

**Cook Inlet Salmon FMP Amendment 16**  
**Tribal Engagement Meeting**  
**January 9, 2024: 11:00am-12:00pm AKST**  
**Summary**

**Attendees**

Tribes

- Chief Gary Harrison - Chairman, Chickaloon Native Village (CNV)
- Jessica Winestaffer - CNV
- Stephanie Freeman - CNV
- Doug Wade - CNV
- Debra Call - Co-Chair, Cook Inlet Fishers Group, Knik Tribe
- Bernadine Atchison, Chair, Kenaitze Indian Tribe (KIT)
- Mary Ann Mills - Councilmember, Vice-Chair, KIT
- Wayne Wilson - Councilmember and Environmental Chair, KIT
- Elanna Shall - Environmental Program Manager, KIT
- Sam Schimmel - KIT
- Paul Sturra - KIT
- Nick Jacuk - UAF Master Student of Fisheries, Knik Tribe
- Jon Ross - KIT and Salamatof Tribe
- Stephen Payton, Seldovia Village Tribe
- Greg Encelewski - President, Ninilchik Village Tribe (NVT)
- Ivan Encelewski - NVT
- Nikki Graham - Ninilchik Native Association
- Carrie Brophil - Native Village of Eklutna (NVE)
- Dorothy Cook - NVE, Tribal Fisheries Group, Tribal Council Member, Secretary, and Enrollment Officer
- Marc Lamoreaux - Land and Environment Department, NVE

Tribal corporations/entities

- Stephanie Thompson - President, Alexander Creek, Inc.
- Michael Opheim - Chugach Regional Resource Commission, Tribal Liaison, Port Graham, Lower Cook Inlet Seldovia
- Michaelene Stephan - President, Tyonek Native Corporation (TNC)
- David Kroto - TNC

NOAA National Marine Fishery Service

- Doug Duncan, Fishery Management Specialist
- Doug Shaftel, Fishery Management Specialist, Tribal Engagement Team
- Kelly Cates, Fishery Management Specialist, Tribal Engagement Team
- Amilee Wilson, Tribal Liaison

**Meeting begins @ ~11:00am**

### **Welcome and Introductions**

NMFS staff opened the meeting with a welcome and by thanking the Tribes for joining NMFS in the engagement session. A quick tutorial of the Google Meet controls and clarification that the meeting was not a consultation, but that consultation will be scheduled, was provided.

### **Update on Cook Inlet Salmon FMP A16/rulemaking (NMFS)**

NMFS provided a status update on the development of Amendment 16 to the Salmon Fishery Management Plan and implementing regulations. The update included a process update (NMFS was responding to public comments on the proposed rule), upcoming public presentations on the Stock Assessment and Fishery Evaluation report and opportunities for input, and timing of publication of the final rule (on or before May 1, 2024) and subsequent outreach events in the planning stages.

### **Tribes**

- **Final rule and UCIDA litigation**
  - NVT: If UCIDA challenges the final rule, is that going to delay Federal management of the fishery?
  - KIT: Are there certain comments that would be beneficial to submit?
- **Request for subsistence fishery/tribal set-aside**
  - KIT: Could a tribal set-aside be made through an in-season decision? How did a tribal set-aside get left out of Amendment 16? Was it due to lack of tribal consultation?
  - NVT: This is not a new fishery, it's a new management structure. We need a tribal set aside for all of our villages. There are different terms for tribal set asides/rights.

There is a subsistence interest in the Magnuson Stevens Act and merely focusing on the court order ignores subsistence issues. The Secretarial Order requires NMFS to work with tribes on lands and waters. This needs to be implemented regardless of the court order.

If we don't have a fishery, the harvest levels are meaningless to us. Last year, there were 1.6 million fish over escaped salmon; this is unsustainable. In other words, we could harvest 1.6 million fish and it would still be sustainable.

Is there any possibility in Amendment 16 to adopt something that would include tribal fishery?

