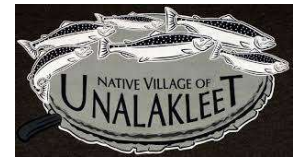




KAWERAK, INC.



Native Village of Council
Native Village of Shishmaref
Chinik Eskimo Community
Native Village of Shaktoolik
Native Village of Elim

June 18, 2024

Submitted via electronic mail to: nmfs.afsc.spea@noaa.gov; jon.kurland@noaa.gov; janet.coit@noaa.gov; robert.foy@noaa.gov

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CC: Native Village of Council; Native Village of Unalakleet; Native Village of White Mountain: Native Village of Shishmaref; Native Village of Shaktoolik; Nome Eskimo Community; Eskimo Walrus Commission; Chinik Eskimo Community

Re: Draft Supplemental Programmatic Environmental Assessment for Fisheries Research Conducted and Funded by the Alaska Fisheries Science Center, 89 Fed. Reg. 28749 (Apr. 19, 2024), Dkt. No. 2024-07096

Dear Ms. Reuter, Ms. Coit, Mr. Kurland, and Mr. Foy:

Kawerak, Inc., the Eskimo Walrus Commission, Native Village of Council, Native Village of Unalakleet, Native Village of White Mountain, Native Village of Shaktoolik, Chinik Eskimo Community, Nome Eskimo Community, and Native Village of Shishmaref provide the following comments to the National Marine Fisheries Service (NMFS) and Alaska Fisheries Science Center (AFSC) on its Draft Supplemental Programmatic Environmental Assessment (SPEA) on planned fisheries research conducted and funded by the AFSC over the upcoming 5 years¹.

¹ Draft SPEA- 89 Fed. Reg. 28749 (Apr. 19, 2024), Dkt. No. 2024-07096

NOAA's NMFS has been delegated primary responsibility for the conservation and protection of living marine resources through science-based management under statutes including the Magnuson-Stevens Fishery Management Act (MSA), Marine Mammal Protection Act (MMPA), Endangered Species Act (ESA), and National Environmental Protection Act (NEPA). Conservation and the protection of living marine resources must be central to all AFSC actions, regardless of secondary or tertiary purposes AFSC may have. However, the research activities planned in the 5-year period described in this draft SPEA deviate from this mission and should not proceed as outlined.

AFSC has not met their interrelated obligations under these federal laws and has failed in this draft SPEA to provide adequate justification for their planned expenditure of significant federal funds towards research that does not serve a significant scientific purpose and is strongly opposed by Tribes. As this is at a draft stage, it is completely appropriate for NOAA, NMFS, and AFSC to pause expenditures towards these activities until such a time they are able to fulfil their obligations under these federal laws, all associated regulation, policy, and Executive Orders, including in regards to Tribal Consultation, and realign planned activities with the mission and purpose of protecting the living marine resources that have sustained Tribes in the region, and which they have stewarded for millennia.

AFSC's draft SPEA research plan proposes a completely unnecessary move to substantially increase bottom trawl activities, using commercial non-pelagic trawl gear, in the Northern Bering Sea (north of the 60th parallel), and begin these harmful activities in the Chukchi Sea and Beaufort Sea, in an unprecedented reach into highly sensitive waters and fragile habitats that Tribes have lived in close relationship with since time immemorial. The federal government recognizes how important these ecosystems are for Tribal, national (NBSORA²), and international interests³ and has enacted

² *President Obama designated the Northern Bering Sea Climate Resilience Area in 2016 pursuant to Executive Order 13754. The Executive Order recognizes that “[t]he Bering Sea and Bering Strait are home to numerous subsistence communities, rich indigenous cultures, and unique marine ecosystems” and that “[t]he preservation of a healthy and resilient Bering ecosystem, including its migratory pathways, habitat, and breeding grounds, is essential for the survival of marine mammals, fish, seabirds, other wildlife, and the subsistence communities that depend on them.” It commands all agencies that oversee, regulate, or conduct activities in the Area to consider “the delicate and unique ecosystem,” and notes that the Bering Strait is also a “critically important migratory pathway for a wide variety of marine mammals.” In recognition of the value of protecting these ecosystems, marine mammals, and other wildlife, the use of “non-pelagic trawl gear” (bottom-trawl gear) is banned in these waters.*

