

My name is Anna Crary. I am an attorney with the law firm Landye Bennett Blumstein and I work with the Chignik Intertribal Coalition, a coalition of the five tribes in the Chignik Management Area who were devastated by the failure of the Chignik sockeye run in 2018.

In 2004, the Board amended 5 AAC 09.365, the South Unimak and Shumagin Islands June salmon management plan.<sup>1</sup> The amendments increased sockeye harvest opportunity for Area M fisheries by almost tripling maximum allowed fishing hours, from 144 hours to 416 hours, between June 7 and June 29. The amendments also expanded the area already opened to fishing to include the entire Unimak and Southwestern district, East and West Pavlof Bays, Bechevin Bay, and Shumagin Islands section. The Board justified the expansion of this intercept fishery based on a 1987 tagging study showing that the June fishery in South Unimak and the Shumagin Islands was a low-impact fishery with low harvest rates of Bristol Bay sockeye and AYK chums.<sup>2</sup>

In 2004, the Board did not consider the impact its expansion of a known interception fishery would have on Chignik and Chignik-bound stocks. But, abundant evidence demonstrates that 2004's unmitigated expansion of a known intercept fishery has had dire and direct effects on Area L. It is time for the Board to revisit its 2004 decision and amend 5 AAC 09.365 to equitably share the burden of conservation of sockeye stocks between Area M and Area L.

Revisiting its 2004 decision is supported by the Board's own policy. In its findings published in 2004, the Board noted that "[i]f after another three years the 2004 measures result in unexpected consequences, the board will be able to make adjustments accordingly."<sup>3</sup> Revising 5 AAC 09.365 so that Area M shares the burden of conservation on Chignik-bound sockeye stocks is consistent with the Board's intent to reconsider the regulation if the effect of expanding a known intercept fishery had harmful consequences.

Amending 5 AAC 09.365 is also consistent with what the best available science shows about the presence of Chignik-bound sockeye in areas opened by the Board in 2004 – particularly, the Shumagin Islands and the Dolgoi Islands in June and July. In 2004, the best available science was a 1987 tagging study that focused on Bristol Bay sockeye and AYK chums. Four years later, WASSIP was published. WASSIP clearly shows the presence of a variable but significant percentage of Chignik-bound sockeye in the Shumagin Islands area in both June<sup>4</sup> and July.<sup>5</sup> WASSIP also documents the presence of a variable but significant percentage of Chignik-bound sockeye in the Dolgoi Islands during June – an area previously closed to the harvest of sockeye salmon in June, but opened by the Board's action in 2004.<sup>6</sup>

Compliance with Alaska's mixed stock fisheries policy also necessitates amending 5 AAC 09.365. Where a mixed stock fishery management plan neither allocates nor restricts harvest, the burden

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<sup>1</sup> See Alaska Board of Fisheries Finding #2004-229-FB.

<sup>2</sup> *Id.* at 2.

<sup>3</sup> *Id.* at 5.

<sup>4</sup> See WASSIP p. 184 (showing that in June 2006, between 7.1% and 28.8% of the sockeye stock present in the Shumagin Islands area are bound for Black Lake).

<sup>5</sup> See WASSIP, p. 63 (July, showing that in 2006, between 14.9% and 38.4% of the sockeye stock present in the Shumagin Islands area are bound for Black Lake).

<sup>6</sup> See WASSIP, p. 187-189 (showing that in 2006-2008, between 21% and 73.9% of the sockeye stock composition in the Dolgoi Island area are bound for Black Lake).

of conservation<sup>7</sup> must be shared among all fisheries in close proportion to their respective harvest on the stock of concern.<sup>8</sup> There is no dispute that Area M sockeye fisheries are mixed stock fisheries. There is no allocation of those stocks (other than SEDM),<sup>9</sup> and under current regulations, Area M bears none of the burden of conservation for the sockeye stocks to which they have unlimited access. Continued management of the Area M fishery without making that fishery bear its fair share of the burden of conservation will contribute to the demise of the sockeye fishery in Area L.

The Board's mandatory allocation principles also support reverting to time and area limits imposed that existed before 2004.<sup>10</sup> Area M's aggressive prosecution of a June sockeye fishery on a mixed stock known to have significant percentages heading for Chignik's terminal fishery reduces Chignik's commercial fishing opportunity, and implicates the survival of Chignik's historical commercial sockeye fishery. The majority of the participants in the Chignik fishery are local Alaskan residents from Chignik Lake, Chignik Lagoon, Chignik Bay, Perryville, Ivanof Bay whose families have traditionally fished those waters for hundreds if not thousands of years.

In 2018, Chignik did not have a commercial sockeye fishery, nor did the early or late Chignik sockeye runs meet their minimal escapement goals.<sup>11</sup> However, in June 2018, Area M fished on Chignik-bound sockeye stocks for three continuous weeks. Despite the Board taking emergency action to restrict Area M fishing times and opportunities in July 2018, Area M continued to fish throughout July while the Chignik fishery remained closed. Unlike the Area M fleet, if Chignik doesn't have a sockeye fishery, its fishermen can't go anywhere else. Chignik's June sockeye fishery has crucial economic importance to the Chignik area. Without that fishery, the Chignik's villages and municipalities will cease to exist.

An average Chignik sockeye harvest is 1.4 million fish. Since the unmitigated expansion of Area M's interception fishery in 2004, Chignik's sockeye harvest has fallen well below that average seven times.<sup>12</sup> This cannot be a coincidence. Reliable evidence, established fisheries management regulations, and the Board's own policy supports revising 5 AAC 09.365 to equitably share the burden of conservation of Chignik-bound sockeye stocks between Area L and Area M. The time has come.

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<sup>7</sup> Alaska's policy for the management of sustainable salmon fisheries defines the term "burden of conservation" as the restrictions imposed by the board or department upon various users in order to achieve escapement, rebuild, or in some other way conserve a specific salmon stock or group of stocks; this burden, in the absence of a salmon fishery management plan, will be generally applied to users in close proportion to the users' respective harvest of the salmon stock. *See* 5 AAC 39.222(f)(4).

<sup>8</sup> 5 AAC 39.220(b).

<sup>9</sup> *But cf* 5 AAC 09.366 (allocating 7.6% of Chignik-bound sockeye to the SEDM); *see also* 5 AAC 18.360 (allocating 15% of Chignik-bound sockeye to the Cape Igvak section).

<sup>10</sup> AS 16.05.251(e).

<sup>11</sup> There is a dispute as to whether the sonar counts the ADFG relied on in reporting the size of the late run escapement are accurate. Furthermore, the ADFG failed to consider the late July / early August 2018 GSI sample and further failed to assign escapement to the appropriate runs.

<sup>12</sup> *See* Chignik Management Area Report No. 18-32, p.37.