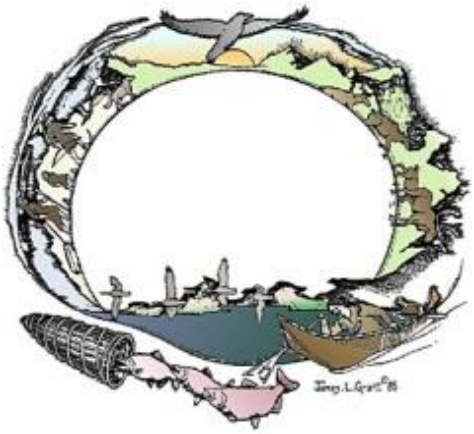

Tanana Chiefs Conference, 122 First Avenue, Fairbanks, AK 99701
Association of Village Council Presidents, 101 Main Street, Bethel, AK 99559

The Honorable Penny Pritzker
Secretary of Commerce
U.S. Department of Commerce
1401 Constitution Ave., NW
Washington, D.C. 20230

North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, Alaska 99501-2252

September 16, 2014

Re: Petition for Emergency Action and Rulemaking to Protect Chinook Salmon in Western Alaska

Dear Madame Secretary and Council Members:

The Association of Village Council Presidents ("AVCP") and Tanana Chiefs Conference ("TCC") hereby respectfully petition the Secretary of Commerce and the North Pacific Fishery Management Council (the "Council") to protect Western Alaska Chinook salmon by implementing an emergency regulation for the remainder of the 2014 season that reduces the 2014 overall Chinook salmon bycatch hard cap under the current Amendment 91 structure[1] from 60,000 to 20,000, and the performance standard from 47,591 to 15,000. AVCP is a tribal consortium of 56 federally recognized tribes in the Yukon-Kuskokwim Delta region. TCC is a tribal consortium of 37 federally recognized tribes in the Yukon River Drainage and upper Kuskokwim Regions of Interior Alaska. Chinook salmon are the cornerstone for nutritional,

[1] *See* 75 FR 53026 (Aug. 30, 2010).

cultural and economic survival in the 93 villages we represent. Dramatically low Chinook runs and harvests in recent years have caused severe impacts to the people in our villages and the Chinook stocks upon which they depend. Emergency action is necessary to avoid substantial harm to the Chinook salmon stocks, Western Alaska salmon fisheries and AVCP and TCC communities.

Chinook salmon have been in a multi-year downward spiral on the Yukon and Kuskokwim rivers. Recent record low Chinook runs with resulting low productivity present a serious conservation and management problem requiring immediate emergency measures on the high seas as well as the river systems. Ensuring that bycatch remains below 20,000 Chinook salmon is critical for the conservation and sustainability of Western Alaska Chinook salmon. In reality, a much lower bycatch amount is needed. The requested emergency regulation would set a limit above the most recent 5 year average. If this limit had been in place for the last 5 years it would have been exceeded only once. This provides an opportunity for the pollock fishery to obtain their harvest while ensuring that an extremely high bycatch cannot occur in 2014. The Council is in the process of initiating a regulatory amendment to provide mechanisms for lowering the amount of Chinook salmon caught as bycatch in the pollock fishery. However, these regulations will not be in place for several years. Because of the state of the Western Alaska Chinook salmon stocks, it is critical that a regulation be put in place now to ensure that bycatch does not reach crisis levels.

The Magnuson-Stevens Act (the "MSA" or the "Act") provides the Secretary and Council with emergency regulatory authority for situations precisely like this one. For the reasons outlined below we believe this situation meets the emergency criteria and justifications.

Emergency Criteria

The Department of Commerce policy guidelines for emergency actions taken under the Act provide that "an emergency exists involving any fishery" when there is a situation that:

1. Results from the recent, unforeseen events or recently discovered circumstances; and
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 on participants to the same extent as would be expected under the normal rulemaking process.

