



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
West Coast Region
Sustainable Fisheries Division
510 Desmond Drive SE, Suite 103
Lacey WA, 98503

April 9, 2015

Mr. Charles O. Swanton
Deputy Commissioner
Alaska Department of Fish and Game
P.O. Box 115526
Juneau, AK 99811-5526

Dear Mr. Swanton:

The National Marine Fisheries Service (NMFS) was disappointed to receive word that the bilateral Chinook Technical Committee (CTC) failed to reach agreement on a model calibration that would establish the abundance indices for Chinook salmon 2015, a step necessary for coastwide planning of 2015 fisheries and anticipated by the Pacific Salmon Commission to have occurred by April 1. Because it is NMFS' understanding that all members of the CTC objecting to the recommended calibration were from Alaska, I am directing the following to you. Please let me know if there is another person more appropriate to respond to the questions below.

Agreement by the United States to the Pacific Salmon Treaty (PST) annex provisions applicable beginning in 2009 was an action subject to the consultation requirements of the Endangered Species Act (ESA). The biological opinion that formed the determination that annex implementation would not jeopardize listed species did so based upon, among other things, the agree-to processes by which the abundance indices are established. It is NMFS' understanding that the recommended abundance indices for 2015 were based upon previously agree-to processes and that no technical objection to that previous process was identified by CTC members. Rather, the objection by members from Alaska stemmed from the observation that the projected indices did not comport with actual catches in recent fisheries in Southeast Alaska. The CTC report reflects the current state of affairs such that a "small group of Alaskan CTC members will be assembling analyses . . . and the auxiliary sources of information, and combining them into a report within the next two weeks."

Before considering the questions presented by this situation, it is important to note that, at least by NMFS' understanding, any resolution of the concerns about the abundance indices will require bilateral CTC concurrence, and any change to procedures that may be proposed will require concurrence of the bi-lateral Pacific Salmon Commission. With that in mind, my initial question relates to the potential need to re-initiate consultation under the ESA on the biological opinion as it applies to Alaska Chinook salmon fisheries. Can you provide information that



would suggest that any change addressing the concerns of the objecting CTC members to the recommended abundance indices would *not* require a re-initiation of consultation under the ESA? Obviously, the related question is how Alaska proposes that any re-initiation occur prior to the 2015 fisheries.

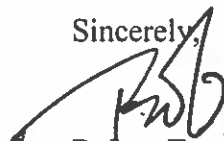
My second concern relates to the trust obligation of the NMFS to ensure that treaty Indian tribes have the opportunity to harvest their treaty-protected share of the fishery resource. As you know, determinations of fishing regimes that ensure this opportunity are negotiated in a time-critical process known as "North of Falcon." For this process to be effective, the level of intercepting fisheries, both in Alaska and Canada, must be determined as a precedent to determining the tribal share and tribal fisheries. As you are aware, the Pacific Salmon Commission spends considerable time discussing the important inter-jurisdictional coordination necessary to plan fishing seasons. In particular, the role of Alaska's fisheries in this process was addressed during negotiation of the PST and understandings related to that role captured in the so-called "Chinook Stipulation" filed in *Confederated Tribes and Bands of the Yakama Indian Reservation v. Baldrige*. The stipulation was "entered into by all parties to this proceeding for the purpose of defining a procedure and standards by which the parties agree to determine the allocation of certain Chinook salmon resources between fisheries in and off the state of Alaska and in fisheries in and off the states of Washington and Oregon."

Has Alaska identified issues related to the "Chinook Stipulation" that would arise should it propose to alter the recommended abundance indices or the methodology by which abundance indices are established for 2015? A review of circumstances leading to federal judicial action under the "Chinook Stipulation" in 1995 may be instructive in identifying such issues, 898 F Supp. 1477 (1995).

There are other facets of this situation that are of concern to many involved parties. I am sure you anticipate multiple questions at the upcoming meeting of the Pacific Fisheries Management Council. While NMFS is deeply interested in a collaborative resolution of those questions and concerns, please appreciate that this letter is directed solely to those matters over which we believe NMFS has unique responsibilities.

Thank you for consideration of the questions posed above. I look forward to further discussions about this issue and a complete understanding of the pathway forward.

Sincerely,



Robert Turner
Assistant Regional Administrator
Sustainable Fisheries Division

CC: Ron Allen, U.S. Section Chair
Phil Anderson, Commissioner
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