1.0 INTRODUCTION

This Environmental Impact Statement (EIS) provides decision-makers and the public with an evaluation of the predicted environmental effects of alternative measures to minimize Chinook salmon bycatch in the Bering Sea pollock fishery. The Regulatory Impact Review (RIR), in Volume II, provides decision-makers and the public with an evaluation of the social and economic effects of these alternatives to addresses the requirements of Executive Order 12866, Executive Order 12898, and other applicable federal law. If approved, the North Pacific Fishery Management Council's (Council or NPFMC) preferred alternative would be Amendment 91 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP). The Draft EIS/RIR served as the central decision-making document for the Council to recommend Amendment 91 to the Secretary of Commerce. The EIS and RIR are intended to serve as the central decision-making documents for the Secretary of Commerce to approve, disapprove, or partially approve Amendment 91, and for the National Marine Fisheries Service (NMFS or NOAA Fisheries) to implement Amendment 91 through federal regulations. This EIS complies with the National Environmental Policy Act (NEPA). The RIR addresses the requirements of Executive Order 12866 and Executive Order 12898.

The Council developed the following problem statement for Bering Sea Chinook salmon bycatch management:

> *An effective approach to salmon prohibited species bycatch reduction in the Bering Sea pollock trawl fishery is needed. Current information suggests these harvests include stocks from Asia, Alaska, Yukon, British Columbia, and lower-48 origin. Chinook salmon are a high-value species extremely important to western Alaskan village commercial and subsistence fishermen and also provide remote trophy sport fishing opportunities. Other salmon (primarily made up of chum salmon) harvested as bycatch in the Bering Sea pollock trawl fishery also serve an important role in Alaska subsistence fisheries. However, in response to low salmon runs, the State of Alaska has been forced to close or greatly reduce some commercial, subsistence and sport fisheries in western Alaska. Reasons for reductions in the number of Chinook salmon returning to spawn in western Alaska rivers and the Canadian portion of the Yukon River drainage are uncertain, but recent increases in Bering Sea bycatch may be a contributing factor.*
>
> *Conservation concerns acknowledged by the Council during the development of the Salmon Savings Areas have not been resolved. Continually increasing Chinook salmon bycatch indicates the VRHS [Voluntary Rolling Hotspot System] under the salmon bycatch intercooperative agreement approach is not yet sufficient on its own to stabilize, much less, reduce the total bycatch. Hard caps, area closures, and/or other measures may be needed to reduce salmon bycatch to the extent practicable under National Standard 9 of the MSA [Magnuson-Stevens Act]. We recognize the MSA requires use of the best scientific information available. The Council intends to develop an adaptive management approach which incorporates new and better information as it becomes available. Salmon bycatch must be reduced to address the Council's concerns for those living in rural areas who depend on local fisheries for their sustenance and livelihood and to contribute towards efforts to reduce bycatch*

of Yukon River salmon under the U.S./Canada Yukon River Agreement obligations. The Council is also aware of the contribution that the pollock fishery makes in the way of food production and economic activity for the country as well as for the State of Alaska and the coastal communities that participate in the CDQ [Community Development Quota] program; and the need to balance tensions between National Standard 1 to achieve optimum yield from the fishery and National Standard 9 to reduce bycatch.

The EIS and RIR examine five alternatives to minimize Chinook salmon bycatch in the Bering Sea pollock fishery. These alternatives are described in detail in Chapter 2. The EIS evaluates the environmental consequences of each of these alternatives with respect to ten major resource categories:

- Pollock
- Chinook salmon
- Chum salmon
- Other groundfish species
- Other prohibited species (steelhead trout, halibut, Pacific herring, and crab)
- Forage fish
- Marine mammals
- Seabirds
- Essential fish habitat
- Marine ecosystem

The RIR evaluates the social and economic consequences of the alternatives. RIR analyzes the economic impacts of the alternatives, including a net benefit analysis of the preferred alternative and an Environmental Justice analysis of the impacts of the alternatives on minority and low income populations.

1.1 What is this Action?

The proposed action is to implement new management measures to minimize Chinook salmon bycatch in the Bering Sea pollock fishery. The Bering Sea pollock fishery annually intercepts up to 95 percent of the Chinook salmon taken incidentally as bycatch in the Bering Sea and Aleutian Islands (BSAI) groundfish trawl fisheries. This EIS analyzes alternative ways to manage Chinook salmon bycatch, including replacing the current Chinook Salmon Savings Areas and voluntary rolling hotspot system intercooperative agreement (VHRS ICA) in the Bering Sea with salmon bycatch limits or new regulatory closures based on current salmon bycatch information. The alternatives represent a range of bycatch management measures for analysis that assist the decision-makers and the public in determining the best alternative to meet the purpose and need for the action. The alternatives meet the purpose and need by presenting different ways to minimize Chinook salmon bycatch in the Bering Sea pollock fishery to the extent practicable while achieving optimum yield.

1.2 Purpose and Need for this Action

The purpose of Chinook salmon bycatch management in the Bering Sea pollock fishery is to minimize Chinook salmon bycatch to the extent practicable, while achieving optimum yield. Minimizing Chinook salmon bycatch while achieving optimum yield is necessary to maintain a healthy marine ecosystem, ensure long-term conservation and abundance of Chinook salmon, provide maximum benefit to fishermen and communities that depend on Chinook salmon and pollock resources, and comply with the Magnuson-Stevens Act and other applicable federal law. National Standard 9 of the Magnuson-Stevens Act requires that conservation and management measures shall, to the extent practicable, minimize bycatch.

National Standard 1 of the Magnuson-Stevens Act requires that conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for

the United States fishing industry. Section 3(33) of the MSA defines optimum yield to mean "the amount of fish which . . . (A) will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems; [and] (B) is prescribed as such on the basis of the maximum sustainable yield from the fishery, as reduced by any relevant economic, social, or ecological factor . . . ." NMFS has established in regulations at 50 C.F.R. § 679.20(a)(1)(i) that the optimum yield for the Bering Sea Aleutian Island Management area is a range from 1.4 to 2.0 million metric tons (mt).

The BSAI FMP defines total allowable catch is the annual harvest limit for a stock or stock complex, derived from the acceptable biological catch by considering social and economic factors. NMFS's regulations at 50 C.F.R. § 679.20(a)(2) provide that the sum of the TACs so specified must be within the optimum yield range. The BSAI FMP provides further elaboration of the differences among optimum yield (OY), acceptable biological catch (ABC) and total allowable catch (TAC):

> In addition to definitional differences, OY differs from ABC and TAC in two practical respects. First, ABC and TAC are specified for each stock or stock complex within the "target species" and "other species" categories, whereas OY is specified for the groundfish fishery (comprising target species and other species categories) as a whole. Second, ABCs and TACs are specified annually whereas the OY range is constant. The sum of the stock-specific ABCs may fall within or outside of the OY range. If the sum of annual TACs falls outside the OY range, TACs must be adjusted or the FMP amended (BSAI FMP at 13).

Recognizing that salmon bycatch management measures precluding the pollock fishery from harvesting its entire TAC for any given year are not determinative of whether the BSAI groundfish fishery achieves optimum yield, providing the opportunity for the fleet to harvest the TAC in any given year is one aspect of achieving optimum yield in the long term.

Several management measures are currently used to reduce Chinook salmon bycatch in the Bering Sea pollock fishery. Chinook salmon taken incidentally in groundfish fisheries are classified as prohibited species and, as such, must be either discarded or donated through the Prohibited Species Donation Program. In the mid-1990s, NMFS implemented regulations recommended by the Council to control the bycatch of Chinook salmon taken in the Bering Sea pollock fishery. These regulations established the Chinook Salmon Savings Areas and mandated year-round accounting of Chinook salmon bycatch in the trawl fisheries. Once Chinook salmon bycatch in the Bering Sea pollock fishery reaches 29,000 Chinook salmon, the Chinook Salmon Savings Area is closed to pollock fishing for the rest of the year. This prohibited species catch limit is divided between the CDQ and non-CDQ fisheries. The savings areas were adopted based on historic observed salmon bycatch rates and was designed to avoid areas with high levels of Chinook salmon bycatch.

The Council started considering revisions to salmon bycatch management in 2004, when information from the fishing fleet indicated that it was experiencing increases in Chinook salmon bycatch following the regulatory closure of the Chinook Salmon Savings Areas. This indicated that, contrary to the original intent of the savings area closures, Chinook salmon bycatch rates appeared to be higher outside of the savings area than inside the area. While, upon closure, the non-CDQ fleet could no longer fish inside the Chinook Salmon Savings Area, vessels fishing on behalf of the CDQ groups were still able to fish inside the area because the CDQ groups had not yet reached their portion of the Chinook salmon prohibited species catch limit. Much higher salmon bycatch rates were reportedly encountered outside of the closure areas by the non-CDQ fleet than experienced by the CDQ vessels fishing inside. Further, the closure areas increased costs to the pollock fleet and processors.

To address this problem, the Council examined other means that were more flexible and adaptive to minimize salmon bycatch. The Council developed and recommended Amendment 84 to the BSAI FMP to implement in federal regulations the VRHS ICA and an exemption to the Chinook Salmon Savings Areas for vessels that participated in the VRHS ICA. In 2002, participants in the pollock fleet started the VRHS ICA for Chinook salmon. The exemption to area closures for the VRHS ICA was first implemented through an exempted fishing permit in 2006 and 2007 subsequently, in 2008, through Amendment 84 to the BSAI FMP. The VRHS ICA was intended to increase the ability of pollock fishery participants to minimize salmon bycatch by giving them more flexibility to move fishing operations to avoid areas where they experience high rates of salmon bycatch.