- NVC: We are deprived of our subsistence. There should be an Indigenous People's set aside. Feds are supposed to take care of this and under supremacy clause the State is supposed to as well. NMFS must adhere to international treaties. This treaty has been on the books since 1996 and we are just now talking about it. NMFS is finally starting to take the treaty seriously. This needs to be taken care of as soon as possible. We are not trying to fish the last fish. We need you to tell the State that they need to also have the Indigenous People's Set-aside.
- VE: Development of co-management is the way to develop tribal fisheries. It might take time but at least we have a strategy to get it done.
- KIT: This is a difficult situation with lots of communication needs. It's difficult to understand why NMFS didn't address comments directly prior to bringing Amendment 16 to table in February. Executive Order 13175 charges all agencies to do regular, meaningful, robust consultation. There was adequate time and discussion to address it prior to this proposed fishing season.

Are there FMPs in Alaska that consider tribal subsistence rights that could be a blueprint for Cook Inlet?

Kenaitze Tribe's [fishing opportunity] has been taken away for over 30 years and it has had a huge impact on people and society. On the Kenai River, Kenaitze Indian Tribe doesn't have a clear access to resources. This is an opportunity in the EEZ to rectify this and perhaps it can be addressed on an inseason or emergency order basis.

We have unique issues that need to be addressed and are available to continue discussion about how to assist agencies to substantiate rights as a nation. NMFS needs to focus on the federal government's international obligations and responsibilities for tribal rights and food security. These laws have been on the books for years. We will provide the [applicable] international treaties and federal law.

Not clear why in Alaska tribes do not hold the same rights as lower 48 tribes, yet there are treaties that protect the rights to our land and we are listed in the UN Charter, and with that comes sacred responsibility for all countries that signed that document. We look forward to putting this information together.

- NVC: First order was that tribes in AK were supposed to get the same treatment as the [Washington State] Boldt decision. Instead Alaska tribes got educational nets under the Holland decision in the 80s. We have not made progress since. This is the closest we have gotten to have our fishing rights recognized. Is further litigation required to make that a reality?

## NMFS

- It is possible that litigation could delay federal management, but will not know unless and until a challenge is made.
- There is not a tribal set-aside or fishery under current regulations; new regulations would be needed. NMFS circulated invitations for consultations in early 2023, but did not learn about the tribal interest in a subsistence fishery/set-aside until the fall of 2023.
- NMFS is willing to work with tribes to see what may be possible, however, management of these federal waters is driven by litigation and a court has required NMFS to address commercial and recreational fisheries within a short amount of time. The court order has no language regarding tribal subsistence or set aside. The court's timeline does not leave time to fully develop a tribal or subsistence fishery, analyze it and incorporate it into proposed action
- NMFS appreciates the frustration of tribes that a tribal set aside is not included in this action. But this action is not the last opportunity to consider a tribal set aside.
- Any tribal set-aside or fishery would need a new amendment to the Salmon Fishery Management Plan. There is no blueprint for creating a salmon subsistence fishery in Alaska. The subsistence halibut program is implemented under a treaty that does not apply to salmon.
- NMFS needs to understand the details of what the tribes are looking for. We're hearing different terms related to the tribal fishery and need to flush out those issues. For example, do the tribes contemplate a conglomerate fishery for all Cook Inlet tribes or are there other individual tribal fishery needs? Please go back to your communities and see what your community needs are and bring them back to us.
- NMFS appreciates the tribes reiterating the presidential order and feel it is important to work with our tribal partners to uphold the federal trust responsibility. NMFS is working with the Department of Commerce [NMFS parent agency] to determine what co-stewardship means for working together moving forward. NMFS staff are scheduled to attend the upcoming tribal co-stewardship symposium.
- NMFS acknowledges the tribes concerned about the erosion of Native rights with regard to ways of fishing.
- NMFS must evaluate what is legally feasible regarding a tribal set-aside/subsistence fishery and ensure that we are meeting our trust responsibilities.
- Regarding the request to ask the State to create a tribal Indigenous People's salmon fishery in Cook Inlet, NMFS can only evaluate what can be done under the federal Salmon FMP.
- NMFS wants to work with tribes within its capacity to uphold tribal rights. Will pass these comments on to NOAA General Counsel and Headquarters (International Affairs Office). NMFS cannot promise that a tribal set aside will occur, but can commit to work with tribes to explore what is possible.

### Wrap Up/Next Steps

NMFS will circulate dates for a tribal consultation.

**Meeting Adjourned: ~12:05 PM**

