as cultural, economic, nutritional, and educational purposes. It provided food for the winter, and valuable cultural lessons that reflect generations of knowledge about the land and salmon. Low salmon runs have increased regulations on the Yukon River that often criminalizes our tribal members. Tribal members of the Yukon face conservation management decisions in addition to restrictions to meet the Yukon Salmon Agreement obligations that allocate salmon between Alaska and Canada. Gear type on the Yukon River allows four-inch nets, which many of our tribal members did not have and did not have the means to purchase. The lack of salmon causes families to rely on wage employment in order to pay for very expensive commodities and does not integrate with hunting and fishing lifestyle because there is less time and less opportunities to go out on the land when you are required to be at a job. For instance, wildland firefighting often requires tribal members to be away from home during the summertime and into the fall, which is the prime time to subsist and preserve foods in preparation for wintertime. There are repercussions as the traditional networks of sharing and bartering are stressed by shortages. Sharing resources fosters community health and strengthens relationships. With the loss of salmon and the ability to fish today, Tribal members are harmed, feeling financial hardship and a sense of loss.

36. TCC and its member Tribes have an interest not just in the health of the Bering Sea and the species that depend on it, but also in the rule of law and the

expectation that federal agencies, including the Service, will comply with laws enacted to protect the region's environment. These laws include the National Environmental Policy Act (NEPA), which requires the Service to analyze all potential environmental impacts, including cumulative impacts, of its actions. The Service's decision to adopt the 2023-2024 harvest specifications for the Bering Sea and Aleutian Islands without updated NEPA analyses undermines TCC's ability to advocate for its interests, including providing our member Tribes accurate information about the impacts of these decisions on our way of life, which depends on salmon and other marine resources of the Bering Sea and Aleutian Islands ecosystem. Without this up-to-date information, it is impossible for TCC to fully achieve its organizational mission and purposes. The interests and organizational purposes of TCC are therefore directly injured by and traceable to the Service's actions in this case. Only a ruling setting aside these illegal and unwise decisions will prevent harm to TCC and its member Tribes.

37. Salmon is life to our people living on the Yukon River. Our Athabascan people are resilient and have relied upon many species of animals and fish to survive for millennia and they continue to do so today. Protecting subsistence, including salmon, and our traditional way of life are top priorities for TCC. The preservation of Yukon River salmon goes beyond securing food – it's about being able to practice our traditional activities and being able to share that knowledge with our future generations.

38. Tribes along the Yukon and Kuskokwim Rivers have been experiencing king salmon declines for over 20 years. TCC Tribes have tried to save king salmon runs

by implementing a self-imposed moratorium for nearly ten years. We feel we constantly carry the conservation burden while ocean-based commercial fleets do little.

39. Citizens and beneficiaries of TCC's member tribes and communities, including me, depend on a healthy marine ecosystem and the resources it sustains, including salmon, to support their ways of life, traditional and cultural practices, and food security. The 2023-2024 harvest specifications authorized by the Service will directly and irreparably injure these interests by allowing bycatch of our salmon and by allowing these fisheries to continue without new environmental analysis. Every fish affected by what happens in the ocean matters to us when our subsistence needs are not being met.

I declare under penalty of perjury that the foregoing declaration is true and correct.

Dated: October 5, 2023 By: 

Brian Ridley
Chief/Chairman and President of TCC

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

ASSOCIATION OF VILLAGE COUNCIL PRESIDENTS and TANANA CHIEFS CONFERENCE, *Plaintiffs*, CITY OF BETHEL, *Intervenor-Plaintiff*, v. NATIONAL MARINE FISHERIES SERVICE *et al.*, *Defendants*, AT-SEA PROCESSORS ASSOCIATION and UNITED CATCHER BOATS, *Intervenor-Defendants.*	Case No. 3:23-cv-00074-SLG

DECLARATION OF KARMA ULVI

I, Karma Ulvi, hereby declare as follows:

2. I am a tribal member of the Native Village of Eagle, which is one of the member Tribes of Tanana Chief Conference (TCC).

3. I am the Chief of the Hän Hwëch'in, tribe from the Native Village of Eagle, which is one of the 42 tribes of TCC. I have lived in Eagle for a majority of my life.

4. In 2015, I started my career with TCC as the Community Health Practitioner for the Native Village of Eagle. I was in this role for five years until I became the Chief of my Tribe and the Tribal Administrator (TA) for Eagle. Currently, I have been the TA for six years. I became involved with our Tribe to advocate for our way of life and to serve my people on issues that affect our food security and how we live. Our Tribe has a strong voice, but on the regional level we often rely on TCC to represent us concerning our hunting and fishing rights, housing, health and social programs. TCC advocates for us to ensure our peoples' voices are heard and that people understand the drastic effects of losing our culture and food source has on our lives.