³ *Arctic Waters are protected from commercial fishing activities by Canada, the People's Republic of China, the Kingdom of Denmark (in respect of the Faroe Islands and Greenland), the European Union, Iceland, Japan, the Kingdom of Norway, the Republic of Korea, the Russian Federation, and the United States of America; the signatories “recognize that subsistence harvesting of living marine resources is ongoing in some Arctic Ocean coastal States, and that traditional and local knowledge exists among the users of these resources. We desire to promote scientific research, and to integrate scientific knowledge with traditional and local knowledge, with the aim of improving the understanding of the living marine resources of the Arctic Ocean and the ecosystems in which they occur. We also recognize the interests of Arctic residents, particularly the Arctic indigenous peoples, in the proper management of living marine resources in the Arctic Ocean,” DECLARATION CONCERNING THE PREVENTION OF UNREGULATED HIGH SEAS FISHING IN THE CENTRAL ARCTIC OCEAN (2015) and also that “recognizing the interests of Arctic residents, including Arctic Indigenous Peoples, in the long-term conservation and sustainable use of living marine resources and in healthy marine ecosystems in the Arctic Ocean and underlining the importance of involving them and their*

protections of them. The public finds bottom-trawling activity to be harmful to the entire environment and highly controversial⁴ and many entities have formally opposed the use of commercial trawl gear by AFSC.

In announcing the postponement⁵ of one project still proposed within the suite planned by AFSC, NOAA commits to “creating space for respectful dialogue and trust building” and to, “value our responsibilities to and partnerships with Alaska Native communities and discuss the research plans NOAA has to improve understanding of the impacts of climate change, fishing practices, and other activities on our ocean ecosystems.”

We are awaiting their enactment of these commitments. AFSC should not move forward with any new projects, especially those poised to deeply harm and put at risk the ecosystems on which Alaska Native Tribes rely, until they have met this commitment.

Not only is the negative impact of bottom-trawling on the sea floor clear, which is central to subsistence habitat and thus the human environment, the research plans outlined in the draft SPEA represent an investment of approximately \$100 million per year.⁶ That significant amount of tax-payer money should be invested wisely by any federal agency. There is no reason for AFSC to act in contravention of all these principles and engage in expensive bottom trawling activities outlined in the draft SPEA. AFSC does not enumerate any rationale for planning to ignore their own (and other) research which already shows that bottom trawling is inherently harmful, nor does AFSC provide reasoning on why they ought to operate against the protections for Northern Bering Sea and Arctic waters that are closed to non-pelagic trawl gear use. AFSC should not spend millions of tax-payer dollars on unnecessary bottom trawl activities.

Bottom trawling in the Northern Bering Sea and Chukchi Sea will have severe detrimental impacts to marine mammals and other living resources that AFSC is charged with protecting.

The Northern Bering Sea is characterized as having among the highest benthic biomass in the world, with low species diversity and a reliance on infauna, such as clams, amphipods, and polychaetas, which play a crucial role in the ecosystem’s food web.⁷ Diverse marine mammals are part of the subsistence food system of the Northern Bering Sea, including “Pacific walrus, four species of seals, and ten species of whales.”⁸ The Chukchi Sea is also a highly productive ecosystem home to marine

communities; and desiring to promote the use of both scientific and Indigenous and local knowledge of the living marine resources of the Arctic Ocean and the ecosystems in which they occur as a basis for fisheries conservation and management,” AGREEMENT TO PREVENT UNREGULATED HIGH SEAS FISHERIES IN THE CENTRAL ARCTIC OCEAN (2018). In both documents, as in NOAA’s mission, “conservation” is primary and the integrated use of Indigenous Knowledges and engagement with Indigenous Peoples is central.

⁴See www.theguardian.com/environment/2024/jan/18/carbon-released-by-bottom-trawling-too-big-to-ignore-says-study and <https://alaskabeacon.com/2024/03/01/noaa-postpones-controversial-bottom-trawling-experiment-in-alaskas-northern-bering-sea/>

⁵ Janet Coit letter, Feb 2024

⁶ Draft SPEA, 3-58

⁷ Alaska Fisheries Science Center, *Considerations for Research Planning in the Northern Bering Sea Research Area for North Pacific Fisheries Management Council* at 8 (2012); See also Feng, Z. et al., *Benthic hotspots on the northern Bering and Chukchi continental shelf: Spatial variability in production regimes and environmental drivers*, 191 *Progress in Oceanography* 102497 (Feb. 2021).

