

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Chris Oliver *for*  
Executive Director

DATE: March 23, 2009

SUBJECT: Chinook Salmon Bycatch EIS/RIR/IRFA

ESTIMATED TIME 28 HOURS
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**ACTION REQUIRED**

Final Action on Bering Sea Chinook Salmon Bycatch Management EIS/RIR/IRFA

**BACKGROUND**

The Council will be taking final action at this meeting on the draft EIS/RIR/IRFA (DEIS) on Chinook Salmon Bycatch Management Measures. Further information on the DEIS and information relevant to the Council's final action is described by subject heading below. The DEIS includes available information through November 2008. Updated information on Chinook salmon mortality from 1992 through 3/19/09 is attached as Item C-2(a). A table is also provided which gives comparable information on A season bycatch levels and pollock catch from 2003 through 2009.

Under the current regulations (Amendment 84 to the BSAI Groundfish FMP), the pollock fleet is exempt from salmon savings area closures by participation in a voluntary rolling hot spot (VRHS) ICA program approved by NMFS. One of the regulatory conditions of the ICA is an annual compliance audit. Information related to the 2008 compliance audit indicating a previously unreported Savings Area violation is included as Item C-2(b). As noted in the audit letter, an enforcement action is now pending.

***June 2008 preliminary preferred alternative (PPA)***

In June 2008, the Council took initial review of the Chinook Salmon Bycatch Management Measures EIS/RIR/IRFA and selected a preliminary preferred alternative (PPA). The Council's PPA includes a specified cap level of 68,392 Chinook salmon (Annual scenario 1 or PPA1), "if an ICA is in place that provides explicit incentive(s) for each participant to avoid salmon bycatch in all years." The hard cap in the absence of such an approved ICA (Annual scenario 2 or PPA2) would be 47,591 Chinook salmon. The motion from the June 2008 meeting is attached as Item C-2(c). Staff was directed to analyze the PPA and revise the preliminary draft analysis accordingly to form the draft EIS/RIR/IRFA that would be put forward for public review and comment.

***Draft EIS/RIR/IRFA***

The draft EIS/RIR/IRFA (DEIS) was revised by staff from the June 2008 version to incorporate additional information, analyses, and to specifically analyze the PPA. It was released on December 3, 2008. The DEIS provides the Council and the public with an evaluation of the environmental, social, and

economic effects of alternative measures to minimize Chinook salmon bycatch in the Eastern Bering Sea pollock fishery. The executive summary of the DEIS is attached as Item C-2(d). In conformance with National Environmental Policy Act (NEPA) requirements, NMFS solicited public comment on the DEIS. NMFS accepted public comments on the DEIS during the 80-day public comment period from December 5, 2008 to February 23, 2009.

### ***Comment Analysis Report***

NMFS received 61 letters providing comments on the DEIS. Comments were available for downloading, or hard copies of comment letters were mailed to you, per your request at that time. NMFS, Council staff, and ADF&G staff have undertaken a careful and deliberate approach to ensure that all public comments are reviewed, considered, and responded to in this process. A preliminary Comment Analysis Report (CAR) is provided as Item C-2(e) (because of the volume this item will be handed out separately at the meeting) which provides the public's comments received during that formal DEIS comment period, summarizes them, and presents the agency's preliminary responses. The CAR provides this information to the Council, the Secretary of Commerce, and the public prior to publication of the final EIS. The CAR will become Chapter 16 of the final EIS.

### ***Chinook Salmon Bycatch DEIS – Council Outreach Report***

Although the Council is still in the process of developing an overall policy to guide and improve outreach with rural community and Native stakeholders, it was determined necessary and timely to undertake such an effort with affected communities and Native entities on this issue in June 2008, at the time the Council chose a preliminary preferred alternative. The Council wanted to formulate and effect an outreach plan during the development of the DEIS and well prior to final Council action. The outreach plan for Chinook salmon bycatch management was developed by Council staff with input from NMFS and affected stakeholders. It was intended to improve the Council's decision-making processes on the proposed action, as well as enable the Council to maintain ongoing and proactive relations with Alaska Native groups and rural communities.