From 1992 through 2002, the annual average Chinook salmon bycatch in the pollock fishery was 32,665 Chinook salmon. Chinook salmon bycatch numbers increased substantially from 2003 to 2007. The average from 2003 to 2007 was 74,067 Chinook salmon, with a bycatch peak of approximately 122,000 Chinook salmon in 2007. Chinook salmon bycatch in the Bering Sea pollock fishery decreased substantially in 2008 and 2009. The 2008 Chinook salmon bycatch estimate was 20,599 Chinook salmon. The preliminary estimate for 2009 is 12,410 Chinook salmon.

In light of the high amount of Chinook salmon bycatch through 2007, the Council and NMFS are considering new measures to minimize bycatch to the extent practicable while achieving optimum yield. While the VRHS ICA reports on Chinook salmon bycatch indicate that the VRHS has reduced Chinook salmon bycatch rates compared with what they would have been without the measures, and despite the 2008 and 2009 decrease in Chinook salmon bycatch, concerns remain that, under the status quo, the potential exists for a high amount of Chinook salmon bycatch such as experienced in 2007.

The Council and NMFS decided to give priority to Chinook salmon bycatch management and limited the scope of this action to Chinook salmon, because Chinook salmon is a highly valued species and specific protection measures are warranted. The Council and NMFS are addressing non-Chinook salmon (primarily chum salmon) bycatch in the Bering Sea pollock trawl fishery with a separate subsequent action. Until then, existing non-Chinook salmon bycatch reduction measures will remain in effect.

1.3 The Action Area

The action area effectively covers the Bering Sea management area in the exclusive economic zone (EEZ), an area extending from 3 nm from the State of Alaska's coastline seaward to 200 nm (4.8 km to 320 km). The Bering Sea EEZ has a southern boundary at 55° N. latitude from 170° W. longitude to the U.S.-Russian Convention line of 1867, a western boundary of the U.S.-Russian Convention Line of 1867, and a northern boundary at the Bering Strait, defined as a straight line from Cape Prince of Wales to Cape Dezhneva, Russia.

Impacts of the action may also occur outside the action area in the freshwater origins of the Chinook salmon caught as bycatch and in the Chinook salmon migration routes between their streams of origin and the Bering Sea. Chinook salmon caught as bycatch in the Bering Sea pollock fishery may originate from Asia, Alaska, Canada, or the western United States.

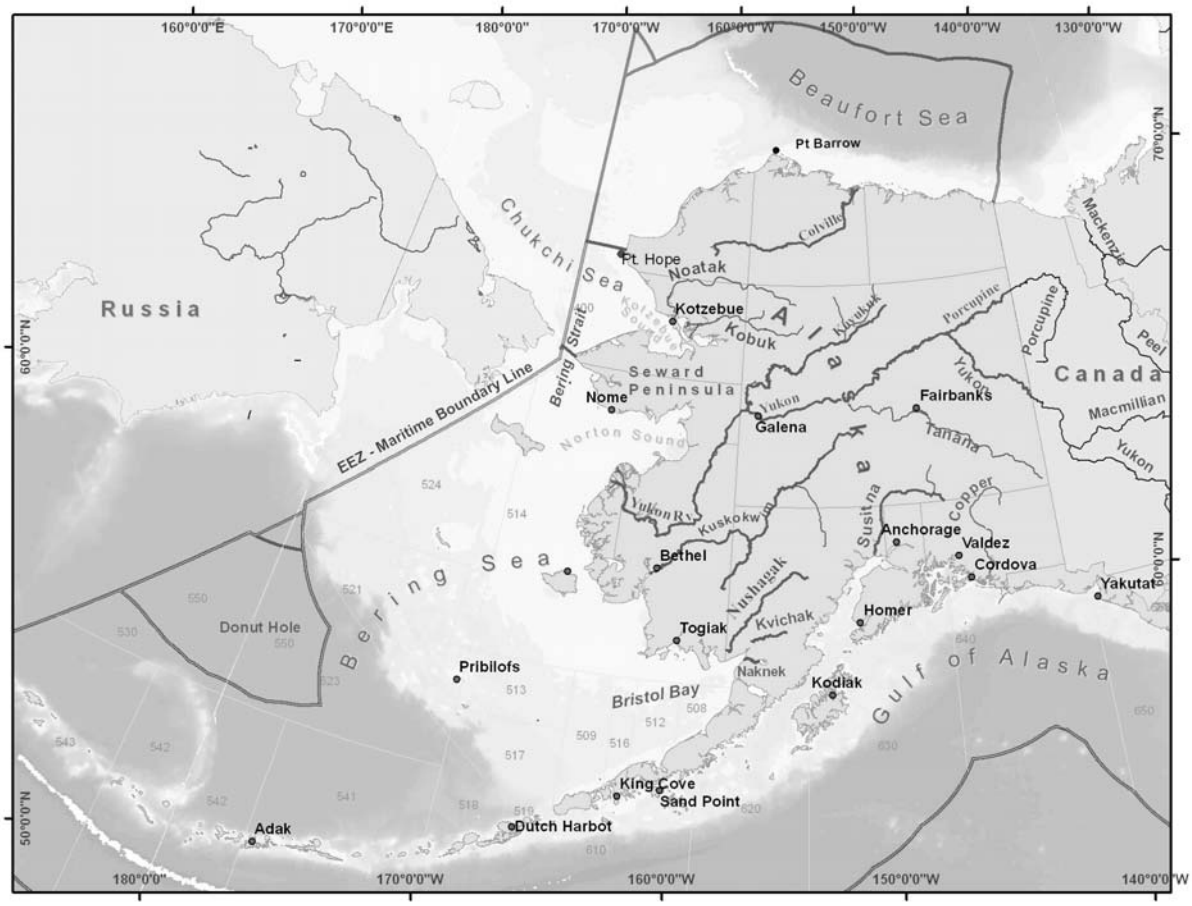

Fig. 1- 1 Map of the Bering Sea and major connected salmon producing rivers in Alaska and Northwest Canada

A comprehensive description of the action area is contained in previous EISs prepared for North Pacific fishery management actions. The description of the affected environment is incorporated by reference from Chapter 3 of the Programmatic Supplemental Environmental Impact Statement for the Alaska Groundfish Fisheries (PSEIS, NMFS 2004) and Chapter 3 of the Final Environmental Impact Statement for Essential Fish Habitat Identification and Conservation in Alaska (EFH EIS, NMFS 2005a). These documents contain extensive information on the fishery management areas, marine resources, habitat, ecosystem, social, and economic parameters of the pollock fishery. Both of these public documents are available on the NMFS Alaska Region website.[13]

A large body of information exists on the life histories and general distribution of salmon in Alaska. The locations of many freshwater habitats used by salmon are described in documents organized and maintained by the Alaska Department of Fish & Game (ADF&G). Alaska Statute 16.05.871 requires ADF&G to specify the various streams that are important for spawning, rearing, or migration of anadromous fishes. This is accomplished through the *Catalog of Waters Important for Spawning, Rearing or Migration of Anadromous Fishes* (ADF&G 1998a) which lists water bodies documented to be used by anadromous fish, and the *Atlas to the Catalog of Waters Important for Spawning, Returning or Migration of Anadromous Fishes* (ADF&G 1998b), which shows locations of these waters and the

[13] http://alaskafisheries.noaa.gov/

species and life stages that use them. Additional information on salmon streams is available from the ADF&G website.[14]

1.4 The Bering Sea pollock fishery

Pollock is a commercially targeted species distributed in the North Pacific from Central California to the southern Sea of Japan. Currently, this species comprises a major portion of the BSAI finfish biomass and supports the largest single species fishery in the U.S. EEZ. The economic character of the fishery centers on the products produced from pollock: roe (eggs), surimi, and fillet products. In 2007, the total first wholesale gross value of retained pollock was estimated to be $1.248 billion. In 2008, the total value of pollock increased to an estimated $1.415 billion.

Within the BSAI management area, pollock is managed as three separate stocks: the Eastern Bering Sea, the Aleutian Islands region stock, and the Aleutian Basin or Bogoslof stock. The largest of these stocks, the Eastern Bering Sea stock, is the primary target of the pollock fishery. Since 1977, average annual catch of pollock in the Bering Sea has been 1.2 million tons while reaching a peak of catch of nearly 1.5 million tons in 2006.

Until 1998, the Bering Sea pollock fishery was managed as an open access fishery, commonly characterized as a "race for fish." In 1998, however, Congress enacted the American Fisheries Act (AFA) to rationalize the fishery by limiting participation and allocating specific percentages of the Bering Sea directed pollock fishery total allowable catch (TAC) among the competing sectors of the fishery.

Sections 206(a) and (b) of the AFA establish the allocation of the Bering Sea pollock TAC among four AFA sectors. First, 10% of the Bering Sea pollock TAC is allocated to the CDQ Program. Then, NMFS reduces the remainder of the TAC by an amount of pollock that will be harvested as incidental catch in the non-pollock fisheries. In 2009, the incidental catch allowance for Bering Sea pollock was 29,340 mt. The remaining amount, after subtraction of the CDQ allocation and the incidental catch allowance, is called the directed fishing allowance. As required under the AFA, NMFS then allocates the directed fishing allowance among the three remaining AFA sectors (the "non-CDQ sectors"): 50% to the inshore catcher vessel (CV), 40% to the offshore catcher processor (CP), and 10% to the mothership sector (MS). Because the percentage of the TAC allocated to each of the four AFA sectors is specified in the AFA, transfer of pollock among the sectors is not allowed.