⁸ *Id.*

mammals⁹ upon which Tribes in this region rely on for cultural continuity and food security. Marine mammals that feed primarily in benthic habitat, including the walrus, gray whale, and bearded seal, and all living marine resources rely on a healthy seafloor. Bottom trawl activities can have an “indirect, negative impact on marine mammals that depend on those habitats for food.”¹⁰ Neither the Northern Bering Sea nor the Chukchi Sea have a history of commercial bottom trawling, which has been banned for good reason to protect this vulnerable environment, its wildlife, and subsistence resources.¹¹

One significant concern of bottom trawling is the direct negative impact on benthic invertebrate species. Studies show that areas with bottom trawling have a reduction in biomass and mean body size for many benthic invertebrates,¹² indicating a general population decline.¹³ Moreover, recent NMFS studies demonstrated damage from bottom trawling to seafloor habitat and deep-sea sponges, which serve as important habitat for juvenile and adult fish.¹⁴ The overall structural complexity and diversity of benthic habitat is significantly reduced by bottom trawling.¹⁵ This includes erasing microhabitat features, altering sediment properties, and increasing turbidity.¹⁶ The long-term consequences involve a reduction in production, changes in trophic structure, and alterations of the benthic communities.¹⁷

Analysis of this well-known research is absent in the draft SPEA and appears unconsidered in the preparation of these plans. In failing to provide this analysis, AFSC has not completed the basic requirements of making public their research plans. This draft should be sent back as incomplete and re-submitted for public review and comment once this analysis is done.

AFSC implies that these experiments are for the purposes of opening the areas to commercial fishing activities¹⁸ and asserts that better understanding of the harms of using bottom trawl gear is required¹⁹

⁹ NOAA Fisheries, *Final Programmatic Environmental Assessment for Fisheries and Ecosystem Research Conducted and Funded by the Alaska Fisheries Science Center at 3-11, 3-43, 3-44, 3-45* (2019).

¹⁰ Marine Mammal Commission, *Fisheries Interactions with Marine Mammals* (2024) <https://www.mmc.gov/priority-topics/fisheries-interactions-with-marine-mammals/>.

¹¹ Brower, A. et al., *Biologically Important Areas II for cetaceans within U.S. and adjacent waters – Aleutian Islands and Bering Sea Region*, 9 *Front. Mar. Sci* 1055398 (2022).

¹² McConnaughey, R. A. et al., *An examination of chronic trawling effects on soft-bottom benthos of the eastern Bering Sea*, 57 *ICES Jour of Mar Sci* 1835 (2000); Sciberras, M. et al., *Response of benthic fauna to experimental bottom fishing: A global meta-analysis*, 19 *Fish and Fisheries* 700 (2018).

¹³ Alaska Fisheries Science Center, *Considerations for Research Planning in the Northern Bering Sea Research Area for North Pacific Fisheries Management Council at 98* (2012) https://www.npfmc.org/wp-content/PDFdocuments/rural_outreach/NBSRA_DiscPap_912.pdf.

¹⁴ NMFS, *Trawling Effects on Sponges in Alaska*, May 21, 2021, <https://www.fisheries.noaa.gov/alaska/ecosystems/trawling-effects-sponges-alaska>.

¹⁵ McConnaughey, R. A. et al., *An examination of chronic trawling effects on soft-bottom benthos of the eastern Bering Sea*, 57 *ICES Jour of Mar Sci* 1835 (2000).

¹⁶ McConnaughey, R. A. et al., *An examination of chronic trawling effects on soft-bottom benthos of the eastern Bering Sea*, 57 *ICES Jour of Mar Sci* 1835 (2000).

¹⁷ Sciberras, M. et al., *Response of benthic fauna to experimental bottom fishing: A global meta-analysis*, 19 *Fish and Fisheries* 700 (2018).

¹⁸ See McConnaughey, B., *Project Title: NBS Effects of Trawling Study (NETS), Alaska Fisheries Science Center at 2* (2023) <https://www.aleut.com/wp-content/uploads/2024/01/1.-NETS-overview-Oct2023.pdf>;

¹⁹ See also McConnaughey, B., *NBS Effects of Trawling Study (NETS) Project Details, Alaska Fisheries Science Center* (2024), https://www.aleut.com/wp-content/uploads/2024/01/2.-NETS-Project-Details_20240102.pdf.

to regulate industrial fishing practices in US waters. Understanding the harms of these activities for the purpose of responsible regulation does not require further engagement in bottom trawling. There are available models to predict and estimate the negative consequences of using non-pelagic trawl gear that do not require damaging undisturbed benthic habitat in the protected Northern Bering Sea and Chukchi Sea.²⁰ AFSC is aware of these models and has written and cited many of the publications referenced here, yet they provide no reasoning in the draft SPEA²¹ why they ought to engage in ongoing harmful bottom trawl activities in these protected waters instead of using the best scientific information and models available.

Under NEPA, all federal actors are required to assess the consequences of their activities on the environment and by extension on the Indigenous Peoples who live in relationships with that environment. This analysis is required prior to undertaking the activity²² so that the agency and the public “will have available, and will carefully consider, detailed information concerning significant environmental impacts” and that such information “will be made available to the larger audience that may play a role in both the decision-making process and the implementation of the decision.”²³

For AFSC, that larger audience includes the Tribes and Tribal organizations serving the region where research activities take place. AFSC has failed to provide their analysis of the impacts the research proposed in the draft SPEA would have on the specific environments of the Northern Bering and Chukchi Seas. They have not prepared or distributed an Environmental Impact Statement (EIS) about their planned bottom-trawl activities in these previously undisturbed waters, nor have they engaged the “larger audience” of Tribes that would appropriately have a decision-making role in the adoption and implementation of the proposed research.

