



B2 Response to SalmonER petition
June 2024

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
1315 East-West Highway
Silver Spring, Maryland 20910
THE DIRECTOR

April 2, 2024

Vivian Korthuis, Chief Executive Officer
Association of Village Council Presidents
101 A Main Street
PO Box 219
Bethel, Alaska 99559

Kevin Whitworth, Executive Director
Kuskokwim River Inter-Tribal Fish
Commission
P.O. Box 190
Bethel, Alaska 99559

Karma Ulvi, Chair
Yukon River Inter-Tribal Fish Commission
P.O. Box 19
Eagle, Alaska 99738

Brian Ridley, Chief/Chairman
Tanana Chiefs Conference
122 1st Avenue
Fairbanks, Alaska 99701

Serena Fitka, Executive Director
Yukon River Drainage Fisheries Association
PO Box 2618
Valdez, Alaska 99686

Dear Messrs. and Mses. Korthuis, Whitworth, Ulvi, Ridley, and Fitka,

Thank you for your letter dated January 17, 2024 regarding Chinook salmon bycatch in the Bering Sea pollock trawl fishery. In your letter, the Association of Village Council Presidents, Kuskokwim River Inter-Tribal Fish Commission, Yukon River Inter-Tribal Fish Commission, Tanana Chiefs Conference, and Yukon River Drainage Fisheries Association request an emergency action to institute a cap of zero Chinook salmon bycatch in 2024 to address the devastating socio-economic impacts of historically low Chinook salmon returns to rivers in the Arctic-Yukon-Kuskokwim (AYK) region on Tribal communities. Your letter also requests that the Department of Commerce urge the North Pacific Fishery Management Council (Council) to evaluate and update current Chinook bycatch management through the regular process to be in place following the expiration of the proposed emergency action. National Marine Fisheries Service (NMFS) manages Chinook salmon bycatch in the Bering Sea pollock fishery as prohibited species catch (PSC)(50 CFR 679.21).

In your letter, in previous correspondence, and in conversations with me and NMFS staff, your organizations have made clear that AYK communities are suffering from the impacts of record low Chinook salmon returns and declines of other salmon stocks, with associated impacts to food security and cultural traditions. I recognize the significance of those impacts to AYK communities. I also acknowledge that since a previous request for emergency action made by some of your organizations and others on December 21, 2021, Chinook salmon stocks in AYK have declined further overall. Nonetheless, for the reasons stated below, after reviewing the circumstances under applicable federal law, I am denying your request for emergency action.

Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) allows NMFS to undertake emergency action in certain circumstances. While the Secretary's emergency authority provides some exceptions to the procedural requirements of the MSA, the underlying action must still comply with the MSA, including the ten national standards. Specific to this petition, the most relevant statutory authority stems from National Standard 9, which requires that fishery conservation and management measures "shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch."

NMFS analyzed the request using NMFS's Policy Guidelines for the Use of Emergency Rules (NMFS Policy Procedure 01-101-07 published in the Federal Register (62 FR 44421, August 21, 1997)) that, among other considerations, define three criteria that must be met to determine that an emergency exists. The phrase "an emergency exists involving any fishery" is defined as a situation that:

- (1) Results from recent, unforeseen events or recently discovered circumstances;
- (2) Presents serious conservation or management problems in the fishery; and
- (3) Can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts to the same extent as would be expected under the normal rulemaking process.

In evaluating whether to grant the petition, NMFS must examine whether the emergency criteria are met and whether the petition contains information indicating that the petitioned bycatch reduction measure is practicable. Based on a review of the best available scientific information, the petition does not meet all three criteria. Most notably, the circumstances do not establish that the requested action would effectively resolve the Chinook salmon crisis in AYK rivers or that the immediate benefits of taking emergency action would outweigh the value of addressing Chinook bycatch through the Council process. Further, NMFS examined whether a cap of zero Chinook PSC in the Bering Sea pollock fishery is practicable. Instituting a cap of zero Chinook PSC would effectively close the pollock fishery, the largest fishery in the United States, and adversely impact the people and organizations who rely on it, including Community Development Quota groups that provide substantial benefits to underserved communities. Complete elimination of Chinook PSC by closing the Bering Sea pollock fishery would not be practicable. Therefore, NMFS cannot grant the request for emergency action.