The outreach report is divided into several sections, including the rationale behind the outreach plan, and the three primary tasks that constituted the plan: direct mailings to stakeholders, regional/community outreach meetings, and documentation of the results. The final report is attached as Item C-2(f). The report also includes a short summary of each of six regional outreach meetings as a brief reference, which provides a general description of the participants at each meeting, the primary comments received, and any recommendations, motions, or resolutions that directly resulted from the meeting, when applicable. Appendix A to the report includes detailed information about each meeting, including a catalog of the comments provided, organized by general issue. Finally, Appendix B to the report contains copies of the motions or resolutions resulting from the meetings.

The outreach report was sent to you on March 4. This report will be included, in part or in whole, in the final EIS submitted to the Secretary of Commerce after the Council makes a final recommendation.

### ***Industry incentive based bycatch reduction programs***

In conjunction with their identified PPA, the Council requested that the pollock industry develop the specifics of an inter-cooperative agreement (ICA) that meets the requirements of the PPA. A progress report of proposed programs was provided to the Council in February 2009. At that time, the Council made several requests of industry and requested that the final reports be provided for review by the SSC at this meeting. The Council's request to the SSC regarding this review is attached as Item C-2(g). The final report of the proposed ICA put forward by industry participants was sent to you on March 16.

Analysis of the efficacy and impacts of the ICA and its salmon bycatch avoidance incentive programs are not included in the DEIS/RIR/IRFA. No specific ICA proposals were available to analyze at the time the DEIS/RIR/IRFA was being prepared. In addition, analysis of the ICA is not required under NEPA because the environmental impacts of the PPA are determined by the cap level of 68,392 Chinook salmon. The impacts of the PPA on the human environment are based on the assumption that this level of bycatch could be reached in any year. Under the PPA, no regulations would prevent the pollock industry from reaching this cap. As long as the draft EIS analyzes and discloses the consequences of adopting the dual-caps specified in the PPA (the 68,392 high cap and the 32,482 "backstop" cap), and the Council considers the ICA as a feature of the PPA that may provide additional incentives to avoid Chinook salmon bycatch within these cap levels, the Council can take final action without analysis in the draft EIS/RIR/IRFA of the specific incentive program the pollock industry may submit if the PPA were to be implemented by NMFS. If the Council adopts the PPA, it will have to recognize that the primary Chinook salmon bycatch management measure is the 68,392 cap and the Council's rationale will need to explain how this cap and other elements of the PPA achieve the objectives of Chinook salmon bycatch management and complies with the national standards in the Magnuson-Stevens Act and other applicable law.

The EIS/RIR/IRFA contains an explanation of the Council's general goals for incentive programs and the Council's intent to evaluate these programs once they are in effect and operational in the pollock fishery. This evaluation will be done through the annual report that will be required of the industry. Under the PPA, the annual report would be required to include: (1) a comprehensive explanation of incentive measures in effect in the previous year, (2) how incentive measures affected individual vessels, and (3) evaluation of whether incentive measures were effective in achieving Chinook salmon savings beyond levels that otherwise would have been achieved in absence of the measures. Through these annual reports and its own assessment of future Chinook salmon bycatch levels under the PPA, the Council would determine the effectiveness of the incentive programs. If the PPA is adopted and if analysis prepared after the ICAs are in effect demonstrates that the Council's goals for salmon avoidance are not being met, the Council could reinitiate analysis of alternative salmon bycatch management measures and implement revised or new management measures in the future.

### ***Final preferred alternative***

Final action on the Chinook DEIS will occur at this April Council meeting. The Council will receive reports on the DEIS from staff (including analysis of the PPA and responses to comments on the DEIS), the outreach report, ICA presentations from pollock industry representatives, as well as public testimony, prior to selecting its final preferred alternative. As is always possible, the Council's final preferred alternative may differ from its PPA. Tables which identify the structure of the PPA alternative in order to assist the Council with modifying aspects of this as they choose are provided as Item C-2(h). Information is also provided in that document with respect to the National Standards, the problem statement and other considerations for the Council at final action. The Council will recommend that NMFS implement its final preferred alternative as Amendment 91 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) and as amendments to regulations at 50 CFR part 679. Item C-2(i) provides excerpts from the FMP showing where amendments will be proposed to incorporate the Council's final preferred alternative.