Pollock allocations to the AFA sectors are further divided into two seasons – 40% to the A season (January 20 to June 10) and the 60% to the B season (June 10 to November 1). NMFS may add any under harvest of a sector's A season pollock allowance to the subsequent B season allowance. Typically, the fleet targets roe –bearing females in the A season and harvests the A season TAC by early April. The B season fishery focuses on pollock for filet and surimi markets and the fleet harvests most the B season TAC in September and October.

In addition to the required sector level allocations of pollock, the AFA allowed for the development of pollock industry cooperatives. Ten such cooperatives were developed as a result of the AFA: seven inshore cooperatives, two offshore cooperatives, and one mothership cooperative. These cooperatives are described below in more detail. All cooperatives are required to submit preliminary and final annual written reports on fishing activity including prohibited species catch (PSC) on an area-by-area and vessel by vessel basis. NMFS and the Council are required by the AFA to release this information to the public.

[14] http://www.state.ak.us/adfg/habitat

1.4.1 Community Development Quota Program

The CDQ Program was established by the Council in 1992 to improve the social and economic conditions in western Alaska communities by facilitating their economic participation in the BSAI fisheries. The CDQ Program was developed to redistribute some of the BSAI fisheries' economic benefits to adjacent communities by allocating a portion of commercially important BSAI species including pollock to such communities. Their initial 7.5% allocation of pollock was expanded to 10% with the enactment of the AFA. These allocations are further allocated among the 6 CDQ groups: the Aleutian Pribilof Island Community Development Association (APICDA), the Bristol Bay Economic Development Corporation (BBEDC), the Central Bering Sea Fishermen's Association (CBSFA), the Coastal Villages Region Fund (CVRF), the Norton Sound Economic Development Corporation (NSEDC), and the Yukon Delta Fisheries Development Association (YDFDA). The percentage allocations of pollock among the six CDQ groups were approved by NMFS in 2005 based on recommendations from the State of Alaska. These percentage allocations are now the required allocations of pollock among the CDQ groups under section 305(i)(1)(B) of the Magnuson-Stevens Act. CDQ groups typically sell or lease their Bering Sea pollock allocations to various harvesting partners. The vessels harvesting CDQ pollock are the same vessels conducting AFA non-CDQ pollock harvesting. More detailed information on the CDQ Program is contained in the RIR.

1.4.2 Inshore catcher vessel sector

Each year, catcher vessels eligible to deliver pollock to the seven eligible AFA inshore processors may form cooperatives associated with a particular inshore processor. These catcher vessels are not required to join a cooperative and those that do not join a cooperative are managed by NMFS under the "inshore open access fishery." In recent years, all inshore catcher vessels have joined one of seven inshore cooperatives. Annually, NMFS allocates the inshore sector's allocation of pollock among the inshore cooperatives and, if necessary, the inshore open access fishery. NMFS permits the inshore cooperatives, allocates pollock to them, and manages these allocations through a regulatory prohibition against an inshore cooperative exceeding its pollock allocation.

The inshore CV cooperatives are required to submit copies of their contracts to NMFS annually. These contracts must contain the information required in NMFS regulations, including information about the cooperative structure, vessels that are parties in the contract, and the primary inshore processor that will receive at least 90 percent of the pollock deliveries from these catcher vessels. Each catcher vessel in a cooperative must have an AFA permit with an inshore endorsement, a license limitation program permit authorizing the vessel to engage in trawl fishing for pollock in the Bering Sea, and no sanctions on the AFA or license limitation program permits. Although the contract requirements are governed by NMFS regulations, compliance with the provisions of the contract (primarily the 90 percent processor delivery requirements) are not enforced by NMFS, but are enforced through the private contractual arrangement of the cooperative.

Once an inshore cooperative's contract is approved by NMFS, the cooperative receives an annual pollock allocation based on the catch history of vessels listed in a cooperative contract. The annual pollock allocation for the inshore CV sector is divided up by applying a formula in the regulations which allocates catch to a cooperative or the inshore open access fishery according to the specific sum of the catch history for the vessels in the cooperative or the limited access fishery. Under § 679.62(a)(1), the individual catch history of each vessel is equal to the sum of inshore pollock landings from the vessel's best 2 of the 3 years 1995 through 1997, and includes landings to catcher/processors for vessels that made landings of 500 mt or more to catcher/processors from 1995 through 1997. Each year, fishing permits are issued to the inshore cooperative, with the permit application listing the vessels added or subtracted.

An inshore CV open access fishery could exist if vessels choose not to join a cooperative in a given year. In this case, the inshore CV pollock allocation would be partitioned to allow for an allocation to the limited access fishery. The TAC for the inshore open access fishery is based on the portion of total sector pollock catch associated with the vessels not participating in one of the inshore CV cooperatives.

1.4.3 Offshore catcher/processor cooperatives and mothership cooperatives

Separate allocations of the Bering Sea pollock TAC are made annually to the offshore CP sector and the mothership sector. These sector allocations of pollock are not further subdivided by NMFS among the vessels or companies participating in these sectors. However, through formation of cooperatives and under private contractual arrangement, participants in the offshore CP sector and the mothership sector further subdivide their respective pollock allocations among the participants in their sector. The purpose of these cooperatives is to manage the allocations made under the cooperative agreements to ensure that individual vessels and companies do not harvest more than their agreed upon share. The cooperatives also facilitate transfers of pollock among the cooperative members, enforcement of contract provisions, and participation in the VRHS ICA.

Two fishery cooperatives are authorized by the AFA to form in the offshore CP sector and the offshore catcher vessels sector. A single cooperative may form that includes both CPs and named offshore catcher vessels delivering to CPs, or the CP and CV may form separate cooperatives and enter into an inter-cooperative agreement to govern fishing for pollock in the offshore CP sector. The offshore CP sector elected to form two cooperatives. The Pollock Conservation Cooperative (PCC) was formed in 1999 and is made up of nineteen CPs that divide the sector's overall pollock allocation. The AFA listed 20 eligible CPs by name and also allowed eligibility for any other CP that had harvested more than 2,000 metric tons of pollock in 1997 and was eligible for the license limitation program. One CP, the Ocean Peace, met the requirements for an "unlisted catcher/processor" under the AFA and is part of the offshore CP sector. The Ocean Peace fished for pollock from 1999 through 2001 and again in 2008. Under the requirements of the AFA, unlisted CPs may harvest up to 0.5% of the offshore CP sector's allocation of pollock. The Ocean Peace is not part of the PCC.

The High Seas Catcher Cooperative (HSCC) consists of seven catcher vessels that formerly delivered pollock to CPs. These catcher vessels must either deliver to the PCC or lease their allocation to the PCC. The HSCC has elected to lease its pollock allocation to the PCC.

Mothership catcher vessels have formed a cooperative called the Mothership Fleet Cooperative (MFC). Under the AFA, fishery cooperatives are authorized to form in the mothership sector if at least 80 percent of the mothership sector catcher vessels enter into a fishery cooperative. The three motherships also are eligible to join the cooperative and retain a limited anti-trust exemption under the Fisherman's Collective Marketing Act. The three motherships in this sector have not formed a separate cooperative and are not members of the MFC.

1.4.4 Participation in the 2007 and 2008 pollock fisheries

In 2007 and 2008, 89 unique catcher vessels participated in the pollock fishery with 17 catcher vessels making delivering to motherships. The number of CV delivering pollock to inshore processors varied between 2007, 82 vessels, and 2008, only 80 vessels. All 7 shore based processors participated in the 2008 fishery, while in 2007 the Arctic Enterprise Association did not operate and, therefore, their allocation was delivered to another AFA plant. In 2008, one catcher vessel (*Muir Milach*) delivered

pollock to the CP sector comprised of 17 participating CP vessels, as compared to only 16 CP vessels participating in the fishery in 2007. Each of the mothership sector's three AFA permitted vessels participated in the 2007 and 2008 fishery. The RIR Chapter 2 provides the participation in the pollock fishery from 2003 to 2008.

Table 1-1 Participation in the 2007 and 2008 Bering Sea pollock fishery

AFA sectors, processors, and vessels	Number permitted under AFA	Number participating in 2008	Number participating in 2007
Catcher/processor	21	17	16
CV delivering to catcher/processor	7	1*	0
Motherships	3	3	3
CV delivering to motherships	19	17	17
Inshore processors	7	7	6
CV 60 ft.-125 ft.	70	56	56
CV ≥ 125 ft	29	24	26
Total CV to inshore processors	N/A	80	82
Total unique CV	99	89	89
Inshore cooperatives	N/A	7	6
CDQ groups	N/A	6	6

* In 2008, catcher vessel (*Muir Milach*) delivered 1467 mt of pollock to 2 AFA CPs and did not deliver to shoreside or motherships.

1.5 Public Participation

The EIS and RIR were developed with several opportunities for public participation and is based on and prepared from the issues and alternatives identified during the scoping process, the Council process, and the public comment process for the draft EIS/RIR. This section describes these avenues for public participation.

1.5.1 Notice of intent and scoping

Scoping, the term used for involving the public in the NEPA process at its initial stages, is designed to provide an opportunity for the public, agencies, and other interest groups to provide input on potential issues associated with the proposed action. Scoping is used to identify the environmental issues related to the proposed action and identify alternatives to be considered in the EIS and RIR. Scoping is accomplished through written communications and consultations with agency officials, interested members of the public and organizations, Alaska Native representatives, and State and local governments.

