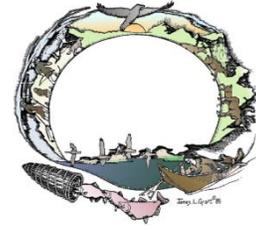




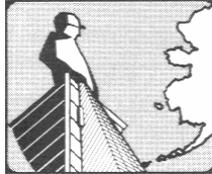
Association of Village
Council Presidents



Kawarak, Inc.



Tanana Chiefs Conference



Bering Sea Fishermen's Association



December 6, 2014

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

Re: Agenda Item C-2 Bering Sea Salmon Bycatch Initial Review

Dear Chairman Hull and Council members:

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

As you are well aware, the region our organizations serve is home to what was once some of the world's most magnificent Chinook salmon resources. Chinook salmon are a keystone species in the overall health of the river ecosystems, providing nutrients to a vast system of wildlife as well as juvenile salmon. These salmon provide a primary source of food and are essential to the viability of the subsistence way of life and the cultures and economies of Western Alaska. For many residents in remote villages, the commercial salmon harvest also provides the only means of income.

These once vibrant salmon runs have been on a steady decline throughout the region, with dramatically low salmon runs and harvests in recent years. In 2014, these declines have reached a new low. **For the first time in history, subsistence fisheries for Chinook salmon were closed throughout nearly the entire Arctic-Yukon-Kuskokwim (AYK) region.** On the Yukon River, subsistence fisheries for Chinook salmon were closed, and chum fisheries were severely limited to protect Chinook salmon as well. On the Kuskokwim River, subsistence Chinook salmon fisheries were also closed. And in southern Norton Sound, subsistence fishing for Chinook salmon was severely restricted in 2014. These closures presented a significant hardship throughout the summer, as family's traditional and historic practices of harvesting and storing salmon for the winter were disrupted. In reality, however, the hardship has just begun, as many families face a winter ahead without the stores of salmon upon which they have historically relied.

In light of the declines in Western Alaska Chinook salmon stocks, and the severe impacts on Western Alaskans as a critical source of food, income and cultural survival has disappeared, it is imperative that mortality from bycatch in the pollock fishery is reduced as well. While the cause of the declines is unclear, in-river users are making extreme sacrifices and in some areas have had their harvest reduced to zero. In this situation every single Chinook salmon is critical to the future and rebuilding of these historic runs. At this point, it is not only a matter of conservation, but also a matter of equity and basic human rights to food security that bycatch is reduced as well. The ultimate goal of bycatch reduction should be zero, and we should be constantly striving towards this goal. In addition, chum salmon is of vital importance to subsistence communities in these times of Chinook salmon declines, and ensuring adequate protections are in place for chum salmon bycatch are also critical. **To that end, we ask the North Pacific Fishery Management Council (the Council) to:**

- 1. Move forward at this meeting with the current set of alternatives, with the modifications/additions to Alternative 2 and 5 detailed below;**
- 2. Move forward with this amendment package in an expedited manner with final action in April 2015 at the latest;**
- 3. Initiate a trailing amendment package to look separately at reducing the overall cap, currently set at 60,000.**

Our specific recommendations follow:

1. The Council should move forward at this meeting with the current set of alternatives, with the modifications/additions to Alternative 2 and 5 detailed below;

The current set of alternatives presents a variety of methods for requiring additional bycatch reduction beyond the status quo. We see no reason to remove any of the alternatives from consideration at this point. This package should continue to move forward in an expedited manner. To ensure a complete package designed to reduce Chinook and chum salmon bycatch and maintain the incentives developed under Amendment 91, we recommend that you include the following revisions to Alternatives 2 and 5:

- a. Alternative 2 should be revised to incorporate a backstop measure for vessels which are not participating in an incentive plan agreement (IPA) and to require specific regulatory language outlining minimum requirements for chum IPAs.

Alternative 2 proposes to incorporate chum salmon protection measures into the current Chinook salmon IPAs. While the analysis does not present a specific example of what type of chum salmon protection measures will be integrated, our understanding and assumption is that these chum salmon measures will be very similar to the current rolling hot spot program in place under Amendment 84. Amendment 84 provided an exemption to the Chum Salmon Savings Area for vessels which participate in a rolling hot spot program. Under the proposed Alternative 2, by combining chum salmon measures with Amendment 91, vessels which are NOT participating in an IPA (which would now include Chinook and chum bycatch reduction measures) would be subject to the lower Chinook salmon caps, but would not be subject to ANY chum salmon bycatch reduction measures. In this case, a vessel which was not participating in an IPA would have no limits or management measures of any kind dedicated to reducing chum salmon bycatch. This represents a significant step backwards from the current management measures. It also does not comply with the Council's obligation under National Standard 9 of the Magnuson Stevens Act to reduce bycatch to the extent practicable. Under even the most lenient interpretation of this National Standard, having no bycatch management measures in place for chum salmon cannot possibly meet this National Standard. While all vessels are currently participating in Incentive Plan Agreements, potential changes to the performance standard under Alternative 5 as well as the ability to avoid any chum salmon bycatch measures could create an incentive for vessels to opt-out of the IPAs. According to the EA, "Anything that decreases the incentive to remain in the IPA and potentially fish under the opt-out provisions of Amendment 91 could result in increased bycatch and hence have an adverse impact to both chum and Chinook salmon stocks."¹ Ensuring that a backstop bycatch management measure for chum salmon is in place is critical. For the sake of simplicity, we recommend retaining the current Chum Salmon Savings Area or a hard cap as a backstop measure to apply to vessels which are not participating in an IPA. This will not only