I understand your concerns regarding the inclusion of Local Knowledge and Traditional Knowledge in bycatch management. Information used by NMFS and the Council agrees with Tribes' observations of declining salmon returns to AYK rivers. Genetic stock composition analyses indicate that an estimated 45 percent (2011-2022) of Chinook PSC in the Bering Sea pollock fishery originates from coastal AYK rivers.¹ As part of its bycatch management

¹ Guthrie III, C.M., Barry, P.D., Nguyen, H.V.T., D'Amelio, C.L., Karpan, K., and Larson, W.A. April 1, 2023. Genetic Stock Composition Analysis of Chinook Salmon (*Oncorhynchus tshawytscha*) Bycatch Samples from the

evaluation, the Council also uses estimates of the adult equivalency (AEQ) of Chinook salmon that would have returned to river systems had they not been intercepted as bycatch. The most recent AEQ assessment includes data from 2021 and finds that an estimated 1.9% of Chinook salmon PSC would have returned to Western Alaska rivers.²

Ongoing research in the Bering Sea shows that declining Chinook salmon returns since 2007 are primarily caused by ecosystem-wide changes that NMFS continues to monitor and study as part of our ecosystem-based approach to fisheries management.³ Collectively, the best available scientific information indicates that closure of the Bering Sea pollock fishery would not substantially increase returns to AYK rivers.

NMFS's Policy Guidelines for the Use of Emergency Rules states that "[c]ontroversial actions with serious economic effects, except under extraordinary circumstances, should be done through normal notice-and comment rulemaking." NMFS will continue to work with the Council to evaluate existing bycatch minimization measures and to seek improvements within the legal standards of the MSA. The next Council meeting takes place April 4-9, 2024 in Anchorage, and will include annual updates to Chinook and chum salmon bycatch reports. The Council will also review the Bering Sea chum salmon bycatch preliminary Draft Environmental Impact Statement and accompanying Social Impact Statement.⁴ I encourage participation from Alaska Native Tribes and Tribal organizations. Your testimony is an invaluable part of the bycatch management evaluation process.

As indicated in our discussion on February 27, 2024, Secretary Raimondo and I recognize the inequity of Council representation and will continue to advocate to Governor Dunleavy to nominate qualified Alaska Natives to serve on the Council, and to support an amendment to the MSA that would add two dedicated Alaska Native seats on the Council.

2021 and 2022 Gulf of Alaska pollock Trawl Fisheries. Available from:

<https://meetings.npfmc.org/CommentReview/DownloadFile?p=a5e7366b-bb9f-429a-b1b2-636ecfd1f442.pdf&fileName=C2a%20GOA%20Chinook%20Genetics%202021-2022.pdf>

² NMFS, NPFMC, ADF&G. May 2022. Update on Chinook salmon mortality and impacts due to bycatch in the EBS pollock fishery. Available from: <https://meetings.npfmc.org/CommentReview/DownloadFile?p=c16a58bc-e94e-4fd3-a23f-08909946bf20.pdf&fileName=D1c%20Chinook%20Salmon%20AEQ.pdf>

³ In your letter requesting emergency action, you state that "the loss of even one spawning female Chinook salmon is a loss of several thousand potential salmon in the next generation; each spawning female can produce 3,000 to 14,000 eggs." While it is true that female Chinook salmon produce many eggs, this citation is removed from the context of Chinook salmon life history. Like other salmonids, Chinook salmon produce many thousands of eggs in order to offset significant early life mortality rates. Recent studies in the Bering Sea indicate that early marine mortality is driving population declines in Chinook salmon. With recent warming trends and subsequent changes to ecosystem dynamics, Chinook salmon entering the marine phase are increasingly subject to size-dependent mortality. Lack of preferred, lipid-rich prey causes slower marine growth and increased susceptibility to natural mortality (e.g., predation, starvation). Strong evidence also points to stressors in the freshwater environment (heat, low water levels) encountered by AYK Chinook salmon during upriver spawning migrations.

