June 19, 2020

Via Electronic Mail

José Francisco Cali Tzay

Special Rapporteur on the rights of indigenous peoples

c/o OHCHR-UNOG

Office of the High Commissioner for Human Rights

Palais Wilson

1211 Geneva 10, Switzerland

Email: indigenous@ohchr.org

**RE: Impact of COVID-19 on the Rights of Indigenous Peoples in the Bristol Bay Region of Alaska**

Dear Mr. Cali Tzay:

I write to you on behalf of the Bristol Bay Area Health Corporation (“BBAHC”) to present information regarding the impact of COVID-19 on the rights of Alaska Natives in the Bristol Bay Region of Alaska. BBAHC is the intertribal non-profit organization established in 1973 by the Alaska Native village governments in the Bristol Bay Region to provide health care services to Alaska Natives. BBAHC operates and manages the Kanakanak Hospital and is responsible for providing health care services to the people of the 28 Alaska Native villages in our Region.

As discussed in detail below, COVID-19 poses an imminent public health crisis in our Region as the State of Alaska has prioritized the economic interests of the commercial fishing industry in the Bristol Bay and Chignik fisheries over the rights of Alaska Natives residing in the Bristol Bay Region. BBAHC requests that you include the information from this statement in your report to the United Nations General Assembly on the impact of COVID-19 on the rights of Indigenous Peoples. Additionally, given the imminent public health emergency unfolding for the Alaska Native villages located in the Bristol Bay Region, BBAHC urges that you also consider an immediate and separate communication to the United States and the State of Alaska regarding the concerns presented in this statement.

***Background: COVID-19 and the conflict between commercial fishing interests and the rights of Alaska Natives in the Bristol Bay Region of Alaska***

The Bristol Bay Region has been home to Alaska Natives for thousands of years. Today it is also the site of one of the world's largest wild salmon fisheries. Because of the substantial annual in-migration of non-residents to Bristol Bay for the commercial fishing season, the COVID-19 pandemic poses exceptional risks to the Alaska Natives living here. Tens of thousands of non-residents arrive to the Bristol Bay Region to fill seasonal jobs as fishermen, industry support personnel, and seafood processing workers.

Bristol Bay is also among the most remote areas of Alaska. The BBAHC-operated Kanakanak Hospital is a Critical Access Hospital licensed for 16 beds, a 5-bed Emergency Department, and no Intensive Care Unit (ICU). Widespread COVID-19 infection would rapidly overwhelm our health care system capacity.

***The State of Alaska's COVID-19 Health Mandates and Tribal Efforts to Protect Human Health and Safety in Alaska***

The State of Alaska has issued statewide Health Mandates to restrain the spread of COVID-19, including travel restrictions and quarantine requirements.[[1]](#footnote-1) Consistent with these Mandates, many Alaska Native tribal governments imposed additional restrictions to limit non-resident access to their communities to mitigate the risks associated with the COVID-19 pandemic crisis. Some tribes have recommended that non-residents not enter communities, while others have even banned all outbound and inbound travel except for medical or emergency reasons. For example, the Native Village of Koyukuk voted to stop passenger travel to and from village. The Assistant Koyukuk City Manager said, "the community was devastated by earlier epidemics that wiped out more than half the village and is seeking to protect today’s elders."[[2]](#footnote-2)

In the Bristol Bay Region, BBAHC, tribal governments and tribal organizations joined together to address issues associated with the COVID-19 pandemic and the 2020 fishing season as the Bristol Bay Working Group.[[3]](#footnote-3) Consistent with the Health Mandates and the terms established by other tribes in Alaska, the Working Group developed proposed COVID-19 protocols, which we presented to the Governor and State officials. The Bristol Bay Working Group also called for consultation regarding compliance and enforcement guidelines to ensure that prior to opening Bristol Bay to commercial fishing for the 2020 season, the State would take measures to ensure at least the following minimum public health protections:

(1) A program of rigorous enforcement to ensure the fishing industry's compliance with state guidelines and recommendations;

(2) COVID-19 pre-testing for all fisheries workers prior to traveling to the Bristol Bay Region;

(3) Mandatory follow-up tests and a 14-day quarantine period for all arriving fisheries workers;

(4) Mechanisms to enforce the quarantine requirements; and

(5) Procedures to update and comply with additional medical protocols and guidelines as they become available from State and Federal health authorities.