AFSC, as part of the United States government, has a responsibility to engage in appropriate government-to-government relations with Tribes. Tribes are not “stakeholders,” Tribes are rights holders to which certain obligations are owed by AFSC as agents of the federal government and party to nation-to-nation agreements. Community engagement is not synonymous with Tribal Consultation, though engagement can support and enhance the communication necessary to undertake formal Consultation. Unfortunately, AFSC seems to misunderstand the appropriate relationship with private industry, aka one stakeholder, and has prioritized their energies on this single stakeholder while ignoring their responsibilities for outreach, engagement²⁴, and formal Tribal Consultation with Tribes²⁵ and Alaska Native communities.

²⁰ See, e.g., Hiddink, J. G. et al., *Global analysis of depletion and recovery of seabed biota after bottom trawling disturbance*, 114 PNAS 8301 (2017).

²¹ Draft SPEA, where analysis should be begins in Table 1-1 and continues throughout document.

²² *Kleppe v. Sierra Club*, 427 U.S. 390, 410, n. 21 (1976).

²³ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989).

²⁴ Draft SPEA, “4.3.3.4 Fulfillment of Obligations to Communities Specified by Laws and Treaties” fails to note their obligation to Tribes under EO 13175, however AFSC has not even upheld their responsibilities to fulfill these obligations with fishing communities, subsistence communities, or any local stakeholders they reference in this section.

²⁵ [Aleut.com/consultation](https://aleut.com/consultation) See history of “postponed” Consultation, originally scheduled for Jan 5, 2024. See also, ACSPI Resolution in Opposition to NETS Project October 30, 2023, and associated Request for Consultation that has not yet been rescheduled after AFSC cancelled less than an hour prior to zoom AFSC planned for January 5, 2024.

Instead of only co-developing research plans with private industry as is stated in the draft SPEA,²⁶ AFSC should be co-producing research plans with Tribes in alignment with Tribal research priorities and US marine protection priorities. Pausing at this draft stage will allow AFSC time to properly engage with rights holders (Tribes) and stakeholders beyond the single interest group AFSC has so far worked with.

Subsistence is a matter of national security for Tribal nations. We cannot understate how important these practices are to Yup'ik, St. Lawrence Island Yupik, and Iñupiaq Peoples and therefore how much attention, knowledge, and energy are invested in the stewardship of the ecosystems and living resources of our lands and waters by Tribes. In any activity that can impact Tribal food security, Tribes have an interest and are relevant experts to understanding the potential values and potential risks of any federal government activities that may harm the ability of Tribal nations to live in accordance with the Traditional Knowledge that has sustained us for millennia.

Tribes and tribal organizations have consistently opposed bottom-trawling in these areas²⁷ and speak with the experience of thousands of years living in relationship with this environment. Tribes also speak as governments, weighing the potential risks and benefits of any given activity in the interest of their people. Bottom trawling activities, the use of non-pelagic trawl gear for any purpose, is known to be harmful and threatens Tribal national security in the disruption and destruction of subsistence resources. This specifically has been communicated with AFSC in recent opposition to bottom trawling in the Northern Bering Sea and Chukchi Sea. It has gone without response by AFSC and is unaddressed in the draft SPEA. NOAA and NMFS must hold AFSC accountable to meaningfully addressing these concerns, specifically in a complete SPEA, but also in their broader approach to upholding nation-to-nation relationships with Tribes.

Provided here is a partial list of public resolutions and statements regarding opposition to AFSC's current bottom trawl activities from Tribes and tribal organizations representingⁱ over a third of the 229 Tribes in Alaska. Resolutions passed by the Bering Sea Elders Group,²⁸ Kawerak, Inc.,²⁹ Aleut Community of St. Paul Island,³⁰ Association of Village Council Presidents,³¹ Nome Eskimo

Tribes and Tribal organizations awaiting rescheduling of the NETS/Bottom Trawl Consultation currently postponed by AFSC:

Aleut Community of St. Paul Island; Native Village of Council; Native Village of Elim; Native Village of Unalakleet; Chinik Eskimo Community (Golovin); Native Village of Savoonga; Mary's Igloo Traditional Council; Nome Eskimo Community; Native Village of Wales; Native Village of Gambell; Native Village of Diomedea; Native Village of Shishmaref; Native Village of Koyuk; Native Village of White Mountain; Kawerak, Inc.; Bering Sea Elders Group; Association of Village Council Presidents.