Chinook salmon have been in dramatic decline in Western Alaska for several years. However, in 2014, Chinook salmon returns reached a new low, and for the first time in history, subsistence fisheries were completely closed on the Yukon and Kuskokwim Rivers. While low returns were anticipated, this level of decline was beyond the imagination when the current rules governing salmon bycatch management in the Bering Sea pollock fishery (Amendment 91) were put into place. These tremendous declines are both recent and unforeseen. In addition, new information about the genetic stock identification of the Chinook salmon caught as bycatch also supports the existence of an emergency: a 2012 genetic analysis of samples from the Chinook bycatch from the Bering Sea-Aleutian Island trawl fisheries confirmed that

66.5% of bycatch in 2012 was from Western Alaska river systems flowing into the Bering Sea.[2] With the new confirmed knowledge that the majority of bycatch is of Western Alaskan origin, the only prudent management decision is to immediately cap bycatch levels at 20,000 for the 2014 season.

Chinook salmon bycatch in the Bering Sea pollock fishery presents both conservation and management problems in the fishery. In terms of conservation, both the Kuskokwim and Yukon rivers have experienced record low returns and have either failed or had extreme challenges in meeting escapement goals. In this situation, literally every fish counts. The situation also poses management problems in that the current regulations create a huge disparity between management of bycatch in the pollock fishery, and management of the directed fisheries. While commercial and subsistence fisheries on the Yukon and Kuskokwim Rivers were completely closed in 2014, and tribal members were precluded from participating in their cultural and historic fisheries, the Bering Sea pollock fishery is legally allowed to catch up to 60,000 Chinook salmon in the same year. This creates a serious management problem, as in-river fishermen and at-sea bycatch users are held to entirely different standards.

This emergency can be addressed through regulations. The Chinook salmon caught as bycatch are primarily salmon which will return in the coming years. Thus, while it is too late to change the situation for 2014 salmon stocks which have returned to rivers to spawn, acting now can begin to reverse the course in future years, and give the stocks a chance to rebuild. Acting now is critical, and outweighs the value of advance notice and comment. Chinook bycatch rates are typically highest in the latter part of the B season, in September and October.[3] Ensuring that the total bycatch does not spike for the remainder of the 2014 B season is critical considering the spike that occurred in 2011. In 2011, approximately 25,499 Chinook were taken as bycatch, of which an estimated 7,136 were taken during the A season and 18,363 during the B season. A similar spike in Chinook bycatch would be disastrous to the Chinook population and the Native Villages and communities that rely on the Chinook to meet nutritional, cultural and economic needs.

From 1991-2012, Chinook bycatch in the Bering Sea pollock fishery averaged 38,624 per year but peaked at 121,638 in 2007.[4] In 2012, the number dropped to 11,343, which is 27,281 fish below the 22-year average.[5] In 2013, the pollock industry took 13,036 Chinook as bycatch.[6] Thus far in 2014, the pollock industry has taken 12,173 Chinook as bycatch.[7] The 2014 bycatch thus already exceeds the total Chinook

[2] C.M. Guthrie III et al, NOAA Technical Memorandum NMFS-AFSC-270: Genetic Stock Composition Analysis of Chinook Salmon Bycatch Samples from the 2012 Bering Sea and Gulf of Alaska Trawl Fisheries, iii, 12 (Mar. 2014).
[3] Diana Stram et al, Discussion Paper: Bering Sea Chinook & Chum Bycatch, 18, 19, 23 (May 2014), http://legistar2.granicus.com/npfmc/meetings/2014/6/893_A_North_Pacific_Council_14-06-02_Meeting_Agenda.pdf.
[4] C.M. Guthrie III et al, NOAA Technical Memorandum NMFS-AFSC-270: Genetic Stock Composition Analysis of Chinook Salmon Bycatch Samples from the 2012 Bering Sea and Gulf of Alaska Trawl Fisheries, 23 (Mar. 2014).
[5] *Id*.
[6] NOAA, Bering Sea Chinook Salmon Bycatch Report, December 31, 2013, http://alaskafisheries.noaa.gov/2013/car180_bs_with_cdq.pdf.
[7] National Marine Fisheries Service Alaska Region, Bering Sea Chinook Salmon Seasonal Bycatch Report, August 21, 2014, http://alaskafisheries.noaa.gov/2014/car181_bs_with_cdq.pdf.

bycatch in 2012 and will soon surpass the 2013 total. Without the requested emergency measures, bycatch in the B season could well result in bycatch numbers well over 20,000.[8]

Emergency Justification

Under the Department of Commerce policy guidelines, emergency action is justified under one or more of the following situations:

(1) Ecological—(A) to prevent overfishing as defined in an FMP, or as defined by the Secretary in the absence of an FMP, or (B) to prevent other serious damage to the fishery resource or habitat; or
(2) Economic—to prevent significant direct economic loss or to preserve a significant economic opportunity that otherwise might be foregone; or
(3) Social—to prevent significant community impacts or conflict between user groups; or
(4) Public health—to prevent significant adverse effects to health of participants in a fishery or to the consumers of seafood products.[9]

Although only one of the criteria must be satisfied to justify emergency action, we believe the current situation meets three of the above criteria.

