April 3, 2020

The Honorable Wilbur Ross
Secretary of Commerce
United States Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

Re: Guidance and Recommendations for the Rapid Disbursement of COVID-19 Relief Funding for Tribal Fishery Participants under Section 12005

Dear Secretary Ross:

On behalf of the undersigned American Indian and Alaska Native organizations, we write to provide recommendations on the implementation of Section 12005 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act. Further, we thank you for your efforts during the COVID-19 pandemic to ensure that fishery participants are provided some relief including the disaster relief assistance provided to tribal nations pursuant to Section 312(a) of the Magnuson-Stevens Fishery Conversation and Management Act.

As part of the CARES Act, Congress has provided an additional $300 million for “fishery participants,” which includes tribal nations and tribal fishers. Tribal fisheries are not only a vital component of the tribal economy, but also of local and regional economies, and are the primary source of income for many families. The COVID-19 pandemic is having grave impacts on tribal fisheries due to fisheries being cancelled or forced to close, and lack of an available market. Tribal fisheries contribute significantly to annual fisher income and provide a ceremonial and subsistence food source for use by the community throughout the year. It is imperative that funds provided for in the CARES Act Section 12005 are distributed in a manner that provides immediate and meaningful relief to our tribal communities.

Towards that goal, we respectfully provide the following recommendations to assist you and the Department of Commerce (Commerce) with the implementation and distribution of relief funds available to tribal nations and tribal fishers who are facing grave economic hardships as a direct and indirect result of COVID-19.

Recommendations

- **Prioritization of funding.** Assistance to tribal nations and tribal fishers should be a top priority for the Secretary of Commerce because their status is different than many fishery participants. Tribal nations that possess fishing rights secured by treaties,
Executive Orders, or other federal law possess a federally reserved-right, akin to a property right in the resource. These tribal communities and tribal fishers have a disproportionate dependence on fishery resources and revenue when compared to other fishery participants because of tribal culture and a long history of inequity.

- **Timelines for review and distribution of funding.** Commerce should be accountable for rapid distribution of fishery assistance. Tribal nations have experienced severe delays in the distribution of National Oceanic and Atmospheric Administration (NOAA) Fishery Disaster Assistance funding, which is something tribal communities cannot afford during this time of crisis. Commerce should set timelines to: a) review requests for assistance; b) respond in writing to requests; c) make determinations of eligibility and assistance, and d) process and distribute checks. We also ask Commerce to provide guidance to tribal nations seeking financial assistance on the information needed to evaluate eligibility and the information needed to determine assistance levels.

- **Determination of economic impact to tribal nations and corresponding amount of assistance.** Each tribal nation, as a sovereign government, must determine the economic value of their COVID-19 related impacts to fisheries. It is important that Commerce not unilaterally determine an allocation formula, particularly since H.R. 748 § 12005 includes impacts to subsistence, cultural, and ceremonial fisheries. Since the COVID-19 fishery assistance speaks to the unique culture and legal rights of tribal nations, only these nations are able to calculate the appropriate level of assistance. Tribal nations may present a variety of numeric and narrative information to be used for determining scope of economic impacts, including but not limited to, reduced average market price per pound, reduced monthly harvest rates (all species), closed fisheries, reduced work force, increased operating costs associated with COVID-19 related difficulties, or other such information that is pertinent to a tribal nation’s particular situation.

- **Evaluating “any negative impacts to subsistence, cultural or ceremonial fisheries” provision.** The subsistence, cultural, and ceremonial provision of § 12005(b) is unique to tribal nations. Section 12005(b)(2) should be interpreted so that “subsistence, cultural and ceremonial fisheries” applies only to tribal nations or those with explicit rights to harvest secured by treaties, Executive Orders, or other federal law. Not every potential subsistence user should have parity with tribal nations that hold these explicit legal rights to that harvest.

- **Agency resources for quick relief.** We strongly encourage Commerce to reprogram resources, as appropriate, to ensure that the agency tasked with distribution has adequate staff, resources, and infrastructure to perform the tasks involved in implementing and distributing the funds.
• **Tribal nation requests.** We strongly encourage Commerce to allow tribal nations to request funds on behalf of their impacted tribal fishers and communities, and have the tribal nations distribute funds to their impacted fishers and communities.

• **Use of assistance.** Section 12005 specifies that direct relief payments are an eligible use of assistance funding, but is otherwise silent on the use of financial assistance. Tribal nations, as sovereign governments, must be given the discretion to determine the best method, amount, and use of the assistance. Also, relief funds should be made available to provide relief for market losses caused by the coronavirus pandemic, either directly or indirectly.

Stabilizing tribal fisheries and fishers during this pandemic is critical to tribal economies and the preservation of tribal lifeways and customs. Accordingly, we submit this letter to assist your implementation of Section 12005 of the CARES Act, and we support consultation with tribal governments to ensure this relief is expediently delivered.

Sincerely,

Kevin J. Allis
Chief Executive Officer
National Congress of American Indians

Joseph Valandra
Executive Director
Native American Contractors Association