The formal scoping period began with the publication of a Notice of Intent in the *Federal Register* on December 26, 2007 (72 FR 72994). Public comments were due to NMFS by February 15, 2008. In the Notice of Intent, NMFS requested written comments from the public on the range of alternatives to be analyzed and on the environmental, social, and economic issues to be considered in the analysis. NMFS published a news release on January 17, 2008, to remind people of their opportunity to participate in this scoping process.

A scoping report was prepared to inform the Council and the public of the comments received. The scoping report summarizes the issues associated with the proposed action and describes alternative

management measures raised in public comments. The scoping report was presented to the Council at its April 2008 meeting and is posted on the NMFS Alaska Region website.[15]

Additionally, members of the public participated and commented during the Council process. The Council started considering revisions to salmon bycatch management in 2004. Since then, the Council has notified the public when it is scheduled to discuss salmon bycatch issues. The Council process, which involves regularly scheduled and announced public Council meetings, ad-hoc industry meetings, and Council committee meetings, started before the formal EIS scoping process and continued as NMFS and the Council developed and refined the alternatives under consideration until the Council took final action in April 2009 to recommend a preferred alternative to NMFS.

1.5.2 Summary of alternatives and issues identified during scoping

NMFS received 42 written comments from the public and interested parties. The scoping report provides a summary of the comments and contains copies of the comments. This section summarizes the alternatives and issues raised during the scoping process.

Chapter 2 describes the alternatives the Council and NMFS determined best accomplish the proposed action's purpose and need. Chapter 2 also describes the alternatives raised during scoping that were considered but not carried forward, and discusses the reasons for their elimination from further detailed study.

Generally, the comments received suggested that (1) alternatives should comply with the Magnuson-Stevens Act, the Endangered Species Act, and Pacific Salmon Treaty; (2) salmon bycatch management should significantly reduce salmon bycatch; (3) hard caps are necessary to effectively reduce salmon bycatch; (4) hard caps should contain individual vessel accountability; and (5) there should be an exemption for vessels that participate in an ICA such as the one that established the VRHS.

The types of alternative management measures suggested by public comments include the following:

- Hard cap management measures
- Eliminate the prohibited species catch accounting period options
- Monitoring and enforcement measures
- Time/Area closure alternatives
- Pollock fishery management changes

To the extent practicable and appropriate, the EIS and RIR address the following issues raised during scoping.

Evaluate the effectiveness of existing salmon bycatch management measures

Many comments discussed the effectiveness of existing salmon bycatch management measures; the Chinook and chum salmon savings areas and the exemption from those closures for pollock vessels that participate in the VRHS ICA.

[15] http://alaskafisheries.noaa.gov/sustainablefisheries/bycatch/default.htm

Scientific Issues

Comments suggested that the EIS utilize the best available stock identification data to determine the relevant impacts to salmon stocks from different levels of salmon bycatch under the alternatives. The comments stated that the analysis should address scientific uncertainty regarding the river of origin of salmon caught in the pollock fishery and the relationship between bycatch and abundance. The EIS should consider the long-term impacts that excessive salmon bycatch has on (1) the sustainability of western Alaska salmon stocks, (2) the composition and genetic diversity of those stocks, and (3) the people that rely on salmon.

Alaska Native Issues

Comments explained that salmon are irreplaceable to the cultural, spiritual, and nutritional needs of Alaska Native people and that analysis of the impacts on subsistence users and subsistence resources must include the broad range of values, not simply a commercial dollar value or replacement costs of these fish. Salmon serves an important cultural and economic role in the communities of Alakanuk, Eek, Nanakiak, Nunapitchuk, Emmonak, Kwethluk, Bethel, St. Mary's, Ruby, Nulato, Koyukuk, Kotlik, Galena, Kaltag, Fairbanks, Kongiganak, Quinhagak, Nenana, Minto, Marshall, and Hooper Bay, and throughout western and Interior Alaska.

Comments also stated that salmon bycatch in the Bering Sea pollock fishery is essentially a reallocation of the in-river return of salmon destined for western and Interior Alaska communities and communities in Canada. Comments recommended that the EIS address impacts to federally-protected subsistence users, in-river commercial fisheries, treaty obligations, and environmental justice implications. Comments explained that excessive salmon bycatch (1) threatens the way of life in western Alaska, (2) seriously impacts in-river uses of those stocks, where federal and state law provides subsistence uses the highest priority, and (3) is a serious concern to the people of western and Interior Alaska who depend upon these stocks as a primary subsistence food source.

Additional Issues

Comments encouraged that salmon bycatch management comply with the Magnuson-Stevens Act, the Endangered Species Act, the Pacific Salmon Treaty and Yukon River Agreement, Alaska National Interest Lands Conservation Act, NEPA, Executive Order 13175 on consulting with tribes, and Executive Order 12898 on environmental justice.

Comments stated that the EIS should discuss how monitoring and enforcement activities would need to be changed to comply with the alternatives and develop a research and monitoring plan to identify information needed to establish an "optimal" bycatch level based on improved stock-specific information.

Comments stated that the EIS should analyze the commercial, subsistence, sport, and cultural values of salmon for users throughout Alaska and the Pacific Northwest. The EIS should contain a full economic analysis of the effects that alternative hard caps would have on the fishing industry, coastal communities, Community Development Quota (CDQ) groups, suppliers, consumers, and other groups that derive benefits from a viable pollock fishery.

Because of the complexity of the issues, to adequately comply with the requirements for consultation under E.O. 13175, comments requested that NMFS develop summary materials which, along with the full EIS/RIR, can provide a resource to tribes to enable them to adequately participate.

1.5.3 Public comments on the Draft EIS/RIR/IRFA

NMFS released the Draft EIS/RIR/IRFA and solicited public comment on the during an 80-day public comment period from December 5, 2008, to February 23, 2009. NMFS received 61 letters of comment. The letters of comment are posted on the NMFS Alaska Region website.[16]

Chapter 9 contains the Comment Analysis Report (CAR), which provides the public comments received during the comment period, summarizes them, and presents the agency's response. NMFS provided a preliminary CAR to the Council at the April 2009 meeting and posted the preliminary CAR on the NMFS Alaska Region web page along with the public comments. The preliminary CAR contained summaries of the public comments received during the comment period and the agency's responses. The preliminary CAR also contained, as appendices, the EIS and RIR sections that authors substantively revised based on public comments. The preliminary CAR appendices have been incorporated into this final EIS. The preliminary CAR was also a tool for the authors to revise the EIS and RIR and respond to each statement of concern.

1.5.4 Changes to the Final EIS and Final RIR from the Draft EIS/RIR/IRFA

All changes from draft to final are detailed in Chapter 9. This section summarizes the major changes. The first major change from the Draft EIS/RIR/IRFA was to separate the Final EIS and Final RIR into Volume I and Volume II, respectively. This change was made primarily because the combined final document was over 1000 pages and thus too large to fit into one volume. Additionally, the final IRFA is not included these documents and will be published in the classifications section of the preamble to the proposed rule due to the nature of that analysis.

The second major change was the incorporation and analysis of Alternative 5, which the Council recommended as the preferred alternative in April 2009. A description of Alternative 5 was added to Chapter 2 and Chapters 4 through 8 and the Final RIR analyze the impacts of Alternative 5.

The third major change was to incorporate into the Final EIS and Final RIR the sections that authors substantively revised based on public comments. These sections were provided as appendices to the preliminary CAR for Council consideration when it took final action in April 2009.

Additional changes were made throughout the document to improve clarity and organization.

1.5.5 Community outreach

One of the Council's policy priorities is to improve Alaska Native and community consultation in federal fisheries management. The Council identified the need to improve the stakeholder participation process during development of the EIS and RIR. As the Council chose a preliminary preferred alternative at its June 2008 meeting, it was determined timely to undertake an outreach effort with affected community and Native stakeholders during the development of the draft EIS/RIR and prior to final Council action. The Council developed an outreach plan to solicit and obtain as much input as possible on the proposed action from Alaska Natives, communities, and other affected stakeholders. This outreach effort, specific to Chinook salmon bycatch management, dovetailed with the Council's overall community and Native stakeholder participation policy.

[16] http://www.fakr.noaa.gov/sustainablefisheries/bycatch/salmon/chinook/comments/default.htm

The outreach plan for Chinook salmon bycatch management was intended to enable the Council to maintain ongoing and proactive relations with Native and rural communities. One of the objectives of the plan is to coordinate with NMFS' tribal consultation efforts, discussed in Section 1.5.7, to prevent a duplication of efforts between the Council and NMFS, which includes not confusing the public with divergent processes or providing inconsistent information.

A summary report to document the outreach process and results of the regional and Native meetings were prepared and presented to the Council in April 2009, when the Council took final action to recommend Alternative 5. The report, entitled "Summary and Results of Outreach Plan for DEIS on Chinook Salmon Bycatch in the Bering Sea Pollock Fishery," is summarized below and available on the Council website.[17]

1.5.6 Summary of the community outreach meetings

Upon informal consultation with community and Native coordinators, Council staff determined that the most effective approach to community outreach meetings is to work with established community representatives and Native entities within the affected regions and attend annual or recurring regional meetings, in order to reach a broad group of stakeholders in the affected areas. Council staff consulted with the coordinators of the Federal Subsistence Regional Advisory Councils (RACs) and the Association of Village Council Presidents (AVCP) in order to schedule time on the agendas for their upcoming meetings. Council staff provided presentations on the Council process, overall outreach efforts, and the proposed action on Chinook salmon bycatch reduction measures, at six separate regional meetings. After the presentations, the organizations and the public asked questions and provided feedback on the proposed action and process. Council staff recorded questions and comments. Two Council members attended five of the six meetings, and one to two Council staff analysts attended each meeting.