Ecological

An emergency rule that reduces the Chinook bycatch hard cap to 20,000 is necessary to prevent serious damage to the Chinook fishery. Overall, conditions have changed dramatically since Amendment 91 was adopted in April 2009. At that time, several stocks were showing initial signs of decline. At present, evidence clearly shows recent, persistent statewide declines in productivity and run abundance.[10] The cause is largely undetermined.

The Yukon River saw record lows from 2011-2013, and the Kuskokwim River saw record lows in 2010 and 2013.[11] The escapement goal for Canadian origin stocks (which make up approximately 50% of the run), mandated by the Yukon River Salmon Agreement and agreed upon by the Yukon River Panel, have only been met in two of the last eight years (the goal was met in 2009 and 2011). The 2013 Yukon River escapement of 30,275 was well below the goal (42,500-55,000 Chinook salmon) and the lowest on record. In 2010 and 2013, the lower bound of the Kuskokwim River escapement goal was not met.[12] The Alaska Board of Fisheries has designated the Yukon Chinook salmon a Stock of Yield Concern since 2000.[13]

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[8] B season bycatch numbers fluctuate each year: 2005 – 40,632; '06 – 24,502; '07 – 54,450; '08 – 5,109; '09 – 2,786; '10 – 2,917; '11 – 19,020; '12 – 3,954. National Marine Fisheries Service, Incidental Catch of Salmon in the Alaska Fisheries and the Incidental Take Statement for Chinook Salmon, Attachment 1 (Jun. 2013), http://alaskafisheries.noaa.gov/sustainablefisheries/bycatch/salmon/chinook/annualrptchinookbycatch0613.pdf.

[9] Policy Guidelines for the Use of Emergency Rules, 62 Fed. Reg. 44422 (Dep't. of Commerce Aug. 21, 1997).

[10] ADF&G, Chinook Salmon Stock Assessment and Research Plan, 2013, 8 (Jan. 2013), http://www.adfg.alaska.gov/FedAidPDFs/SP13-01.pdf.

[11] Kuskokwim River Salmon Management Working Group, Information Packet (May 20, 2014), http://www.adfg.alaska.gov/static-f/fishing/PDFs/commercial/krsmwg/5_20_14_agenda_info_packet.pdf.

[12] *Id*.

[13] Stephanie N. Schmidt and Eric Newland, Yukon River King Salmon Stock Status, Action Plan And Summer Chum Salmon Fishery, 2012, ADF&G Special Publication 12-30 (2012), http://www.adfg.alaska.gov/static/regulations/regprocess/fisheriesboard/pdfs/2012-2013/ayk/sp12_30.pdf.

The Alaska Department of Fish and Game (ADF&G) and the U.S. Fish and Wildlife Services projected that the 2014 Chinook run would be extremely poor and possibly the worst on record, that it would be insufficient to meet all escapement goals, and that there would be no subsistence and commercial fisheries.[14] The run size outlook was 64,000 to 121,000.[15] From 1982 to 1997, in comparison, the average Yukon River run was approximately 300,000 Chinook.[16] Though final run size numbers are not yet in, with the summer coming to a close it is becoming abundantly clear that the 2014 runs were dismal. As a result of critical conservation efforts and tremendous sacrifice of the villages, the upper end of the Canadian escapement objective of 42,500-55,000 appears to have been met.[17] The Kuskokwim River drainage, which typically has the largest Chinook run in Alaska, was similarly bleak in 2014. As of August 5, 2014, achievement of escapement goals was unlikely for several tributaries of the Kuskokwim drainage and uncertain for the Kuskokwim River.[18] Only one escapement project had achieved the escapement goal, while the others were likely below the lower end.[19]