²⁶ See especially Draft SPEA, "4.3.3.3 Collaborations Between the Fishing Industry and Fisheries Management" though present throughout document.

²⁷ Some examples: 2010 Kawerak Resolution; Bering Sea Elders Group Resolution Opposing Bottom-Trawling in the Northern Bering Sea September 20, 2019

²⁸ Bering Sea Elders Group Resolution Opposing Bottom-Trawling in the Northern Bering Sea September 20, 2019

²⁹ Kawerak Resolution in Opposition to NETS Project September 27, 2023

³⁰ ACSPI Resolution in Opposition to NETS Project October 30, 2023, and associated Request for Consultation.

³¹ Association of Village Council Presidents' Resolution in Opposition to NETS December 7, 2023

Community,³² Northern Bering Sea Climate Resilience Area Tribal Advisory Council,³³ Norton Sound Health Corporation,³⁴ Native Village of Shishmaref,³⁵ Native Village of White Mountain,³⁶ Norton Bay Inter-Tribal Watershed Council,³⁷ and Native Village of Koyuk³⁸ have been shared with AFSC without response in updates to planned research activities for the next 5 years. The Eskimo Walrus Commission shared a Letter of Opposition³⁹ over these unnecessary risks to the environment that AFSC plans to engage in, and these are not addressed in the draft SPEA either.

AFSC did not seek out broad Tribal Consultation on these new research plans, as they are required to do in the NOAA Handbook, which states they should seek out any potentially interested Tribes⁴⁰. Disrespectfully, AFSC failed to appear at the single limited formal Consultation⁴¹ on one project, the Northern Bering Sea Effects of Bottom-Trawling Study (NETS), that was scheduled for January 5, 2024, and cancelled that same day with so little notice that some of their staff joined the meeting.

AFSC has not undertaken the required analysis of previously provided feedback and communication about Tribal concerns with their ongoing and proposed activities and therefore should not move forward with expending hundreds of millions of research dollars proposed in these plans until they are able to do so.

Respectful and competent research planning ought to be invested in line with NOAA's mission of stewarding living marine resources in coordination and cooperation with Tribes. AFSC has failed to engage with Tribes who live with the Northern Bering and Chukchi Seas throughout the time they have developed these new plans, which they posit as a continuation of the previous research plans for which they submitted an Environmental Assessment (2019-PEA). AFSC gives scant mention of Tribal engagement they may have had in the development of the 2019-PEA and ignore these responsibilities as if they waived in a supplemental assessment. It is unclear if these plans ought to be considered as only supplemental, given the expansion into new waters and the subsistence areas of interest to new Tribes. We would argue AFSC ought to complete a completely new assessment for new research into new waters. However, NOAA cannot consider past outreach, possibly offered to different Tribes about past research plans to be sufficient to meet AFSC's obligations to engage with Tribes in the regions that may be affected by the proposed suite of research activities in this draft SPEA.

³² Nome Eskimo Community Resolution in Opposition to NETS January 8, 2024

³³ Northern Bering Sea Climate Resilience Area Tribal Advisory Council Opposition to NETS project January 26, 2024

³⁴ Norton Sound Health Corporation Resolution in Opposition to NETS project January 31, 2024

³⁵ Native Village of Shishmaref Resolution in Opposition to NETS project February 6, 2024

³⁶ Native Village of White Mountain Resolution in Opposition to NETS project February 26, 2024

³⁷ Norton Bay Inter-Tribal Watershed Council Resolution in Opposition to NETS project February 29, 2024

³⁸ Native Village of Koyuk Resolution in Opposition to NETS project 2024

³⁹ Eskimo Walrus Commission Letter in Opposition to NETS project February 23, 2024

⁴⁰ NOAA Procedures for Government-to-Government Consultation with Federally Recognized Indian Tribal Governments (2023)

⁴¹ Tribes and Tribal organizations awaiting rescheduling of the NETS/Bottom Trawl Consultation currently postponed by AFSC: Aleut Community of St. Paul Island; Native Village of Council; Native Village of Elim; Native Village of Unalakleet; Chinik Eskimo Community (Golovin); Native Village of Savoonga; Mary's Igloo Traditional Council; Nome Eskimo Community; Native Village of Wales; Native Village of Gambell; Native Village of Diomedea; Native Village of Shishmaref; Native Village of Koyuk; Native Village of White Mountain; Kawerak, Inc.; Bering Sea Elders Group; Association of Village Council Presidents.