On April 6, 2020, the same day the Bristol Bay Working Group presented its protocols to the Governor, the City of Dillingham and the Curyung Tribal Council sent a letter to the Governor requesting that he take "immediate action to control the impacts of the entry of the virus to our state, our region and our community by serious consideration to closing the upcoming Bristol Bay commercial salmon fishery" and that he "assess the closure of the Bristol Bay commercial salmon fishery in 2020."[[4]](#footnote-4) In the following days, the Naknek Native Village Council,[[5]](#footnote-5) the South Naknek Village Council, and the King Salmon Tribe[[6]](#footnote-6) called for the Governor to put protective measures in place. Also on April 6, Dr. Catherine Hyndman, Clinical Director at BBAHC, wrote to the Governor describing the limited medical resources available in the region. She requested that either the fishing season be cancelled or that the Governor place "strict mandates with viable quarantine plans, preferably overseen by law enforcement."[[7]](#footnote-7)

On April 15, 2020, the Bristol Bay Working Group followed up on its April 6, 2020 protocols, reiterating that if those steps are not taken, "the state should close the Bristol Bay fishery for 2020."[[8]](#footnote-8) Local mayors wrote to the Governor on April 18, 2020, to express their concern that the upcoming salmon fishery would be moving forward with no input from local municipalities and requesting a meeting.[[9]](#footnote-9) The BBAHC released a statement "requesting this year's fishing season remain closed" on April 23, 2020.[[10]](#footnote-10) The City of Dillingham enacted Emergency Ordinance No. 2020-07 on April 30, 2020, mandating a quarantine requirement and detailing the travel use permitting process.[[11]](#footnote-11) On May 1, 2020, the Bristol Bay Regional Seafood Development Association (BBRSDA) formally requested that the State of Alaska provide medical supplies, infrastructure, and compliance support to the Region, including but not limited to PPE, testing supplies, temporary bathroom facilities, and enforcement personnel.[[12]](#footnote-12)

***The Bristol Bay Fishery, Discrimination and the Denial of Alaska Natives' Rights***

Although travel restrictions and other forms of protective measures have been employed by tribal governments in other parts of Alaska, the State of Alaska has thwarted the efforts of Alaska Native governments to adopt appropriate measures to protect our communities here in the Bristol Bay Region. This the direct result of the State of Alaska's administrative determination to grant special privileges to the commercial fishing industry. The State has exempted fishing from the Health Mandates, based on the determination that "Fishing" is considered "critical Infrastructure" under the State's May 5, 2020, "Alaska Essential Services and Critical Workforce Infrastructure Order".[[13]](#footnote-13) This Order covers "the fishing industry including the fisherman, processors, guides, and transporters of the fish as well as those under contract with the fisherman, processors, guides, and transporters for provisioning."[[14]](#footnote-14) Under this Order, the State has provided distinct treatment to the commercial fishing industry, allowing industry itself to self-monitor its own compliance with COVID-19 guidelines.

The Bristol Bay Working Group has remained deeply concerned about the State's decision to open the fishery. One of the key issues is the lack of enforcement for the fishing industry's self-imposed plans and guidelines. Consistent with that concern, BBAHC sent a letter to the Alaska Attorney General[[15]](#footnote-15) requiring that the Attorney General immediately work with the Bristol Bay Area Working Group to prepare a protocol agreement on enforcement, since local Bristol Bay communities have no resources or infrastructure to enact any level of enforcement.[[16]](#footnote-16) The AG has not yet responded to that letter.

Despite the likelihood of imminent harm to Alaska Native communities in our Region and in complete disregard of the proposed protocols the Bristol Bay Working Group prepared and provided to the Governor and the Attorney General, the State has ignored our efforts. In doing so, the State has denied our right to participate in decision-making on matters affect our rights and wellbeing recognized under Article 18 of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

Additionally, the State took this administrative action without consulting or cooperating in good faith to obtain consent through the representative Alaska Native tribes and tribal organizations in the Region, as required by Article 19 of the UNDRIP. Indeed, the Bristol Bay Working Group is the representative group of the Alaska Native village governments and tribal organizations in the Region. The Working Group called for the cancellation of the fishing season if protocols cannot be put into place with effective enforcement mechanisms to ensure compliance. Yet, without consultation or dialogue, the State issued its administrative determination in a manner that presents significant risk to the public health and well-being of the Alaska Natives residing in the 28 Alaska Native villages in our Region.