Economic

An emergency rule to cap Chinook bycatch at 20,000 is necessary to prevent a financial crisis in the communities on the Yukon and Kuskokwim rivers. The declines of Chinook salmon stocks in Western Alaska are resulting in adverse nutritional, economic and cultural impacts to families and communities due to severely restricted subsistence and commercial fishing. The Yukon River area typically has the second largest subsistence harvest of Chinook salmon (after the Kuskokwim area). In 2007, subsistence harvest of Chinook in the Yukon River area represented 35% of the statewide subsistence harvest of Chinook salmon.[20] The amount necessary for subsistence (ANS) set by the Alaska Board of Fisheries for the Yukon River of 44,500 to 66,704 Chinook was not met from 2008-2011; in 2008, the subsistence harvest was 45,186; in 2009, it was 33,805; the 2010 harvest was 44,559 and the 2011 harvest was 40,980.[21] The ADF&G acknowledges that the downturn in abundance has most severely impacted subsistence harvests in Western Alaska, where villages along the Yukon and Kuskokwim rivers account for 80% of the annual Chinook subsistence harvest in Alaska.[22]

Subsistence fishing on the Yukon River has operated on a schedule of closures since 2001. In recent years these closures have been expanded to provide for a full closure on the first pulse of Chinook salmon entering the Yukon River. In 2013, the Alaska Board of Fisheries adopted this first pulse closure

[14] ADF&G, 2014 Yukon River Salmon Fisheries Outlook (Apr. 2014), http://www.adfg.alaska.gov/static/applications/dcfnewsrelease/401593148.pdf.
[15] *Id*.
[16] Arctic-Yukon-Kuskokwim Chinook Salmon Research Action Plan: Evidence of Decline of Chinook Salmon Populations and Recommendations for Future Research, AYK SSI Chinook Salmon Expert Panel, 13 (Aug. 2013), http://www.aykssi.org/wp-content/uploads/AYK-SSI-Chinook-Salmon-Action-Plan-83013.pdf.
[17] News Release, ADF&G, 2014 Yukon River Summer Salmon Fishery News Release #56 (Aug. 4, 2014), http://www.adfg.alaska.gov/static/applications/dcfnewsrelease/470599329.pdf.
[18] News Release, ADF&G, Kuskokwim River Salmon Fishery Update #7 (Aug. 5, 2014), http://www.adfg.alaska.gov/static/applications/dcfnewsrelease/471804020.pdf.
[19] *Id*.
[20] James A. Fall et. al. Alaska Subsistence Salmon Fisheries 2007 Annual Report, ADF&G, Technical Paper 346: 8 (Sept. 2009), http://www.subsistence.adfg.state.ak.us/techpap/TP346.pdf.
[21] James Fall et al, Alaska Subsistence and Personal Use Salmon Fisheries 2011 Annual Report, ADF&G, 61 (Oct. 2013), http://www.adfg.alaska.gov/techpap/TP387.pdf.
[22] *Id*.

in regulation. In 2013, harvesters on the Yukon were restricted to 6-inch maximum mesh for nearly the entire Chinook salmon run.[23] In 2014, during subsistence closures harvesters were restricted to 4-inch maximum mesh to target non-salmon species.[24] 2014 marked the first time in history that directed subsistence fisheries for Chinook were completely closed on the Yukon.

The Kuskokwim River drainage typically has the largest Chinook salmon run in Alaska and the largest subsistence harvest, by area, of Chinook salmon statewide. In 2007, the Kuskokwim area represented 45% of the statewide subsistence harvest of Chinook salmon.[25] The ANS harvest of 64,000 to 83,000 for the Kuskokwim River was not met from 2011-2013.[26] In 2010, late subsistence restrictions were imposed to protect tributaries of concern. In 2011, pre-season actions were taken on those tributaries experiencing chronic low returns. In-season, a late three-day subsistence closure to protect tributaries was followed by a Federal Management Action which closed subsistence salmon fishing within the Federal Conservation Unit for an additional three days.[27] In 2012, severe subsistence restrictions were imposed, with 35 days of restrictions including 12 continuous days of closure, and a significant reduction of subsistence harvest.[28] In 2013, pre-season tributary restrictions were implemented similar to those of 2011 and 2012 and late subsistence gear restrictions were imposed.[29] On March 21, 2014, the Alaska Board of Fisheries adopted an emergency regulation to limit subsistence gear use to conserve Chinook.[30]