Even if outreach to other Tribes in other parts of the state (as may have been done in the preparation of the 2019-PEA), were sufficient in meeting AFSC's obligations and duties of working with Tribes and stakeholders in those other regions, AFSC has been insufficient in terms of engagement responsibilities related to these research plans in the Northern Bering Sea since their 2008 research planning, phrasing from which AFSC still uses through this draft SPEA document. Kawerak responded with formal resolution⁴² and notice to AFSC about concerns with AFSC's approach to engagement and research activities that are of interest to Tribes. Kawerak's work to increase engagement opportunities for AFSC with Tribes and Tribal organizations in the region resulted in the creations of the Northern Bering Sea Research Partnership, which started in 2016 and has been neglected by AFSC throughout the period of the 2019-PEA and current draft SPEA development. NOAA should re-invest in these efforts and join Kawerak and our Tribal partners in understanding regional and Tribal priorities as well as in the planning and execution of research projects.

If the current SPEA is indeed an extension of previously approved activities, AFSC should have been following all the stipulations outlined in approvals from NOAA and other federal agencies regarding the 2019-2024 period of research plans (those outlined in the 2019-PEA). They have not met these obligations⁴³ and should not be allowed to continue expending funds on research until they are in compliance with existing agreements.

One example of AFSC's existing agreements, is found in the NOAA letter of approval for the incidental take under current research plan & 2019-PEA in which NOAA outlines how AFSC must operate for their incidental harms and killing of marine mammals to be acceptable under the Marine Mammal Protection Act. It says⁴⁴ that AFSC will:

- (i) notify and provide potentially affected Alaska Native subsistence communities with the Communication Plan through a series of mailings, direct contacts, and planned meetings throughout the regions where AFSC fisheries research is expected to occur;
- (ii) meet with potentially affected subsistence communities to discuss planned activities and to resolve potential conflicts regarding any aspects of either the fisheries research operations or the Communication Plan;
- (iii) develop field operations plans as necessary, which shall address how researchers will consult and maintain communication with contacts in the potentially affected subsistence communities when in the field, including a list of local contacts and contact mechanisms, and which shall describe operational procedures and actions planned to avoid or minimize the risk of interactions between AFSC fisheries research and local subsistence activities;
- (iv) schedule post-season informational sessions with subsistence contacts from the study areas to brief them on the outcome of the AFSC fisheries research and to assess performance of the Communication Plan and individual field operations or cruise plans in working to minimize effects to subsistence activities; and

⁴² 2010 Kawerak Resolution

⁴³ Draft SPEA, Table 1-1 indicates AFSC is aware of obligations under EO 13175, EO 12989, and other federal laws/regulations and has failed to meet them. The noted actions regarding letter(s) in 2013 and 2016 are not in compliance with their own communication plan, also referenced in this section and commented on further below. AFSC has not undertaken the actions listed in this table.

⁴⁴ https://media.fisheries.noaa.gov/dam-migration/afsc_2019loa_opr1.pdf (3)(h)

- (v) evaluate overall effectiveness of the Communications Plan in year four of this LOA.

AFSC has not engaged in mailings, etc. since the agreement quoted above (part of the 2019-PEA) and in this SPEA instead references outreach from 2011 in lieu of this obligation. AFSC has not met with potentially affected communities to discuss plans. They reference one 2023 meeting with one employee of one non-profit organization in the region (Kawerak) wherein only one AFSC Northern Bering Sea bottom-trawl research project was discussed, and no broad research plans were shared or materials outlining specifics of any of the projects where conflicts might arise. As this project is proposed within NBSCRA, specifics were not necessary to illuminate the conflict. AFSC has not met with potentially affected communities to share information, seek input, or to resolve conflicts, and instead has indefinitely postponed Consultation when conflicts and concerns were repeatedly communicated to AFSC.

AFSC either has not developed field operation plans or has not communicated them with subsistence communities or the public. AFSC has not engaged in scheduled post-season information sessions with subsistence communities. AFSC either has not done or has not made public any evaluation of the effectiveness of this communication plan. We evaluate their communication effectiveness as a failure.

In addition to the fact that responding to Tribally communicated concerns and priorities about bottom trawling and research more generally, as they have promised to do, would be more respectful and better support functional government-to-government relationships, AFSC is bound by NEPA to produce a detailed EIS that weighs and justifies activities that impact the environment⁴⁵. They have not yet done so.

⁴⁵ An EIS is required for any “major federal action significantly affecting the quality of the human environment,” per 42 U.S.C. § 4332(2)(C). NEPA’s implementing regulations define “major federal action” to mean “an action that the agency carrying out such action determines is subject to substantial Federal control and responsibility” and includes the “carrying out specific agency projects,” per 40 C.F.R. § 1508.1(w).

NEPA’s implementing regulations define “major federal action” to mean “an action that the agency carrying out such action determines is subject to substantial Federal control and responsibility” and includes the “carrying out specific agency projects,” per 40 C.F.R. § 1501.3(d).