¹ North Pacific Fishery Management Council and National Marine Fisheries Service, *Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis, Bering Sea Chinook and Chum Salmon Bycatch Management Measures 96* (Nov. 2014) [hereinafter *EA/RIR/IRFA*].

ensure that there are measures in place for all pollock vessels whether in an IPA or not, but will also continue to create a set of incentives which encourage vessels/co-ops to participate in the IPAs.

In addition, the approach outlined in Alternative 2 would move all requirements for chum salmon bycatch reduction into Amendment 91, deleting the current regulations under Amendment 84. The regulations put in place to implement Amendment 84 include a detailed set of provisions for minimum standards for a rolling hot spot program to qualify for the exemption from the Chum Salmon Savings Area. If the rolling hot spot program is to be the primary mechanism for chum salmon bycatch management, sufficient details of the program should be maintained in regulation to ensure minimum standards for the program. While the same level of detail as under Amendment 84 may not be required, it is imperative that basic details, such as the requirement for a rolling hot spot program and minimum standards for the program, are included in regulation.

In addition, the regulations should maintain the requirement for information sharing about violations and fines with Western Alaska third party representatives (as currently required under Amendment 84). The regulations should also mandate that Sea State reports for the rolling hot spot program should be made available to Western Alaskans and other members of the public. This used to be the case under Amendment 84 – Western Alaska representatives who requested to be on the distribution list received Sea State notifications as they were sent to the fleet. When Amendment 91 went into effect Sea State reports were no longer distributed for Chinook salmon, and recently have not been distributed for chum salmon either. The approach in Alternative 2, which puts chum salmon bycatch reduction into the hands of industry and largely outside of regulation, can only be successful if a high standard of transparency is required so that those outside of industry can track the industry's bycatch reduction efforts.

- b. Alternative 5 should be revised to adjust the cap for vessels which are not operating in incentive plans to be equal to or less than the opt-out cap.

As currently designed, Alternative 5 sets out a number of options for reducing the performance standard. Under several of these options, the performance standard could be lower than the Amendment 91 opt-out cap. As the analysis points out, “it is uncertain whether sectors, cooperatives, CDQ groups or individual vessels would opt-out of the IPA... and instead be subject to the opt-out allocation, which is the sum of each opt-out vessels portion of the opt-out cap of 28,496.”² Having a performance standard which is lower than the opt-out cap could create a perverse incentive for vessels to NOT participate in IPAs during times of low abundance, because a higher cap would be available to them under the opt-out cap. Since the point of IPAs is to provide for Chinook salmon bycatch reduction in times of low abundance, this would create a doubly perverse incentive. To maintain the management system set up under Amendment 91, the opt-out

² EA/RIR/IRFA, *supra* note 1 at 119.

cap should also be revised such that it does not exceed the performance standard in years of low abundance (when the lower performance standard is triggered).

- c. With the changes/additions noted above, the full suite of alternatives should move forward for final action.

Alternative 2 proposes a means to further chum salmon bycatch reductions measures. By integrating chum salmon bycatch measures with Chinook salmon bycatch measures this provides a mechanism for ensuring that chum salmon bycatch reduction measures do not inadvertently increase Chinook salmon bycatch. While we continue to have concerns about accountability and transparency in an industry program which operates outside of the Council process, we support continued development of this alternative at this time.

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

Alternative 4 would shorten the pollock fishing season to avoid fishing in times of historically high Chinook salmon bycatch. While we support continued analysis of this alternative, we do have significant concerns about the potential impacts of this alternative on Western Alaska chum salmon. We also question whether shortening the season in regulation, and thus providing less flexibility for the fleet to choose when to fish, will necessarily result in greater bycatch reduction. Addressing high bycatch in September/October may be better addressed through the IPA changes in Alternative 3.

Alternative 5 lowers the performance standard in years of low Chinook salmon abundance as indexed to a set trigger for total run size in the Upper Yukon, Kuskokwim and Unalakleet Rivers. Of all the alternatives proposed, we see this as the alternative with the most potential for bycatch reduction among those analysed, and adopting Alternative 5 is critical. While the analysis does not present a great amount of detail about the impacts of lowering the performance standard, it is our understanding that the current industry IPAs manage their bycatch based on the performance standard. Lowering the performance standard would therefore effectively lower the bycatch “target” for the pollock industry. When Chinook salmon stocks are at a level of low abundance, as

they currently are, it is critical that all sources of mortality are reduced. In-river harvests are reduced as Chinook salmon returns decrease, and at present this means there are no Chinook salmon harvests allowed in many Western Alaska rivers. It is critical that bycatch in the pollock fishery is lowered at these times as well. The current system in which subsistence fisheries can be completely closed in-river while bycatch limits are unchanged is not only inequitable, but seems to violate the “subsistence first” provisions of ANILCA in spirit if not in law.