This spring, the federal government saw the need for emergency response and took the unprecedented action of assuming management of the Kuskokwim subsistence Chinook fishery. This marks a profound turning point in the management of fisheries on the Kuskokwim River. At its April 17, 2014 meeting, the Federal Subsistence Board acted upon the Napaskiak Tribal Council's special action request by adopting Federal Special Action FSA 14-03 closing the Kuskokwim Chinook fishery, with the limited exception of a small harvest of up to 1,000 Chinook under Cultural and Social Permits issued under a community harvest quota system and in accordance with an ANILCA section 804 analysis.[31] The minimal number of fish permitted for harvest was conditioned upon a harvestable surplus and was vastly insufficient to meet the needs of the communities that depend on the Chinook salmon for their livelihood. Many communities issued a Social and Cultural Permit did not fish under them due to the limitations and complexity of the permits. Additionally, the long distance some permit-holders would have been required to travel was not worth the expense of gas for such a minimal harvest during this important time of generating income and sustenance to last the winter.

There has been no directed commercial fishery for Chinook salmon on the Yukon River since 2007, and summer chum salmon fisheries have been restricted to reduce impacts to Chinook salmon migrating

[23] 2013 Yukon River Salmon Fisheries Outlook (Apr. 2014), http://www.adfg.alaska.gov/static/applications/dcfnewsrelease/261131306.pdf.
[24] *Id*.
[25] James A. Fall et al, Alaska Subsistence Salmon Fisheries 2007 Annual Report, ADF&G, Technical Paper 346: 8 (Sept. 2009), http://www.subsistence.adfg.state.ak.us/techpap/TP346.pdf.
[26] Hiroko Ikuta, Options For Amounts Reasonably Necessary for Subsistence Uses of Salmon: Kuskokwim Area, ADF&G Special Publication BOF 2012-07 (2012).
[27] ADF&G, 2011 Preliminary Kuskokwim Salmon Season Summary (Oct. 12, 2011).
[28] *Id*.
[29] *Id*.
[30] Notice of Adoption of Emergency Regulations of the Alaska Board of Fisheries (Apr. 12, 2014), http://www.adfg.alaska.gov/static/regulations/regprocess/fisheriesboard/pdfs/2014-2015/kuskokwim_emergency_notice_2014.pdf.
[31] Federal Subsistence Board, Federal Waters Within the Boundaries of the Yukon Delta National Wildlife Refuge (May 6, 2014), http://www.doi.gov/subsistence/news/fishing/upload/Chinook-News-Release-1-06-May-2014.pdf.

through the river at the same time. The recent 5-year (2008-2012) average commercial Chinook salmon harvest on the Yukon River is down 96% from the long-term average commercial Chinook harvest (1980-2007).[32] The directed commercial Chinook fishery on the Kuskokwim River has been closed since 1987. This year, commercial chum fishing was delayed on the Yukon given the lack of Chinook.[33] Additionally, all commercial harvests of chum and sockeye salmon were delayed on the Kuskokwim River due to conservation measures for the Chinook stocks.[34] The Yukon-Kuskokwim Delta's poverty and unemployment rates are among the highest in the United States, and the per capita income is the lowest in Alaska.[35] The cost of living is high, and commercial fishing is the only industry that brings in money from outside the region (aside from government funding and jobs).[36] The Commercial Fisheries Entry Commission estimated that in 2012, 1,126 fishermen harvested $7.5 million in seafood, mostly from salmon, and that cannery employment peaked at 805 jobs.[37] The foregone chum and sockeye commercial harvests to protect the 2014 Chinook runs will profoundly impact this region, as there are no alternative methods for generating income to pay basic living expenses and to finance subsistence fishing, hunting and gathering activities that are necessary to put food on the table throughout the region.

The Secretary of Commerce declared commercial fishery disasters on the Yukon River from 2010-2012 and on the Kuskokwim River from 2011-2012.[38] In 2014, Congress appropriated $20.8 million in disaster funds to Alaska to provide relief for the Yukon and Kuskokwim regions, along with Cook Inlet.[39] The declaration cited to "undetermined causes" for the recent poor Chinook returns and postulated that they "may involve a variety of factors outside the control of fishery managers to mitigate."[40] In this climate of Chinook decline it is critical that every source of mortality over which managers have control is reduced to prevent future economic catastrophes.