NEPA’s implementing regulations define “major federal action” to mean “an action that the agency carrying out such action determines is subject to substantial Federal control and responsibility” and includes the “carrying out specific agency projects,” per 40 C.F.R. § 1501.3(d). NEPA’s implementing regulations also specify factors that must be considered in determining when a major federal action may significantly affect the environment warranting the preparation of an EIS. *Id.* § 1501.3(d)(1). NEPA’s implementing regulations also specify factors that must be considered in determining when a major federal action may significantly affect the environment warranting the preparation of an EIS, See *id.* § 1501.3(d).

Specifically, in determining whether an action may have “significant” impacts on the environment, an agency must consider the “context” and “intensity” of the action. The regulations specify that, in evaluating the context “[a]gencies should consider the characteristics of the geographic area, such as proximity to unique or sensitive resources or communities with environmental justice concerns” and “should consider the potential global, national, regional, and local contexts as well as the duration, including short-and long-term effects,” see *id.* § 1501.3(d)(1).

The intensity of the action is determined by considering the factors enumerated in the regulations, per *id.* § 1501.3(d)(2)(ii). These include, among others: “[t]he degree to which the action may adversely affect

Further, the Draft SPEA implies⁴⁶ that AFSC considers moving harms around the Bering Sea somehow balances out or offsets the harms to Northern Bering Sea and Chukchi ecosystems. However, NEPA's implementing regulations⁴⁷ state that, in evaluating the significance of an action, "agencies shall not offset an action's adverse effects with other beneficial effects to determine significance." AFSC is obligated to analyze and justify the risks and harms of their proposed activities in the Northern Bering Sea and Chukchi Seas independently of any changes the supplemental research plans may make to the previously considered ecosystems in the 2019-PEA. This draft document should be returned to AFSC and noted as incomplete also in this regard.

While it would be more appropriate for AFSC to complete a full environmental assessment for the draft research plans, as they are proposing both new activities outside the scope of the previous programmatic assessment, and known harmful activities (bottom trawling) in ecosystems outside the scope of the 2019 assessment; and a complete and updated EIS would be in line with modern standards for undertaking environmental risk assessment, communications expectations, and considerations of justice for the communities served by and impacted by research activities; AFSC has failed to uphold existing agreements for properly conducting research activities under the 2019-PEA. This 'status quo' they seek to extend is not good enough and cannot serve as a basis for successfully engaging in research activities, especially those with known potential harms, going forward.

Acceptance of this draft SPEA document as is by NOAA and NMFS would constitute acceptance of the poor standard of work put forth by AFSC at this stage. Responsible investment of federal funds requires a higher standard. Even if NOAA and NMFS decide to forgo the need for an updated EIS for the new ecosystems into which AFSC is proposing to push bottom-trawling and other research activities, AFSC did not submit a complete supplemental programmatic assessment in this draft. It should be returned to AFSC, and no further activity should be undertaken until a complete supplemental document is produced for public comment, with evaluation of all reasonable options, substantive responses to Tribal and other concerns received as a result of current 2019-PEA activities, with complete analysis, weighting, and justification for the known and likely to occur harms proposed in their planned research activities across all existing and new ecosystems, and until fulfillment of all obligations and duties outlined in that agreement can be demonstrated.

*unique characteristics of the geographic area such as ... cultural resources ... or ecologically critical areas;" "[t]he degree to which the action may adversely affect an endangered or threatened species or its habitat;" "[t]he degree to which the potential effects on the human environment are highly uncertain;" "[t]he degree to which the action may adversely affect communities with environmental justice concerns;" whether the action threatens a violation of federal law or Tribal or local policies intended to protect the environment; and "[t]he degree to which the action may adversely affect rights of Tribal Nations that have been reserved through treaties, statutes, or Executive Orders." *Id.* § 1501.3(d)(2)(ii).*

The presence of even just "one of these factors may be sufficient to require preparation of an EIS in appropriate circumstances," see Ocean Advocates v. U.S. Army Corps of Eng'rs, 402 F.3d 846, 865 (9th Cir. 2005). If "substantial questions as to whether a project . . . may cause significant degradation of some human environmental factor," an EIS must be prepared, see Idaho Sporting Congress v. Thomas, 137 F.3d 1146, 1149 (9th Cir. 1998).

⁴⁶ See Draft SPEA at 4-71.

⁴⁷ 40 C.F.R. § 1501.3.