In sum, Council staff, Council members, and when possible, NMFS staff, participated in the following regional meetings:

Bristol Bay RAC October 6 – 7, 2008 Dillingham
AVCP meeting October 7 - 9, 2008 Bethel
Eastern Interior RAC October 14 – 15, 2008 Nenana
Northwest Arctic RAC October 16, 2008 Kotzebue
Western Interior RAC October 28 – 29, 2008 McGrath
Nome Outreach Meeting January 22, 2009 Nome

In addition to the above regional/community meetings, Council staff provided a lengthy presentation of the main EIS findings at the Yukon River Panel meeting on December 9, 2008. The Yukon River Panel is an international advisory body established under the Yukon River Salmon Agreement for the conservation, management, restoration, and harvest sharing of Canadian-origin salmon between the U.S. and Canada. Nine Council members attended. In addition to specific clarifications on the presentation and Council intent, there was substantial time allotted for discussion between Yukon River Panel members and Council members on the forthcoming action.

A short summary of each meeting is provided below. Note that the dates provided below refer to the date on which the Council presentation and comments occurred, recognizing that each meeting was typically two to three days. The complete outreach report also contains (1) details of the regional meetings attended, the participants, and the comments (by category), and (2) copies of resolutions or motions resulting from these meetings.

[17] http://www.fakr.noaa.gov/npfmc/current_issues/bycatch/BycatchOutreach409.pdf

Bristol Bay Subsistence Regional Advisory Council, October 7, 2008, Dillingham

The Bristol Bay RAC meeting was comprised primarily of RAC members and State and Federal agency staff, with a few public participants (estimate of 25 total participants). The Bristol Bay RAC represents 31 Bristol Bay subsistence communities and rural residents. The RAC emphasized the importance of Chinook salmon as a subsistence food and noted lower returns (and smaller Chinook) in their region. The RAC was also very concerned about the lack of genetic information on which to base potential impacts to individual river systems. The RAC adopted a resolution to (1) request the Council adopt regulations to significantly minimize the bycatch of all salmon species in the Bering Sea pollock fishery; (2) support a Chinook salmon bycatch hard cap not to exceed 38,000 fish annually; (3) support hard caps and other regulations that are conservative and designed to preserve salmon stocks; and (4) support State and Federal efforts to conduct additional data collection and analyses to refine regulations that minimize salmon bycatch in the Bering Sea trawl fisheries.

Association of Village Council Presidents 44th Annual Convention, October 8, 2008, Bethel

The AVCP is centralized in the Yukon-Kuskokwim Delta, along the Southwestern region of Alaska, and serves 56 Federally-recognized Alaska tribes. Approximately 200 participants attended, including representatives from member tribes, subsistence and commercial salmon fishermen, Federal and State agency staff, CDQ group representatives, and city and borough representatives. Translation services were provided to translate between Yupik and English. Comments were centered on the priority to protect the subsistence salmon fishery, both for cultural and traditional reasons, as well as a primary food source.

Detailed comments were provided with regard to Alternative 4 and incentive plans linked to a higher cap of 68,000 Chinook salmon. The AVCP submitted a resolution relevant to this issue at the 2008 Alaska Federation of Natives annual convention, which passed. The resolution encouraged the Council and NMFS (1) to take emergency action to regulate the 2009 pollock fishery such that measures would ensure the conservation and rebuilding of western Alaska Chinook salmon stocks; (2) to implement permanent regulations for the 2010 pollock fishery; and (3) to establish a bycatch hard cap of no more than 30,000 Chinook.

Eastern Interior Subsistence Regional Advisory Council, October 15, 2008, Nenana

The Eastern Interior RAC meeting was comprised primarily of RAC members, community members, environmental groups, and some State and Federal agency staff (estimate of 40 total participants). The Eastern Interior RAC represents thirteen villages along the Yukon or Tanana rivers and an additional seventeen villages within the region. The RAC emphasized several concerns about the preliminary preferred alternative and its ability to meet a goal of reduced Chinook salmon bycatch and to increase in-river fisheries. While appreciative of the efforts to communicate with the RAC on this issue, the RAC also commented that ongoing, open dialogue with the Council is long overdue and that additional, noncommercial representation on the Council is necessary.

The RAC adopted several motions, which were sent in the form of a letter to the Council (dated 1/30/09). The motions (1) supported a Chinook salmon hard cap of 29,323 for immediate implementation; (2) requested economic penalties on individual trawl vessels; (3) recommended that the pollock industry bear the cost of improved sampling methods and genetic studies on the Chinook salmon stocks impacted by the industry's bycatch; (4) recommended modification to the food bank program in order to distribute bycaught salmon to Western and Interior Alaska communities; and (5) related concerns with the length of time it takes to have a management action implemented.

Northwest Arctic Subsistence Regional Advisory Council, October 16, 2008, Kotzebue

The Northwest Arctic RAC meeting was attended primarily by RAC members and Federal and State agency staff. The region the RAC represents encompasses 11 villages on the coast of Kotzebue Sound and along the Noatak and Kobuk Rivers. The RAC did not have a quorum under which it could conduct business, due to airline cancellations due to weather. However, members present did receive the presentation and comment on the proposed action. The primary comments and questions addressed the rationale for the various range of hard caps. The RAC noted some tentativeness in providing a recommendation on the proposed action, as Chinook salmon is less important to their region relative to chum and char. The RAC noted significant interest in future management measures for chum salmon.

Western Interior Subsistence Regional Advisory Council, October 28, 2008, McGrath

The Western Interior RAC meeting was comprised of RAC members, State and Federal agency staff, and community members (estimate of 25 total participants). The region the RAC represents encompasses 27 villages along the Yukon and Kuskokwim rivers. The RAC related concerns that several external factors, including fuel prices and unsustainable management measures, put increasing pressure on subsistence users. They had several questions about the rationale supporting Alternative 4 and questioned the potential efficacy of the incentive plans and the transferability provisions. The RAC did not support the hard cap of 68,000 Chinook, noting that it represents an average of the three highest bycatch years on record.

The Western Interior RAC adopted several motions, which were sent in the form of a letter to the Council (1/30/09). The motion recommended a hard cap of 29,323 Chinook, which represents the long-term historic range of Chinook salmon bycatch, but that a hard cap within the 10-year average of 29,000 – 38,000 Chinook would be acceptable. While the RAC does not support the higher cap of 68,000 Chinook, if a higher cap figure is adopted, selling or trading the caps should not be allowed. The motion also recommended that all salmon bycatch should be processed and returned to Alaskan communities within the rivers of origin, but not to replace subsistence activities. Finally, the RAC requested a review of the pollock quota and consideration of season reductions to protect the pollock stock, noting concern that as the pollock stock becomes less abundant, more fishing effort follows, which results in additional salmon bycatch.

Nome Council Outreach Meeting, January 22, 2009,

Council staff organized an outreach meeting in Nome to reach the Bering Straits communities. The Alaska Sea Grant Marine Advisory Program (MAP) agent in Nome helped publicize the meeting and provided equipment, and the Nome Eskimo Community hosted the meeting at its tribal hall. This meeting was also coordinated with NMFS, in that NMFS conducted a tribal consultation with the Nome Eskimo Community subsequent to the Council's outreach meeting. The outreach meeting was also intended to provide background information to facilitate the tribal consultation. The meeting in Nome was publicized through the community's email list serve, which generally reaches the sector of Nome which attends events, meetings, and activities. The meeting was also advertised on two radio stations in Nome. A letter was also sent to 30 Bering Strait governments, IRAs, and village corporations in early January, which announced the meeting and the ability to set up remote audio/internet sites in several villages, which would allow nearby villages to listen to the meeting real-time and follow the powerpoint presentation on a host computer. In addition, the Nome MAP agent posted the Council outreach flyer at about 15 locations in Nome.

An estimated 50 people attended the meeting in Nome, with several additional people participating remotely from the communities of Stebbins, Brevig Mission, Elim, Unalakleet, and Kotzebue. A broad

cross-section of individuals participated, including ADF&G staff, Board members and staff of the NSEDC, members of the pollock industry, an environmental group, staff from the local radio and newspaper, subsistence and commercial salmon fishermen, tribal representatives from the Nome Eskimo Community, Elim, Stebbins, and Brevig Mission, and staff of Kawerak, Inc., which is the regional non-profit corporation organized by the Bering Straits Native Association to provide services throughout the Bering Straits Region.

Feedback provided at this meeting was also varied, but centered heavily on the cultural significance and traditional use value of Chinook to surrounding communities, and the lack of adequate analysis in the EIS/RIR on the impacts to and characterization of the subsistence fishery. Participants also provided several comments on Alternative 4, and the concept of the industry incentive plans. Overall, those who addressed a specific cap level supported a lower cap of 30,000 Chinook salmon, noting that the starting place for such a measure should be conservative due to the lack of genetic data and uncertainty. Comments were also made noting that the local CDQ group, NSEDC, contributes heavily to the Norton Sound economy in terms of employment, community share payments, and fishery infrastructure projects, and that the majority of CDQ funding is directly related to the pollock fishery. Formal comments on the EIS/RIR have been provided from several of the tribes and organizations that attended this meeting.

1.5.7 Tribal Governments and Alaska Native Claims Settlement Act Regional and Village Corporations

NMFS is obligated to consult and coordinate with federally recognized tribal governments and Alaska Native Claims Settlement Act (ANCSA) regional and village corporations on a government-to-government basis pursuant to Executive Order 13175, the Executive Memorandum of April 29, 1994, on "Government-to-Government Relations with Native American Tribal Governments," and Division H, Section 161 of the Consolidated Appropriations Act of 2004 (Public Law 108-199, 188 Stat. 452), as amended by Division H, Section 518 of the Consolidated Appropriations Act of 2005 (Public Law 108-447, 118 Stat. 3267). More information about Executive Order 13175 and related law is in Section 1.7. The tribal consultation process is an opportunity for NMFS to learn about local subsistence use and harvest of Chinook salmon as well as the cultural value and importance of subsistence. The information NMFS learned during these consultations is reflected in the EIS and RIR analysis.