Social and Health

Emergency rulemaking to cap Chinook bycatch at 20,000 is necessary to prevent further negative social and health impacts to Alaska Native communities that rely on Chinook salmon for subsistence and commercial purposes. The social and cultural systems that revolve around the Chinook fishery have been damaged by the Chinook decline. Traditional ways and subsistence are key to facilitating important

[32] Stephanie N. Schmidt and Eric Newland, Yukon River King Salmon Stock Status, Action Plan And Summer Chum Salmon Fishery, 2012, ADF&G Special Publication 12-30 (2012), http://www.adfg.alaska.gov/static/regulations/regprocess/fisheriesboard/pdfs/2012-2013/ayk/sp12_30.pdf.
[33] U.S. Fish and Wildlife Services Office of Subsistence Management, Fisheries Update for the Week of July 27-August 2, 2014, 11, http://www.doi.gov/subsistence/news/fishing/upload/FISHERIES-UPDATE-WEEK-OF-July-27-Aug-2-2014-Report-10.pdf.
[34] News Release, ADF&G, 2014 Kuskokwim Bay Salmon Fishery Update #2 (Jul. 2014).
[35] Mali Abrahamson, The Yukon-Kuskokwim Delta: A Look at the Wade Hampton and Bethel Census Areas, (Oct. 2013), 4, http://laborstats.alaska.gov/trends/oct13art1.pdf.
[36] *Id*.
[37] *Id*.
[38] Letter from Rebecca Blank, Acting Secretary of Commerce, to Sean Parnell, Gov. of Alaska (Sept. 12, 2012), http://www.nmfs.noaa.gov/stories/2012/09/docs/blank_parnell_9_13_12.pdf.
[39] News Release, National Marine Fisheries Office Alaska Regional Office, Alaska Salmon Fisheries to Receive Nearly $21M in Fishery Disaster Relief Funds (Feb. 26, 2014), http://alaskafisheries.noaa.gov/newsreleases/2014/disaster022614.htm.
[40] *Id*.

relationships, promoting healthy living and communicating important cultural values.[41] They are a resilience factor against suicide, which impacts Alaska Natives age 15-24 at a rate 14 times the national average.[42] Subsistence skills are a core component of efforts to prevent substance abuse and suicide, such as the Qungasvik Toolbox, a project of the Center for Alaska Native Health Research and the Yukon-Kuskokwim Health Corporation.[43] Fish camps are the pinnacle location where Chinook are harvested, and while the harvest occurs, children learn to be contributing, productive members of society. With the closure of the subsistence and commercial Chinook fisheries, fish camps that once rang with children's voices and provided a setting for transferring traditions around harvesting, processing and storing of salmon, as well as cultural and spiritual traditions, are vacant or declining.

The people of Western Alaska typically harvest 490 pounds per person of usable wild foods per year, compared to the 316 pounds harvested in other rural areas and 23 pounds in urban areas.[44] Chinook salmon typically comprise 23% of this harvest.[45] The Chinook harvest customarily occurs in the spring when conditions are ideal for drying the fish using traditional methods; this is before the rainy season sets in making drying difficult and before the influx of flies that damage the meat. Harvesting other species after the Chinook have passed presents extreme challenges for preserving the fish due to adverse weather conditions. With the decline of the Chinook runs, households are expending greater effort harvesting alternatives to Chinook, with additional expense.[46] They are required to make more trips to fish camp to pursue Chinook alternatives, which necessitates the purchase of additional gasoline at a time of high gas prices.[47] New and changing gear requirements also present new challenges to community members.

Chinook alternatives are not an adequate replacement to Chinook, because they do not contain the uniquely high content of omega-3 fats that Chinook contain. Omega-3s are well-known as lowering the risk of chronic diseases such as heart disease, cancer, arthritis, and obesity-related diseases like diabetes. A 2011 study of 330 obese Yup'ik people from the Yukon-Kuskokwim area found that the people who participated in the study were protected from the harmful health effects of obesity.[48] They correlated the high intake of omega-3s and the protection from disease. The Yup'ik population has obesity levels similar to the overall U.S. population yet their type 2 diabetes rate is significantly lower – 3.3% versus 7.7%. The Center for Disease Control reported that heart disease was the number one leading cause of death for Alaska Natives in 2009, with cancer second, diabetes forth and suicide