The State has still not considered our requests that it work with tribal governments and local municipalities to establish measures to enforce the existing Occupational Safety and Health Administration (OSHA) and Centers for Disease Control (CDC) guidelines for the seafood processing industry. The State has refused to work with us to develop measures to ensure industry meets minimum requirements of providing seafood workers with separate sleeping arrangements, flexible work schedules to allow for social distancing and personal protective equipment. Rather than develop accountable and enforceable compliance measures, the State has delegated responsibility for COVID-19 containment and mitigation measures to the seafood companies themselves. Such self-enforcement has already failed in other parts of the United States in meat and poultry processing plants and it is already showing signs of failure in the Bristol Bay fishery. Continued non-enforcement of these minimum requirements guidelines could have disastrous consequences resulting in the spread of COVID-19 to the Alaska Native communities in the Bristol Bay Region, reminiscent of what the Alaska Natives of this region experienced during the 1918-1919 Influenza.

BBAHC refuses to accept the State's disregard for the public health and personal integrity of Alaska Natives and other residents of the Region. After the Governor refused to consult and work with the tribal governments, tribal organizations and local governments of the Region to establish appropriate COVID-19 protocols, BBAHC filed a Complaint with Alaska Human Rights Commission.[[17]](#footnote-17) BBAHC's Complaint sought a temporary restraining order to enjoin the Governor from allowing the fishery to open and threaten COVID-19 exposure to the Alaska Natives, residents and health workers in the Region. BBAHC's Complaint challenged the discriminatory policy of the Governor of Alaska that prioritized the economic interests of the fishery over the public health of Alaska Natives in the Bristol Bay Region. It also challenged the application of this discriminatory policy, which denied Alaska Natives in the Bristol Bay Region of their ability to exercise their right of self-determination to restrict access to their communities that in a manner consistent with that of Alaska Natives in other areas of Alaska. The Alaska Human Rights Commission, however, refused to consider our petition.[[18]](#footnote-18) The refusal to accept the BBAHC Complaint has allowed the State to continue its discriminatory policy and deprives Alaska Natives in the Bristol Bay Region of "the right to access to… just and fair procedures for the resolution of conflicts and disputes" with the State of Alaska as set forth in Article 40 of the UNDRIP.

In submitting this statement on the impact of COVID-19 on the rights of Indigenous Peoples in the Bristol Bay Region of Alaska, BBAHC asserts that the State of Alaska's actions are incompatible with fundamental rights enshrined in the UNDRIP. Our efforts to engage and develop acceptable protocols has been ignored by the State (denying us the right to participate in decision-making on matters affect our rights and wellbeing in Article 18). The State's determination to exempt the fishing industry from enforceable or accountable public health protections without consultation or cooperation in good faith with the representative organizations of Alaska Natives in the Bristol Bay Region deprives us of the right of consultation under Article 19). In deciding to sacrifice the health and safety of Bristol Bay Alaska Natives in favor of opening the salmon fishery in 2020, the Governor has contravened principles of non-discrimination and the protection of health set forth in UNDRIP. Those include Article 21 (non-discrimination in the rights of indigenous peoples' to improve their health conditions), Article 23 (the right of indigenous peoples to be actively involved in developing and determining health programs), and Article 24 (the right of indigenous peoples to maintain health practices without discrimination).

***Conclusion***

BBAHC wishes to close this statement noting the COVID-19 recommendations of the United Nations' Inter-Agency Support Group on Indigenous Issues. The Inter-Agency Support Group calls on the UN system to engage with indigenous peoples to "ensur[e] the inclusion of indigenous peoples' views and needs in programs and aid efforts to respond to the COVID-19 pandemic, through their participation and consultation, as envisaged in the UN Declaration on the Rights of Indigenous Peoples."[[19]](#footnote-19) The Inter-Agency Support Group also called for "strengthening the inclusion of indigenous peoples' representatives in emergency and health response committees or other mechanisms dedicated to the COVID-19 pandemic."[[20]](#footnote-20)

BBAHC, tribal governments and other tribal organizations in the Bristol Bay Region approached the State of Alaska with the objective of ensuring that the State of Alaska included our views in a manner like that the Inter-Agency Support Group has recommended for UN system agencies. We do not accept the State's action and we continue our efforts and advocacy to ensure our views and needs are considered and that we are consulted and provided opportunities to participate in collective efforts with the State. We insist that our representatives participate as part of emergency and health response committees responding to COVID-19 in our Region. The State's refusal to consult, collaborate and accept our participation and perspectives deprives us of fundamental rights and presents an imminent public health catastrophe for the Alaska Natives and other residents, non-residents and health workers in the Region.

We appreciate the opportunity to submit this statement. We welcome the UN Special Rapporteur's communication of concern regarding these matters.