NMFS's consultation process involves the tribes early and throughout the decision-making process in accordance to Executive Order 13175. Presently, for major federal actions that require an EIS, we begin the tribal consultation process at scoping, which is the first step in the decision-making process. Scoping is intended to identify the issues associated with, and alternatives to, the proposed action. The NMFS Regional Administrator sends each tribe a letter explaining the proposed action and how an interested tribe can provide comments and contact NMFS for a consultation. Thereafter, NMFS consults with any tribe upon request. Subsequently, upon release of the DEIS, NMFS sends another letter to each tribe soliciting comments on the scope and content of the document, providing information on how to receive a copy, and again inviting interested tribes to contact NMFS for a consultation. Likewise, NMFS sends a similar letter with the release of the final EIS. Each tribal consultation letter identifies the NMFS point of contact for the proposed action. That person is typically NMFS's most knowledgeable person on the issues relevant to the proposed action. The NMFS point of contact works with each interested tribe to conduct the consultation between the tribe and the NMFS Regional Administrator or his designee.

To start the consultation process for this action, NMFS mailed letters to Alaska tribal governments, Alaska Native corporations, and related organizations on December 28, 2007, when NMFS started the EIS scoping process. The letter provided information about the proposed action and EIS process and solicited consultation and coordination with Alaska Native representatives. NMFS received 12 letters

providing scoping comments from tribal government and Alaska Native Corporation representatives, which were summarized and included in the scoping report. Additionally, a number of tribal representatives and tribal organizations provided written public comments and oral public testimony to the Council during the Council outreach meetings and the Council meetings where the Council developed the alternatives.

Once the DEIS was released, NMFS sent another letter to Alaska Native representatives to announce the release of the document and solicit comments concerning the scope and content of the DEIS. The letter included a copy of the executive summary and provided information on how to obtain a printed or electronic copy of the DEIS. Also, NMFS mailed 23 copies of the DEIS to the Alaska Native representatives that requested a copy or provided written comments to NMFS. NMFS received 14 letters providing comments on the DEIS and the alternatives from tribal government, tribal organization, and Alaska Native corporation representatives, which are summarized and responded to in this Comment Analysis Report in Chapter 9. These comments provide information about local subsistence use of salmon and the importance of Chinook salmon to individuals and communities in Alaska. The comment letters are posted on the NMFS Alaska Region website.[18]

Additionally, NMFS received letters from seven tribal government representatives requesting a consultation; the Nome Eskimo Community, Chinik Eskimo Community (Golovin), the Stebbins Community Association, the Native Village of Unalakleet, the Native Village of Kwigillingok, the Native Village of Kipnuk, and the Alakanuk Tribal Council.

NMFS held a tribal consultation in Nome on January, 22, 2009 in conjunction with a Council outreach meeting on Chinook salmon bycatch. Consulting in person with NMFS in Nome were representatives of the Nome Eskimo Community, the Chinik Eskimo Community, and the Native Village of Elim. Consulting by telephone were representatives of the Stebbins Community Association and the Native Village of Unalakleet. Council staff provided information on the DEIS, the alternatives, and the schedule for Council action. NMFS staff provided additional information and then listened to the concerns and issues raised by the tribal representatives. The issues and concerns discussed at the consultation are reflected in the letter from the Nome Eskimo Community, which is summarized and responded to in the CAR.

NMFS also held a tribal consultation teleconference on March 17, 2009, with the Native Village of Kwigillingok and the Bering Sea Elders Advisory Group. The issues and concerns discussed at the consultation are reflected in the letter from the Bering Sea Elders Advisory Group, which is summarized and responded to in the CAR and posted on the NMFS Alaska Region web page.

NMFS also held a tribal consultation teleconference on October 19, 2009, with the Alakanuk Tribal Council and the Native Village of Kipnuk. The Regional Administrator provided information the Chinook and chum salmon bycatch in the Bering Sea in 2009 and then listened to the concerns and issues raised by the tribal representatives. The tribal representatives expressed the difficulty of meeting subsistence needs of Chinook salmon in 2009. They explained a cap of 60,000 Chinook salmon was too high to conserve the species and recommended a cap of 29,000 Chinook salmon.

Once NMFS released the Final EIS and Final RIR, NMFS sent another letter to Alaska Native representatives to announce the release of the document and solicit comments. The letter included a copy of the executive summary and provided information on how to obtain a printed or electronic copy of the

[18] http://www.fakr.noaa.gov/sustainablefisheries/bycatch/default.htm

Final EIS and Final RIR. Also, NMFS mailed 28 copies of the Final EIS and Final RIR to the Alaska Native representatives that requested a copy or provided written comments to NMFS.

1.5.8 Cooperating Agencies

The Council for Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA emphasizes agency cooperation early in the NEPA process. NMFS is the lead agency for this EIS. The State of Alaska Department of Fish and Game (ADF&G) is a cooperating agency and participated in the development of the EIS and RIR and provided data, staff, and review for this analysis. ADF&G has an integral role in the development of the EIS and RIR because it manages the commercial salmon fisheries, collects and analyzes salmon biological information, and represents the people who live in Alaska.

Additionally, at the October and December 2007 and the February, April, and June 2008 Council meetings, Council and NMFS staff informed representatives of the U.S Coast Guard, Washington Department of Fish and Wildlife, Oregon Department of Fish and Wildlife, the U.S. State Department, and the U.S. Fish and Wildlife Service of the development of the Draft EIS/RIR/IRFA. NMFS mailed a copy of the DEIS/RIR/IRFA and Final EIS and RIR to all members of the Council, its Scientific and Statistical Committee and its advisory Panel.

1.6 Statutory Authority for this Action

Under the Magnuson-Stevens Act (16 USC 1801, et seq.), the United States has exclusive fishery management authority over all marine fishery resources found within the EEZ. The management of these marine resources is vested in the Secretary of Commerce (Secretary) and in the regional fishery management councils. In the Alaska Region, the Council has the responsibility for preparing FMPs and FMP amendments for the marine fisheries that require conservation and management, and for submitting its recommendations to the Secretary. Upon approval by the Secretary, NMFS is charged with carrying out the federal mandates of the Department of Commerce with regard to marine and anadromous fish.

The Bering Sea pollock fishery in the EEZ off Alaska is managed under the FMP for Groundfish of the Bering Sea and Aleutian Islands. The salmon bycatch management measures under consideration would amend this FMP and federal regulations at 50 CFR 679. Actions taken to amend FMPs or implement other regulations governing these fisheries must meet the requirements of federal law and regulations.

1.7 Relationship of this Action to Federal Laws, Policies, and Treaties

While NEPA is the primary law directing the preparation of this EIS, a variety of other federal laws and policies require environmental, economic, and socioeconomic analyses of proposed federal actions. This section addresses the CEQ regulations, at 40 CFR 1502.2(d), that require an EIS to state how alternatives considered in it and decisions based on it will or will not achieve the requirements of sections 101 and 102(1) of NEPA and other environmental laws and policies. The EIS and RIR contain the required analysis of the proposed federal action and its alternatives to ensure that the action complies with these additional federal laws and executive orders:

- National Environmental Policy Act (NEPA)
- Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act)
- Endangered Species Act (ESA)
- Marine Mammal Protection Act (MMPA)
- Administrative Procedure Act (APA)

- Regulatory Flexibility Act (RFA)
- Information Quality Act (IQA)
- Coastal Zone Management Act (CZMA)
- Alaska National Interest Lands Conservation Act (ANILCA)
- American Fisheries Act (AFA)
- Executive Order 12866: Regulatory planning and review
- Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
- Executive Order 12898: Environmental Justice
- Pacific Salmon Treaty and the Yukon River Agreement

The following provides details on the laws and executive orders directing this analysis. None of the alternatives under consideration threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

1.7.1 National Environmental Policy Act

NEPA establishes our national environmental policy, provides an interdisciplinary framework for environmental planning by federal agencies, and contains action-forcing procedures to ensure that federal decision-makers take environmental factors into account. NEPA does not require that the most environmentally desirable alternative be chosen, but does require that the environmental effects of all the alternatives be analyzed equally for the benefit of decision-makers and the public.

NEPA has two principal purposes:

1. To require federal agencies to evaluate the potential environmental effects of any major planned federal action, ensuring that public officials make well-informed decisions about the potential impacts.

2. To promote public awareness of potential impacts at the earliest planning stages of major federal actions by requiring federal agencies to prepare a detailed environmental evaluation for any major federal action significantly affecting the quality of the human environment.

NEPA requires an assessment of the biological, social, and economic consequences of fisheries management alternatives and provides that members of the public have an opportunity to participate in the decision-making process. In short, NEPA ensures that environmental information is available to government officials and the public before decisions are made and actions are taken.

Title II, Section 202 of NEPA (42 U.S.C. 4342) created the CEQ. The CEQ is responsible for, among other things, the development and oversight of regulations and procedures implementing NEPA. The CEQ regulations provide guidance for federal agencies regarding NEPA's requirements (40 CFR Part 1500) and require agencies to identify processes for issue scoping, for the consideration of alternatives, for developing evaluation procedures, for involving the public and reviewing public input, and for coordinating with other agencies—all of which are applicable to the Council's development of FMPs.