[41] Christopher R. DeCout et al, Traditional Living and Cultural Ways as Protective Factors Against Suicide: Perceptions of Alaska Native University Students, International Journal of Circumpolar Health (2013).
[42] *Id*.
[43] Qungasivik Toolbox available at http://www.uaf.edu/canhr/projects/elluam/Qungasvik.pdf.
[44] Hiroko Ikuta, ADF&G, Historical Perspectives on Yukon and Kuskokwim Chinook Salmon Subsistence Fishing (Mar. 2010).
[45] *Id*.
[46] ADF&G, Subsistence Harvests in 8 Communities in the Central Kuskokwim River Drainage, 2009: Technical Paper No. 365, 30 (Jan. 2012), http://www.adfg.alaska.gov/techpap/TP%20365.pdf.
[47] *Id*.
[48] Z Makhoul et al, Associations of obesity with triglycerides and C-reactive protein are attenuated in adults with high red blood cell eicosapentaenoic and docosahexaenoic acids, *European Journal of Clinical Nutrition* (2011).

eighth.[49] Limiting the intake of Chinook to the people of the Yukon and Kuskokwim rivers limits their intake of omega-3 fats, which may deprive them of the health protections they receive when they consume normal amounts of Chinook salmon. In total, with the crash of the Chinook fishery, the foundation of society on the Yukon and Kuskokwim rivers has been shattered and the communities are struggling to maintain their identities, food security, health and wellness, and to have the economic wherewithal to survive.

In the spring of 2014, a majority of the Alaska Native villages on the Yukon and Kuskokwim rivers demonstrated tremendous leadership by voluntarily adopting resolutions agreeing to a Chinook fishing moratorium to conserve Chinook salmon populations. These unprecedented resolutions called for long-term and emergency regulations to reduce Chinook bycatch.[50] The people who rely on the Chinook salmon for social, cultural and economic sustenance sacrificed their harvest in an effort to provide for the survival of the Chinook and to allow the U.S. to achieve escapement goals. Subsistence Chinook fishers and commercial chum harvesters both sacrificed their harvests to allow Chinook to pass by to swim to their spawning grounds. While the tribes and community members have demonstrated leadership in upholding the moratorium, there is pressure on all users to fill their respective needs. Tension between subsistence and commercial users is building, with some subsistence harvesters opposing commercial openings until subsistence needs are met and commercial fishers desperate to produce income to support their families, as well as to purchase the necessary gear to practice subsistence fishing.[51] Additionally, tensions between fishers on the low, mid and upper rivers are present, with subsistence fishers upriver appealing to subsistence and commercial chum harvesters on the lower portions of the river to conserve fish so all may meet their subsistence needs. In-river subsistence and commercial harvesters cannot alone bear the burden of rebuilding the Chinook stocks. Simple justice demands that the pollock fishery must be a partner in this endeavor. A bycatch cap of 20,000 must be instituted immediately to prevent further negative social and health impacts to the individuals and Alaska Native communities that rely on the Chinook salmon and to provide some equity in bearing the burden of Chinook conservation. It is simply not fair to allow bycatch to exceed 20,000 Chinook in the pollock fishery given the sacrifices made by in-river users and the dismal status of the Yukon and Kuskokwim Chinook stocks.

Compliance with the Magnuson-Stevens Act and the Trust Responsibility

The Council and the NMFS have an obligation under the Magnuson-Stevens Act to comply with the ten National Standards for fishery conservation and management. National Standard 8 requires fishery managers to "take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and B) to the extent practicable,

[49] National Vital Statistics Report, Deaths Final Data for 2009 (Dec. 29, 2011), http://www.cdc.gov/nchs/data/nvsr/nvsr60/nvsr60_03.pdf.

[50] *See* Press Release, Tanana Chiefs Conference, Yukon/Kuskokwim Villages Show Leadership by Sacrificing Fishing for Chinook Salmon; TCC Calls for Conservation from All Stakeholders (Jul. 2014), http://www.tananachiefs.org/july-2014-chinook-salmon-press-release.