NOAA, NMFS, and AFSC should take the wide, consistent, and rational opposition to new and ongoing federally-funded bottom trawl activities, including those outlined this AFSC draft submission, as an opportunity to pause inappropriate bottom trawl activities, especially in protected waters, and any other unnecessary and harmful research activities that could negatively impact Tribal interests. NOAA, NMFS, and AFSC should instead reinvest time and energy into training their staff on how to conduct appropriate engagement and formal Consultation with Tribal nations, including prioritizing the rescheduling of their currently open and postponed existing agreement to engage in formal Tribal Consultation about NETS, as well as holding Consultation on the entirety of the draft 5-year research plans. In this, there is an opportunity to work together so that our shared interests and investments in research will be in alignment with NOAA's conservation purpose and the responsible management of living marine resources and federally-designated areas like the Northern Bering Sea Climate Resilience Area.

We invite NOAA, NMFS, and AFSC to sincerely create space for respectful dialogue and trust building with Tribes that live in relationship with the waters where research activities are planned. NOAA, NMFS, and AFSC must begin fostering relationships with Tribes living alongside the Northern Bering and Chukchi Seas. We encourage NOAA to also develop or continue relationship building and collaboration with Tribes near the Beaufort, Eastern Bering Sea, along Bristol Bay, on the Aleutian Islands, and all Tribes near other areas of interest across Alaska. We also value partnerships with Alaska Native communities and are ready to discuss the research plans NOAA has to improve understanding of the impacts of climate change, fishing practices, and other activities on our ocean ecosystems.

Signed,



Melanie Bahnke
President,
Kawerak, Inc.



Vera Metcalf
Co-Chair,
Eskimo Walrus
Commission



Axel Jackson
President,
Native Village of Shaktoolik



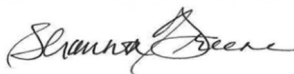
Barb Grey
Chairman,
Native Village of Council



Mary D. Charles
President,
Native Village of White
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Charlie Brown
President,
Chinik Eskimo Community



Rena Greene
Deputy Director,
Nome Eskimo Community



Roberta Ningealook
Tribal Council Coordinator,
Native Village of
Shishmaref



Willa Towarak Echenweiler
Secretary,
Native Village of Unalakleet



Robert Keith
President
Native Village of Elim

ⁱ About the tribal organizations that have formally opposed bottom-trawl activities in the Northern Bering Sea, referenced above, and together represent over a third of the 229 Federally Recognized Tribes in Alaska:

Kawerak, Inc. is the Alaska Native non-profit Tribal consortium for the 20 federally recognized Tribes of the Bering Strait region with its main office in Nome, Alaska. Kawerak’s mission is “advancing the capacity of its people and Tribes for the benefit of the region.” Our vision is “our people and Tribes are thriving,” with an emphasis on living Iñupiaq, St. Lawrence Island Yupik, and Yup’ik subsistence cultures, which depend on a healthy and productive marine environment.

The Association of Village Council Presidents (AVCP) is the Alaska Native non-profit Tribal consortium for the 56 federally recognized Tribes of the Yukon-Kuskokwim Delta region with its main office in Bethel, Alaska. Our mission is, “Yuput calillgutekluki elluarluta yuuluallerkamtenun”, which in English translates to “Working together with Tribes to enhance sovereignty, self-sufficiency and Our Way of Life.” Our region of Alaska is approximately 58,000 square miles in size (comparable in size to the State of New York) and is named for our two largest rivers: the Yukon and Kuskokwim. Our 56 member Tribes are spread across 48 communities and two U.S. Census areas: the Bethel Census Area and the Kusilvak Census Area, with most of our communities located along the rivers and the coast. These rivers are an incalculably important resource for our communities, as the primary transport corridor among villages and to the sea, and as a source of nourishment and habitat for fish, terrestrial wildlife, marine mammals, and migratory birds.

The Aleut Community of St. Paul Island (ACSPI) is the title by which the federal government formally recognizes our Tribal sovereignty: a Nation born, living, and self-governing before the United States was conceived. Our Tribal Government is the venue through which Unangax of St. Paul Island can fulfill our intrinsic rights and responsibilities and support, recollect, practice, and pass on our culture. The ACSPI Tribal Government promotes, maintains, and protects the cultural practices, Traditional Knowledge, food sovereignty, self-governance, and self-determination of the Tribal members of ACSPI.

The Bering Sea Elders Group (BSEG) is a Tribal consortium that was formed specifically to work to protect the Bering Sea. Our mission is to speak and work together as one voice to protect and respect our traditional ways of life, the ocean web of life that supports the resources we rely on, and our children’s future. BSEG is an organization of 38 federally recognized Tribes from Kuskokwim Bay to the Bering Strait. BSEG’s Elder Representatives were selected by their Tribal councils and are messengers to our children, and the people who make decisions that affect our marine resources, ecosystem, and ways of life. BSEG has long worked in coalition with its partner organizations listed above on efforts that relate to activities in the central and northern Bering Sea.