5. Our Tribe has been very concerned for the last 10 years, that we have had few opportunities to fish. In the last four years there has been no opportunities to fish because of the low numbers. Similar to many Tribes along the Yukon River, Eagle Village imposed a moratorium, where we will not fish so that all the salmon can get to the spawning grounds.

6. My Tribe has also become actively involved in our Eagle Fish and Game Advisory Committee (AC) where we have been writing letters of concern for our decline

in salmon. This issue has become a focal point for Eagle, and we are sending council members to the Yukon River Inter-Tribal Fish Commission to attend meetings, advocating to save the salmon by proposing regulations, and testifying at the Board of Fish and the North Pacific Fishery Management Council (NPFMC).

7. As Chief of the Native Village of Eagle, I was elected in May 2023 as the Chair of the Yukon River Inter-Tribal Fish Commission (33 villages along the Yukon), I was appointed by the Governor of Alaska to be on the Alaska Bycatch Review Task Force in 2021, and now appointed by the Commissioner of Alaska Department of Fish and Game in 2023, to be on the Bycatch Advisory Council.

8. My tribe is the Han Hwëch'in (People of the River), and we have been fishing the upper Yukon River for thousands of years. Our grandparents would move down to the river in the summers to fish for King (Chinook) and would spend months from June to August cutting and drying fish for the winter. They only took what they needed, and they used everything from the fish and animals.

9. Growing up in Eagle, my father and mother fished for our family in the summer and my father trapped for furs in the winter. We would catch (King) Chinook and put them away for food in the summer and had fish wheels catching Fall Chum through the later summer. We would hang the Fall Chum for rich protein for the dog team in the winter. The salmon were plentiful, and we never thought that one day we wouldn't be able to fish the food that has given my people life for so many generations.

10. Our children, our families, elders, and communities are very concerned

with the decline in salmon and other large game in our region. These animals supply more than just food for our families but a way of life. These are traditions and culture passed down for thousands of years taught to me by my mother and father and grandparents.

11. Living in rural Alaska is very expensive and we depend on these fish for a healthy source of protein throughout the winter. Our families know the fish are entering the Yukon from the ocean when the cotton flies, and would get ready in early July to start fishing. We would cut fish and tribal members and the elders would tell stories of the old days when this was the only way they knew how to live. Our elders have taught us how to cut fish, we hang and smoke them the traditional way, and either can or freeze so that we have food for the winter. Many times in the village someone will get a moose or caribou and so we trade and barter for meat with fish or vice versa. Some tribes would trade with other tribes, not on the Yukon, to make sure they had fish in their diets. Our people would always make sure the elder had fish in their freezers and take care of them.

12. The Canadian bound salmon are the fish that concern us most since we do not have a lot of species this far from the ocean. We do grow more and more concerned with all of the birds, insects, and animals that are a part of the ecosystem. The plants depend on the spawned fish for fertilizer, the insects depend on the plants, the birds depend on the insects, the bears and the wolves depend on the salmon, and we depend on all of it to be healthy.

13. My family has lived in Eagle and we have always been on the river and

this is where I call home. My mother, aunts, cousins, and family live here and many of our people that live in urban areas come home to practice our way of life and eat our traditional food. We plan to grow old here and to continue our way of life. This is what makes our people happy and healthy.

14. As the Chair of the Eagle Fish and Game AC, the Chief of the Native Village of Eagle, and the Chair of the Inter-Tribal Fish Commission, I can speak for the people of this region that we are desperately concerned about the authorization of the 2023-2024 groundfish fisheries. We are aware that there are many issues affecting the salmon, but we also know that every year millions of tons of fish are taken from the ocean, including thousands of fish and crabs removed as bycatch. How is that affecting other species in the ocean? There are declines in salmon, crab, halibut, and marine mammals, including orcas are being caught, and deep-sea corals and other ocean habitats being destroyed.

15. Along the Yukon, there are many empty fish camps with families not being able to provide for their children and elders. This summer, my brother wanted to go down to the river and dipnet for Fall Chum Salmon as he has done for decades, but I had to tell him we are not allowed to do that anymore. This has dramatic effects on our well-being, our sense of who we are and the lifestyles that our ancestors taught us. Our people have not been able to pass down our traditions for four years, which means the younger generation will not have the experience of cutting, smoking and drying these fish for food. Our elders have not been able to teach and pass on their knowledge to the younger

tribal members. We have not been able to provide salmon to our people at our potlatches and to honor our deceased loved ones.

16. The tribes understand that National Marine Fisheries Service (NMFS) does not directly regulate salmon, as it is managed by the Board of Fish and other agencies. However, NMFS does affect regulations, as their management decisions not only impact bycatch but also how the salmon survive out in the ocean during their life cycle. NMFS' decisions also directly impact the amount of ocean biomass that is taken and all of these species are related. The more food taken, the more hatcheries are produced, the more the salmon bound for the Yukon River and rivers in Alaska cannot find the food that they need to make these long journeys to spawn. This only exacerbates the issues of declining salmon and our subsistence way of life on the Yukon.