[51] Kuskokwim River Salmon Management Working Group Meeting Summary (Jul. 30, 2014), http://www.adfg.alaska.gov/static-f/fishing/PDFs/commercial/krsmwg/08_06_14Summary.pdf. *See also* Alaska Dispatch News, Kuskokwim Fish Wars Heat Up Again as Silvers Enter the River (Jul. 23, 2014).

minimize adverse economic impacts on such communities."[52] The sustained participation in the Chinook fishery by the villages we represent has been significantly interrupted by the poor Chinook returns and the failure to cap bycatch at a reasonable level, and tremendously adverse economic impacts have resulted, as described on page 4 supra. Villages on the Yukon and Kuskokwim Rivers account for over 80% of the annual subsistence harvest of Chinook in Alaska.[53] Amounts necessary for subsistence set by the Alaska Board of Fisheries were not met from 2008-2011 on the Yukon River and in 2011 on the Kuskokwim.[54] Subsistence and commercial fishermen have been required to reduce their Chinook harvest to zero while the pollock industry has already caught nearly 12,000 Chinook as bycatch. To prevent substantial harm to the Chinook population and the communities that rely on it, and in the interest of equity, an immediate action is required to prevent a spike in the pollock fishery's Chinook bycatch for 2014.

Additionally, National Standard 9 requires conservation and management measures to minimize bycatch to the extent practicable.[55] The current cap levels do not meet this obligation and are simply too high to adequately protect Chinook salmon. In recent years, average bycatch levels have been less than 20,000, demonstrating that the hard cap of 20,000 requested in this Petition is indeed "practicable."[56] There is simply no justification, as a matter of equity or law, to allow the 2014 bycatch to exceed 20,000 Chinook.

Finally, the United States government has a trust responsibility to ensure the health and welfare of the tribal members of the Alaska Native Villages in the Yukon and Kuskokwim drainages.[57] The Department of Commerce acknowledges the federal fiduciary relationship with Alaska Natives through its Administrative Order 218-8 and Tribal Consultation and Coordination Policy. Upon passage of the Alaska Native Claims Settlement Act, the congressional Conference Committee specifically reported that it "expects both the Secretary [of the Interior] and the State to take any action necessary to protect the subsistence needs of Alaska Natives."[58] Additionally, when Congress enacted the Alaska National Interest Lands Conservation Act it stressed that subsistence "is essential to Native physical, economic, traditional, and cultural existence..."[59] The Federal Subsistence Board, charged by the Secretaries of Interior and Agriculture to implement Title VIII of ANILCA are on record as recommending a hard cap of no more than 30,000, and that recommendation was made before the dismal returns of the last seceral years, and before genetic studies demonstrated that 66.5% of the bycatch was from Western Alaska stocks (see attached letter). The management decision to allow the pollock fishery to discard 60,000 Chinook as bycatch while the subsistence harvest is closed violates the trust responsibility of the federal

[52] 16 U.S.C. § 1851(a)(8).
[53] ADF&G, Chinook Salmon Stock Assessment and Research Plan, 2013, 37 (Jan. 2013), http://www.adfg.alaska.gov/FedAidPDFs/SP13-01.pdf.
[54] *Id*.
[55] 16 U.S.C. § 1851(a)(9).
[56] From 2008-2011, average Chinook bycatch was approximately 19,000. ADF&G, Chinook Salmon Stock Assessment and Research Plan, 2013, 37 (Jan. 2013), http://www.adfg.alaska.gov/FedAidPDFs/SP13-01.pdf.
[57] *Alaska Chapter, Associated General Contractors v. Pierce*, 694 F. 2nd 1162, 1169 n. 10 (9th Cir. 1982).
[58] S. Rep. No. 581, 92d Cong., 1st Sess. 37 (1971).
[59] See *Native Village of Quinhagak v. U.*S., 307 F.3d 1075, 1082 (9th Cir. 2002) quoting 15 U.S.C. § 3111(1).

government to ensure Alaska Native subsistence needs are met. The 20,000 cap for the 2014 requested by this Petition is a means to fulfill this trust responsibility.

Conclusion

For all of the reasons stated above, we request that the Secretary of Commerce or the Council issue an emergency rule to reduce the hard cap on Chinook bycatch in the Bering Sea pollock fishery from 60,000 to 20,000. We request that the Secretary engage in government-to-government consultations mandated by Executive Order 13175 as it addresses the issues raised in this petition, and encourage the Council to do so as well.

Sincerely,

Victor Joseph, President
Tanana Chiefs Conference

Myron Naneng, Sr., President
Association of Village Council Presidents

Cc:
The Honorable Lisa Murkowski
The Honorable Mark Begich
The Honorable Don Young
The Honorable Sean Parnell
The Honorable Julie Kitka
Cora Campbell, Commissioner, Alaska Department of Fish and Game
Jim Balsiger, Regional Administrator, National Oceanic and Atmospheric Administration