Siddon E. 2023. Ecosystem Status Report 2023: Eastern Bering Sea, Stock Assessment, and Fishery Evaluation Report, North Pacific Fishery Management Council, 1007 West 3rd Ave. Suite 400, Anchorage, Alaska. Pp. 121 - 136. Available from: <https://apps-afsc.fisheries.noaa.gov/REFM/docs/2023/EBSecosys.pdf>

⁴ NPFMC. February 2024. Staff Tasking, Action Memo. Available from:

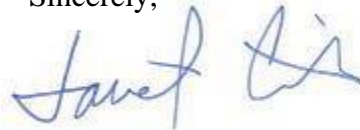
<https://meetings.npfmc.org/CommentReview/DownloadFile?p=4377c8a5-bdd5-4dfa-94c0-b607255d5484.pdf&fileName=E%20Action%20Memo%20.pdf>

You have also requested that we urge the Council to initiate a rulemaking process to examine current Chinook salmon bycatch management and consider improvements. Under the current salmon bycatch management in the Bering Sea pollock fishery, NMFS and the Council employ an intensive array of monitoring, research initiatives, and bycatch evaluation.⁵ Prior to 2011, salmon bycatch measures primarily focused on closure areas and catch limits. Experience over time showed that the industry, working cooperatively, can more effectively avoid salmon PSC by sharing data and using a system of short-term closures in areas where higher rates of salmon bycatch occur, and using bycatch reduction devices that allow salmon to escape trawl capture. Since the implementation of Amendments 91 and 110 in 2011 and 2016, respectively, Incentive Plan Agreements motivate industry to minimize Chinook salmon PSC in the Bering Sea at all times below performance standard levels.⁶

In terms of your request that we urge the Council to initiate rulemaking, NMFS Regional Administrator Jon Kurland told the Council at its June 2022 meeting and again at its April 2023 meeting that NMFS is interested in seeing a new evaluation of the Council's Chinook bycatch management measures. The Council chose to prioritize an analysis of potential new chum salmon bycatch measures, and NMFS supports that decision. We will continue to work with the Council to consider how best to assess the existing Chinook bycatch management regime to illustrate whether changes may be beneficial (i.e., more effective than the current system of abundance-based PSC limits, performance standards, and incentive plan agreements) and practicable.

Please know that my staff and I are committed to working with Alaska Native Tribes and Tribal organizations to continue to evaluate and mitigate salmon bycatch in Alaska. Sustained engagement with Alaska Native communities remains a priority for NMFS, and we look forward to continued discussions with you. If you have further questions, please contact Jon Kurland at jon.kurland@noaa.gov or 907-586-7221.

Sincerely,



Janet L. Coit
Assistant Administrator for Fisheries

⁵ NOAA Fisheries. Chinook Bycatch Management in Alaska. Available from: <https://www.fisheries.noaa.gov/alaska/bycatch/chinook-salmon-bycatch-management-alaska>

⁶ An examination of historical Chinook salmon bycatch from the Bering Sea pollock fishery shows a significant decrease in the average annual bycatch after the enactment of Amendment 91 prior to the 2011 season start from 40,976 salmon (1990-2010) to 18,325 salmon (2011-2023).

NMFS. 2024. Bering Sea Chinook Salmon Bycatch Report (includes CDQ). Available from https://www.fisheries.noaa.gov/sites/default/files/akro/chinook_salmon_mortality2024.html. Accessed on February 21, 2024.