NOAA Administrative Order 216-6 describes NOAA's policies, requirements, and procedures for complying with NEPA and the implementing regulations issued by the CEQ. This Administrative Order provides comprehensive and specific procedural guidance to NMFS and the Council for preparing and adopting FMPs.

Federal fishery management actions subject to NEPA requirements include the approval of FMPs, FMP amendments, and regulations implementing FMPs. Such approval requires preparation of the appropriate NEPA analysis (Categorical Exclusion, Environmental Assessment, or EIS).

NMFS decided to prepare an EIS to assist agency planning and decision-making. The purpose of an EIS is to predict and disclose the impacts of the proposed action and its alternatives on the human environment. NEPA and the Magnuson-Stevens Act requirements for schedule, format, and public participation are compatible and allow one process to fulfill both obligations.

1.7.2 Magnuson-Stevens Fishery Conservation and Management Act

The Magnuson-Stevens Act authorizes the U.S. to manage its fishery resources in the EEZ. The management of these marine resources is vested in the Secretary and in regional fishery management councils. In the Alaska Region, the Council is responsible for preparing FMPs for marine fishery resources requiring conservation and management. NMFS is charged with carrying out the federal mandates with regard to marine fish. The NMFS Alaska Region and Alaska Fisheries Science Center research, draft, and review the management actions recommended by the Council. The Magnuson-Stevens Act established the required and discretionary provisions of an FMP and created ten National Standards to ensure that any FMP or FMP amendment is consistent with the Act

The Magnuson-Stevens Act emphasizes the need to protect fish habitat. Under the law, the Council has amended its FMPs to identify essential fish habitat (EFH). For any actions that may adversely impact EFH, the Magnuson-Stevens Act requires NMFS to provide recommendations to federal and state agencies for conserving and enhancing EFH. In line with NMFS policy of blending EFH assessments into existing environmental reviews, NMFS intends the analysis contained in Chapter 8 of this EIS to also serve as an EFH assessment.

The actions under examination in the EIS and RIR are Chinook salmon bycatch minimization measures for the Bering Sea pollock fishery. While each FMP amendment must be comply with all ten national standards, National Standards 1 and 9 are directly guide the proposed action. National Standard 9 of the Magnuson-Stevens Act requires that conservation and management measures shall, to the extent practicable, minimize bycatch. National Standard 1 of the Magnuson-Stevens Act requires that conservation and management measures prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.

1.7.3 Endangered Species Act (ESA)

The ESA is designed to conserve endangered and threatened species of fish, wildlife, and plants. The ESA is administered jointly by NMFS and the USFWS. With some exceptions, NMFS oversees cetaceans, seals and sea lions, marine and anadromous fish species, and marine plant species. USFWS oversees walrus, sea otter, seabird species, and terrestrial and freshwater wildlife and plant species.

The listing of a species as threatened or endangered is based on the biological health of that species. Threatened species are those likely to become endangered in the foreseeable future (16 U.S.C. 1532(20)). Endangered species are those in danger of becoming extinct throughout all or a significant portion of their range (16 U.S.C. 1532(6)). Species can be listed as endangered without first being listed as threatened.

Currently, with the listing of a species under the ESA, the critical habitat of the species must be designated to the maximum extent prudent and determinable (16 U.S.C. 1533(b)(6)(C)). The ESA defines critical habitat as those specific areas that are essential to the conservation of a listed species and that may be in need of special consideration. Federal agencies are prohibited from undertaking actions that destroy or adversely modify designated critical habitat.

Federal agencies have a mandate to conserve listed species and federal actions, activities or authorizations (hereafter referred to as federal actions) must be in compliance with the provisions of the ESA. Section 7 of the ESA provides a mechanism for consultation by the federal action agency with the appropriate expert agency (NMFS or USFWS). Informal consultations are conducted for federal actions that have no adverse affects on the listed species. The action agency can prepare a biological assessment to determine if the proposed action would adversely affect listed species or modify critical habitat. The biological assessment contains an analysis based on biological studies of the likely effects of the proposed action on the species or habitat.

Formal consultations, resulting in biological opinions, are conducted for federal actions that may have an adverse affect on the listed species. Through the biological opinion, a determination is made about whether the proposed action poses "jeopardy" or "no jeopardy" of extinction or adverse modification or destruction of designated critical habitat for the listed species. If the determination is that the proposed or on-going action will cause jeopardy or adverse modification of critical habitat, reasonable and prudent alternatives may be suggested which, if implemented, would modify the action to no longer pose the jeopardy of extinction or adverse modification to critical habitat for the listed species. These reasonable and prudent alternatives must be incorporated into the federal action if it is to proceed. A biological opinion with the conclusion of no jeopardy or adverse modification of critical habitat may contain conservation recommendations intended to further reduce the negative impacts to the listed species. These recommendations are advisory to the action agency (50 CFR 402.14(j)). If the likelihood exists of any take[19] occurring during promulgation of the action, an incidental take statement may be appended to a biological opinion to provide for the amount of take that is expected to occur from normal promulgation of the action. An incidental take statement is not the equivalent of a permit to take a listed species.

This EIS contains pertinent information on the ESA-listed species that occur in the action area and that have been identified in previous consultations as potentially impacted by the Bering Sea pollock fishery. Analysis of the impacts of the alternatives is in the chapters addressing those resource components. Impacts on ESA-listed salmon are discussed in Chapter 5 Chinook Salmon. Impacts on ESA-listed marine mammals and seabirds are discussed in Chapter 8 Other Marine Resources. NMFS Sustainable Fisheries, Alaska Region, conducted an ESA Section 7 consultation on the proposed action with NMFS Northwest Region for listed salmon. On December 2, 2009, the NMFS Northwest Region issued a Supplemental Biological Opinion that concluded that the proposed action is not likely to jeopardize Upper Willamette Chinook or Lower Columbia River Chinook, and will have no effect on designated critical habitat for these two species (NMFS 2009).

1.7.4 Marine Mammal Protection Act (MMPA)

Under the MMPA, NMFS has a responsibility to conserve marine mammals, specifically cetaceans and pinnipeds (other than walrus). The USFWS is responsible for sea otter, walrus, and polar bear. Congress found that certain species and stocks of marine mammals are or may be in danger of extinction or

[19] The term "take" under the ESA means "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct" (16 U.S.C. § 1532(19)).

depletion due to human activities. Congress also declared that marine mammals are resources of great international significance.

The primary management objective of the MMPA is to maintain the health and stability of the marine ecosystem, with a goal of obtaining an optimum sustainable population of marine mammals within the carrying capacity of the habitat. The MMPA is intended to work in concert with the provisions of the ESA. The Secretary is required to give full consideration to all factors regarding regulations applicable to the "take" of marine mammals, including the conservation, development, and utilization of fishery resources, and the economic and technological feasibility of implementing the regulations. If a fishery affects a marine mammal population, the Council or NMFS may be requested to consider measures to mitigate adverse impacts. This EIS analyzes the potential impacts of the pollock fishery and changes to the fishery under the alternatives on marine mammals in Chapter 8.

1.7.5 Administrative Procedure Act (APA)

The APA requires federal agencies to notify the public before rule making and provide an opportunity to comment on proposed rules. General notice of proposed rule making must be published in the *Federal Register*, unless persons subject to the rule have actual notice of the rule. Proposed rules published in the *Federal Register* must include reference to the legal authority under which the rule is proposed and explain the nature of the proposal including a description of the proposed action, why it is being proposed, its intended effect, and any relevant regulatory history that provides the public with a well-informed basis for understanding and commenting on the proposal. The APA does not specify how much time the public must be given for prior notice and opportunity to comment; however, Section 304 (b) of the Magnuson-Stevens Act provides that proposed regulations that implement an FMP or FMP amendment, or that modify existing regulations, must have a public comment period of 15 to 60 days.

After the end of a comment period, the APA requires that comments received be summarized and responded to in the final rule notice. Further, the APA requires that the effective date of a final rule is no less than 30 days after its publication in the *Federal Register*. This delayed effectiveness, or "cooling off" period, is intended to give the affected public time to become aware of, and prepared to comply with the requirements of the rule. For fishery management regulations, the primary effect of the APA, in combination with the Magnuson-Stevens Act, NEPA, and other statutes, is to allow for public participation and input into the development of FMPs, FMP amendments, and regulations implementing FMPs. Regulations implementing the proposed salmon bycatch reduction measures will be published in the *Federal Register* in accordance with the APA and the Magnuson-Stevens Act.

1.7.6 Regulatory Flexibility Act (RFA)

The RFA requires federal agencies to consider the economic impact of their regulatory proposals on directly regulated small entities, analyze alternatives that minimize adverse economic impacts on this class of small entities, and make their analyses available for public comment. The RFA applies to a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions. The Small Business Administration has established size criteria for all major industry sectors in the United States, including fish harvesting and fish processing businesses.

The RFA applies to any regulatory actions for which prior notice and comment is required under the APA. After an agency begins regulatory development and determines that the RFA applies, unless an agency can certify that an action subject to the RFA will not have a significant economic impact on a substantial number of small entities, the agency must prepare an initial regulatory flexibility analysis

(IRFA) to accompany a proposed rule. Based upon the IRFA, and received public comment, assuming it is still not possible to certify, the agency must prepare a final regulatory flexibility analysis (FRFA) to accompany the final rule. NMFS has published revised guidelines, dated August 16, 2000, for RFA analyses; they include criteria for determining if the action would have a significant impact on a substantial number of small entities.