We continue to believe that the cap itself must be reduced as well, but reducing the performance standard provides an important first and immediate step in reducing bycatch on the fishing grounds. We urge the Council to move forward with Alternative 5. We note that the option for a 60% reduction in the performance standard annually results in a performance standard of 19,036. This exceeds our prior recommendations for a performance standard of 15,000. We continue to support a management measure which gets the performance standard at or below 15,000.

2. Move forward with this amendment package in an expedited manner with final action in April 2015 at the latest.

Western Alaska Chinook salmon stocks are in crisis. Subsistence users whose primary food source is no longer available to them are in crisis right alongside the Chinook salmon which are a basis of the cultural, spiritual and socio-economic fabric of the Alaska Native communities in this region. AVCP and TCC recently filed a petition for emergency regulation to address the bycatch limits in the Bering Sea pollock fishery. Taking action expediently is critical in this situation. We commend the Council for developing this amendment package on a quick timeline so far, and ask you to maintain this schedule with final action in April 2015. If for some reason action is delayed, we ask you to recommend emergency regulations to reduce bycatch in the meantime. With the outlook for Chinook salmon returns in Western Alaska for 2015 no better than in past years, it is imperative that bycatch is reduced now.

3. Initiate a trailing amendment package to look separately at reducing the overall cap, currently set at 60,000.

While the measures in this amendment package provide several promising options for reducing salmon bycatch in times of low abundance, we remain deeply concerned with the overall cap. Even if Alternative 5 is selected, it remains possible and perfectly legal for the pollock fishery to catch up to 60,000 Chinook salmon. This level of bycatch would be absolutely devastating at the current levels of Chinook salmon abundance. It would be equally devastating to the rebuilding of the run to have this level of bycatch occur just when it is starting to recover. Finally, given what we know now about the decline of these stocks, it is unlikely that these stocks would ever be able to sustain a bycatch of that level. The only recent history of bycatch at these levels occurred in the years

directly preceding the current crash. While bycatch alone is not responsible for the current stock status, it is clear that level of bycatch was not sustainable.

We therefore urge you to move forward with a trailing amendment to look at lowering the overall cap. We suggest a trailing amendment because it is critical that the current amendment package moves forward quickly to get bycatch reduction measures in place.

4. Conclusion

As detailed above, Chinook salmon runs are facing significant declines throughout Western Alaska. Subsistence fisheries were closed in many parts of Western Alaska this year, and subsistence harvests have been dramatically reduced. Despite the severe restrictions in recent years, and impacts to coastal and in-river residents, in many cases we are still failing to meet minimum escapement goals. Directed commercial fisheries for Chinook salmon are a thing of the past in the AYK region. Fish camps—a central component of the subsistence way of life and Alaska Native culture in our region—which once rang with children’s voices, and provided the setting for transferring cultural traditions around the harvesting, processing and storing of salmon, as well as the cultural and spiritual traditions around salmon harvests, now lie deserted and empty throughout the region. This is just one symbol of the cultural and economic impacts of the Chinook salmon decline on the region, and unfortunately the impacts run broad and deep.

In this context, the impact of pollock fishery bycatch even at the current relatively low levels of bycatch is significant. In 2014, even subsistence fisheries were shut down because Chinook salmon stocks are so low that they cannot sustain any fishing pressure. If an in-river, subsistence-dependent household cannot even harvest one Chinook salmon a year because the runs are so low, bycatch in the pollock fishery must be reduced as well.

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

In addition, NMFS and the Council are also bound by international law to reduce salmon bycatch. Under the terms of the Yukon River Salmon Agreement, an annex of the Pacific Salmon Treaty, the U.S. agreed to “increase the in-river run of Yukon River origin salmon by reducing marine catches and by-catches of Yukon River salmon. They shall further identify, quantify and undertake efforts to reduce these catches and by-catches.” The treaty also commits the U.S. to meet escapement goals, allowing sufficient Chinook salmon to reach Canada each year. Amendment 91, which allows for bycatch levels of 60,000 Chinook salmon in some years, and 47,591 Chinook salmon in all years, does not represent a “reduction” in bycatch from historical levels. The bycatch of Yukon River Chinook salmon also contributes to repeated failures to meet

our treaty obligation via the mandated escapement goals. This is not only in violation of the obligations of the United States under the treaty, but places the entire burden of meeting the treaty obligation on the backs of in-river subsistence and commercial fishers.

The current crisis for Western Alaska and the extreme sacrifices being made by in-river users demand fast and meaningful action from this Council to ensure that bycatch is reduced. We urge the Council to make the changes to the alternatives recommended above and move forward at this meeting to allow for final action in April 2015. Thank you for your continued attention to this issue of great importance to Western Alaska.

Sincerely,



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Association of Village Council Presidents



Art Nelson, Executive Director
Bering Sea Fishermen's Association



Melanie Bahnke, President
Kawerak



Victor Joseph, President
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