Sincerely,

Robert J. Clark

President/Chief Executive Officer

cc: BBAHC Board of Directors

 Geoffrey Strommer, Hobbs Straus, Dean & Walker, LLP

 Barbara Simpson Kraft, Davis Wright Tremaine, LLP

1. Health Mandate 1 was issued on March 13, 2020, following the Governor's Public Health Disaster Emergency Declaration. Health Mandate 1 suspended visitation to certain State institutions. Health Mandate 10 was issued on March 23, 2020, and provided for limitations on travel into and out of the State, and ordered for 14-day self-quarantine for arriving people within the State. The Governor limited intrastate travel on March 27, 2020, through Mandate 12, which was then superseded by Health Mandate 18, issued on May 11, 2020. Alaska Health Mandates are available at: <https://covid19.alaska.gov/health-mandates/>. [↑](#footnote-ref-1)
2. "*How Bethel and other rural Alaska villages are preparing for COVID-19*," Alaska Public Media (Apr. 17, 2020), <https://www.alaskapublic.org/2020/04/17/how-bethel-and-other-rural-alaska-villages-are-preparing-for-covid-19-alaska-insight/>. [↑](#footnote-ref-2)
3. Bristol Bay Working Group Protocols for 2020 Salmon Season (Apr. 6, 2020). [↑](#footnote-ref-3)
4. Letter from Alice Ruby, Mayor of Dillingham, and Thomas Tilden, First Chief of Curyung Tribal Council, to Governor Mike Dunleavy of Alaska (Apr. 6, 2020). [↑](#footnote-ref-4)
5. Letter from Linda Halverson, President, Naknek Native Village Council, to Governor Mike Dunleavy of Alaska (Apr. 7, 2020). [↑](#footnote-ref-5)
6. Letter from Ralph Angasan Sr., President, King Salmon Tribe, to Governor Mike Dunleavy of Alaska (Apr. 8, 2020). [↑](#footnote-ref-6)
7. Letter from Catherine Hyndman, MD, Clinical Dir., Bristol Bay Area Health Corp., to Governor Mike Dunleavy of Alaska (Apr. 6, 2020). [↑](#footnote-ref-7)
8. Letter from Bristol Bay Working Group to Governor Mike Dunleavy of Alaska (Apr. 15, 2020). [↑](#footnote-ref-8)
9. E-mail from Bristol Bay Mayors to Governor Mike Dunleavy of Alaska (Apr. 18, 2020). [↑](#footnote-ref-9)
10. Press Release, Bristol Bay Area Health Corp., Bristol Bay Area Health Corporation Requests Fishing Season to Remain Closed Due to COVID-19 (Apr. 23, 2020). [↑](#footnote-ref-10)
11. Dillingham, Alaska, Emergency Ordinance No. 2020-07 (Apr. 30, 2020). [↑](#footnote-ref-11)
12. Letter from Andy Wink, Exec. Dir., Bristol Bay Regional Seafood Dev. Ass’n., to Governor Mike Dunleavy of Alaska (May 1, 2020). [↑](#footnote-ref-12)
13. *Alaska Essential Services and Critical Workforce Infrastructure Order* (amended May 5, 2020), <https://gov.alaska.gov/wp-content/uploads/sites/2/Alaska-Essential-Services-and-Critical-Workforce-Infrastructure-Formerly-Attachment-A-05.05.2020.pdf>. [↑](#footnote-ref-13)
14. *Id.*at 2. [↑](#footnote-ref-14)
15. Letter from BBAHC President/CEO Robert Clark to Alaska Attorney General Kevin Clarkson (May 11, 2020). [↑](#footnote-ref-15)
16. In the 1950s, Congress gave civil and criminal enforcement jurisdiction over tribal lands and tribal members to the State of Alaska.  Although the tribes and tribal organizations in the Region are in the best position to provide health care and enforcement, yet they are not provided the funding, tools, and support to carry out those essential governmental functions.
 [↑](#footnote-ref-16)
17. BBAHC Complaint Regarding Governor Mike Dunleavy, in his official capacity as Governor of Alaska, Alaska State Commission for Human Rights (May 13, 2020). [↑](#footnote-ref-17)
18. Letter from Robert W. Corbiser, Executive Director to BBAHC Attorneys Geoff Strommer and Craig Johnson (May 22, 2020). [↑](#footnote-ref-18)
19. "Indigenous Peoples and COVID-19: A Guidance Note for the UN System prepared by the UN Inter- Agency Support Group on Indigenous Issues" (available at <https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2020/04/Indigenous-peoples-and-COVID_IASG_23.04.2020-EN.pdf>). [↑](#footnote-ref-19)
20. *Id*. [↑](#footnote-ref-20)