The DEIS contained a draft IRFA as Chapter 11 that identified the small entities directly regulated by the proposed action. The preamble to the proposed regulations that will be published in the *Federal Register* will contain the IRFA that evaluates the adverse impacts of this action on directly regulated small entities, in compliance with the RFA.

1.7.7 Information Quality Act (IQA)

The IQA directs the OMB to issue government-wide policy and procedural guidance to all federal agencies to ensure and maximize the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by federal agencies. The OMB's guidelines require agencies to develop their own guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of information disseminated by the agency. NOAA published its guidelines in September 2002.[20] Pursuant to the IQA and the NOAA guidelines, this information product has undergone a pre-dissemination review by NMFS, completed on November 30, 2009.

1.7.8 Coastal Zone Management Act (CZMA)

The CZMA is designed to encourage and assist states in developing coastal management programs, to coordinate State activities, and to safeguard regional and national interests in the coastal zone. Section 307(C) of the CZMA requires that any federal activity affecting the land or water or uses natural resources of a state's coastal zone be consistent with the state's approved coastal management program, to the maximum extent practicable.

A proposed fishery management action that requires an FMP amendment or implementing regulations must be assessed to determine whether it directly affects the coastal zone of a state with an approved coastal zone management program. If so, NMFS must provide the state agency having coastal zone management responsibility with a consistency determination for review at least 90 days before final action. Prior to implementation of the proposed action, NMFS will determine whether this action is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the State of Alaska and submit this determination for review by the responsible state agency.

1.7.9 Alaska National Interest Lands Conservation Act (ANILCA)

Among other things, Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) creates a priority for "subsistence uses" over the taking of fish and wildlife for other purposes on public lands (16 U.S.C. 3114). ANILCA also imposes obligations on federal agencies with respect to decisions affecting the use of public lands, including a requirement that they analyze the effects of those decisions on subsistence uses and needs (16 U.S.C. 3120).

[20] http://www.noaanews.noaa.gov/stories/iq.htm

ANILCA defines "public lands" as lands situated "in Alaska" which, after December 2, 1980, are federal lands, except those lands selected by or granted to the State of Alaska, lands selected by an Alaska Native Corporation under the Alaska Native Claims Settlement Act (ANCSA), and lands referred to in section 19(b) of ANCSA (16 U.S.C. 3102(3)).

The U.S. Supreme Court has ruled that ANILCA's use of "in Alaska" refers to the boundaries of the State of Alaska and concluded that ANILCA does not apply to the outer continental shelf (OCS) region (*Amoco Prod. Co. v. Village of Gambell*, 480 U.S. 531, 546-47 (1987)). The action area for Chinook salmon bycatch management is in the Bering Sea EEZ, which is in the OCS region.

Although ANILCA does not directly apply to the OCS region, NMFS aims to protect such uses pursuant to other laws, such as NEPA and the Magnuson-Stevens Act. The RIR evaluates the consequences of the proposed actions on subsistence uses. Thus NMFS and the Council remain committed to ensuring that federal fishery management actions consider the importance of subsistence uses of salmon and protecting such uses from any adverse consequences. One of the reasons NMFS and the Council have proposed implementing salmon bycatch reduction measures is to protect the interests of salmon subsistence users.

1.7.10 American Fisheries Act (AFA)

The AFA established a cooperative management program for the Bering Sea pollock fisheries. Among the purposes of the AFA was to tighten U.S. vessel ownership standards and to provide the pollock fleet the opportunity to conduct its fishery in a more economically rational manner while protecting non-AFA participants in other fisheries. Since the passage of the AFA, the Council has taken an active role in the development of management measures to implement the various provisions of the AFA. The AFA EIS was prepared to evaluate sweeping changes to the conservation and management program for the Bering Sea pollock fishery and to a lesser extent, the management programs for the other groundfish fisheries of the GOA and BSAI, the king and Tanner crab fisheries of the BSAI, and the scallop fishery off Alaska (NMFS 2002). Under the Magnuson-Stevens Act, the Council prepared Amendments 61/61/13/8 to implement the provisions of the AFA in the groundfish, crab, and scallop fisheries. Amendments 61/61/13/8 incorporated the relevant provisions of the AFA into the FMPs and established a comprehensive management program to implement the AFA. The EIS evaluated the environmental and economic effects of the management program that was implemented under these amendments, and developed scenarios of alternative management programs for comparative use. The AFA EIS is available on the NMFS Alaska Region website.[21]

NMFS published the final rule implementing the AFA on December 30, 2002 (67 FR 79692). The structure and provisions of the AFA constrain the types of measures that can be implemented to reduce salmon bycatch in the pollock fishery. The RIR contains a detailed discussion of the pollock fishery under the AFA and the relationship between the Chinook salmon bycatch management and the AFA.

1.7.11 Executive Order 12866: Regulatory planning and review

The purpose of Executive Order 12866, among other things, is to enhance planning and coordination with respect to new and existing regulations, and to make the regulatory process more accessible and open to the public. In addition, Executive Order 12866 requires agencies to take a deliberative, analytical approach to rule making, including assessment of costs and benefits of the intended regulations. For

[21] http://www.fakr.noaa.gov/sustainablefisheries/afa/eis2002.pdf

fisheries management purposes, it requires NMFS to (1) prepare a regulatory impact review (RIR) for all regulatory actions; (2) prepare a unified regulatory agenda twice a year to inform the public of the agency's expected regulatory actions; and (3) conduct a periodic review of existing regulations.

The purpose of an RIR is to assess the potential economic impacts of a proposed regulatory action. As such, it can be used to satisfy NEPA requirements and serve as a basis for determining whether a proposed rule will have a significant impact on a substantial number of small entities under the RFA. The RIR is frequently combined with an EIS and an IRFA in a single document that addresses the analytical requirements of NEPA, RFA, and Executive Order 12866. Criteria for determining "significance" for Executive Order 12866 purposes, however, are different than those for determining "significance" for NEPA or RFA purposes. A "significant" rule under Executive Order 12866 is one that is likely to:

- Have an annual effect on the economy (of the nation) of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;
- Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Although fisheries management actions rarely have an annual effect on the national economy of $100 million or more or trigger any of the other criteria, the Secretary of Commerce with the Office of Management and Budget (OMB), makes the final determination of significance under this Executive Order, based in large measure on the analysis in the RIR. An action determined to be significant is subject to OMB review and clearance before its publication and implementation.

The RIR, in Volume II, identifies economic impacts and assesses of costs and benefits of the proposed salmon bycatch reduction measures.

1.7.12 Executive Order 13175: Consultation and coordination with Indian tribal governments

Executive Order 13175 on consultation and coordination with Indian tribal governments establishes the requirement for regular and meaningful consultation and collaboration with Indian tribal governments in the development of federal regulatory practices that significantly or uniquely affect their communities; to reduce the imposition on unfunded mandates on Indian tribal governments; and to streamline the application process for and increase the availability of waivers to Indian tribal governments. This Executive Order requires federal agencies to have an effective process to involve and consult with representatives of Indian tribal governments in developing regulatory policies and prohibits regulations that impose substantial, direct compliance costs on Indian tribal communities.

Additionally, Congress extended the consultation requirements of Executive Order 13175 to Alaska Native corporations in Division H, Section 161 of the Consolidated Appropriations Act of 2004 (Public Law 108-199; 188 Stat. 452), as amended by Division H, Section 518 of the Consolidated Appropriations Act of 2005 (Public Law 108-447, 118 Stat. 3267). Public Law 108-199 states in Section 161 that "The Director of the Office of Management and Budget shall hereafter consult with Alaska Native corporations on the same basis as Indian tribes under Executive Order No. 13175." Public Law 108-447, in Section

518, amends Division H, Section 161 of Public Law 108-199 to replace Office of Management and Budget with all federal agencies.
In conjunction with the preparation of this EIS and RIR, NMFS has initiated a meaningful government-to-government consultation process with affected tribal governments and Alaska Native corporations, as described in Section 1.5.7.

1.7.13 Executive Order 12898: Environmental Justice

Executive Order 12898 requires that federal agencies make achieving environmental justice part of their mission by identifying and addressing disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low income populations in the United States. Salmon bycatch in the pollock fisheries impacts the in-river users of salmon in western and Interior Alaska, many of whom are Alaska Native. Additionally, a growing number of Alaska Natives participate in the pollock fisheries through the federal CDQ Program and, as a result, coastal native communities participating in the CDQ Program derive substantial economic benefits from the pollock fishery. The RIR analyzes the effects of this federal action on minority populations in Chapter 8 on Environmental Justice.

1.7.14 Pacific Salmon Treaty and the Yukon River Agreement

In 2002, the United States and Canada signed the Yukon River Agreement to the Pacific Salmon Treaty. The Yukon River Agreement states that the "Parties shall maintain efforts to increase the in-river run of Yukon River origin salmon by reducing marine catches and by-catches of Yukon River salmon. They shall further identify, quantify and undertake efforts to reduce these catches and by-catches" (Art. XV, Annex IV, Ch. 8, Cl. 12). The Yukon River Agreement also established the Yukon River Panel as an international advisory body to address the conservation, management, and harvest sharing of Canadian-origin salmon between the U.S. and Canada. This proposed action is an element of the Council's efforts to reduce bycatch of salmon in the pollock fishery and ensure compliance with the Agreement. Additionally, in developing the alternatives under consideration, NMFS and the Council have considered the recommendations of the Yukon River Panel. This EIS and RIR addresses the substantive issues involving the portion of Chinook salmon taken as bycatch in the Bering Sea pollock fishery that originated from the Yukon River and the impacts of salmon bycatch in the pollock fishery on returns of Chinook salmon to the Canadian portion of the Yukon River.