17. Our tribes are very concerned that the approval of the 2023-2024 Groundfish Fisheries are using old and outdated EIS's and that there is not sufficient data to make these important decisions that are affecting subsistence, commercial, and sport users who all rely on healthy fisheries. This year, only 15,304 Chinook and 14,412 Fall Chum have passed Eagle Sonar. These numbers are extremely concerning to our people. NMFS needs current data to be able to make these decisions that are affecting so many different types of marine mammals and the salmon that we depend on. Climate change, disease, predation is having an effect on all the marine and fresh water fish. Using proper data, NMFS will be able to evaluate and analyze the deep impacts that human consumption is having on these marine mammals and regulate according to those updated

EISs.

18. Our tribes strongly feel like because these decisions made by NMFS and the NPFMC are affecting our way of life we should have a seat at the table. We have been managing these resources since time immemorial and we strongly feel like our indigenous knowledge and traditional perspective can be a great asset to these systems. NMFS management decisions have been impacting our lives for years now and we need our voices to be heard.

19. As a member of the Bycatch Review Task Force appointed by Governor Dunleavy, I was involved in getting more research for the Chinook to pin point where the fish are migrating, to implement a Chum Bycatch Limit, and to try to make information easily assessable for people in rural Alaska. We also advocated for using traditional knowledge and tribes to help advise the NPFMC.

20. On the Bycatch Advisory Council, we are working to implementing those recommendations, giving ideas for more research, more easily assessable places to find information that the public has questions on concerning bycatch, and finding different gear types that would allow salmon to escape.

21. Our tribes are citizens of this great state of Alaska. All we ask is that we get to carry on our way of life, our cultures and traditions, our healthy way of living. Our Rivers and Oceans are richer when they are supplying food to eat and there is abundance of fish and animals. Alaska would not be what it is today if we didn't have our fish and large game to provide food for our families. We need to manage responsibly and save for

future generations.

Thank you for giving me an opportunity to address the court. Mahsi Cho.

I declare under penalty of perjury that the foregoing declaration is true and correct.

Dated: 09.27.23

By: _____
Karma Ulvi
Chief of the Native Village of Eagle

Elizabeth M. Bakalar (Alaska Bar No. 0606036)
City Attorney
City of Bethel
300 State Highway, PO Box 1388
Bethel, AK 99559
Email: lbakalar@cityofbethel.net
Telephone: (907) 545-0115

Attorney for the City of Bethel

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALAKSA

ASSOCIATION OF VILLAGE COUNCIL PRESIDENTS, *et al.*, Plaintiffs, and CITY OF BETHEL, Intervenor-Plaintiff, v. NATIONAL MARINE FISHERIES SERVICE, *et al.*, Defendants, and AT SEA-PROCESSORS ASSOCIATION, *et al.*, Intervenor-Defendants.	Case No. 3:23-cv-00074-SLG **CITY OF BETHEL'S JOINDER TO PLAINTIFFS' PRINCIPAL BRIEF UNDER LOCAL RULE 16.3(c)(1)**

The City of Bethel (hereafter "Bethel" or "City") hereby joins in full Plaintiffs' Principal Brief Under Local Rule 16.3(c)(1) filed at Docket 32 in this matter, and adopts all facts stated and arguments made therein, with one addition: the City has an additional basis for standing based on its economic interest in healthy salmon fisheries in the Yukon-Kuskokwim Delta Region; specifically, the impact of the Service's annual harvest specifications decision on the City's sales tax revenue, for the reasons stated in Bethel City Council Resolution #23-10 at Docket 18-4.[1]

Respectfully submitted this 9th Day of October, 2023

By: */s/ Elizabeth M. Bakalar*
Elizabeth M. Bakalar
City Attorney
Alaska Bar No. 0606036
City of Bethel
300 State Highway, PO Box 1388
Bethel, AK 99559
Phone: (907) 545-0115
Email: lbakalar@cityofbethel.net
Attorney for the City of Bethel

CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2023, a copy of foregoing Joinder to Plaintiffs' Principal Brief was served electronically through the CM/ECF system on the following

[1] *See, e.g. Ashley Creek Phosphate Co. v. Norton*, 420 F.3d 934, 938-39 (9th Cir. 2005) (Article III standing is appropriate where a plaintiff has a geographical connection to the region impacted by an environmental impact statement and plaintiffs' concrete interests (including economic interests) combined with environmental interests are affected). In addition to the bases for standing cited in Plaintiffs' Principal Brief, Bethel meets the foregoing standing criteria for the reasons set forth in the City's Complaint in Intervention and Exhibit A to that Complaint.

counsel of record: Jennifer Sundook, James C. Feldman, Jeffrey M. Feldman, Charise Arce, Maile Sinn Fong Tavepholjalern , and Katharine S. Glover.

s/ Elizabeth M. Bakalar
Elizabeth M. Bakalar