UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21668
Juneau, AK 99802-1668

January 18, 2024

Ms. Angel Drobnica, Chair
North Pacific Fishery Management Council
107 West 3rd Ave., Suite 400
Anchorage, Alaska 99501

Dear Ms. Drobnica:

This letter is to inform the North Pacific Fishery Management Council (Council) that the National Marine Fisheries Service received the enclosed request from the Association of Village Council Presidents, Kuskokwim River Inter-Tribal Fish Commission, Tanana Chiefs Conference, Yukon River Drainage Fisheries Association, and Yukon River Inter-Tribal Fish Commission to undertake emergency rulemaking under section 305(c)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to implement a cap of zero for Chinook salmon bycatch in the Bering Sea pollock trawl fishery.

We would like to provide the Council with an opportunity to review and provide input on this request. If the Council does not review this request, we will independently review it consistent with section 305(c)(1) of the MSA.

Sincerely,

Jonathan M. Kurland
Regional Administrator

Enclosure

January 17, 2024

The Honorable Gina M. Raimondo, Secretary of Commerce
U.S. Department of Commerce
1401 Constitution Ave NW
Washington, D.C. 20230
Via Email: TheSec@doc.gov

Re: Emergency Petition for Action Related to Chinook Salmon Bycatch in the Bering Sea Pollock Trawl Fishery

Dear Secretary Raimondo,

The Association of Village Council Presidents (AVCP)[1], Kuskokwim River Inter-Tribal Fish Commission (KRITFC)[2], Tanana Chiefs Conference (TCC)[3], Yukon River Drainage Fisheries Association (YRDFA)[4], and Yukon River Inter-Tribal Fish Commission (YRITFC)[5] respectfully request that the Department of Commerce (Department) take emergency action pursuant to 16 U.S.C. § 1855(c)(1) and institute a cap of zero on any further Chinook salmon bycatch in the Bering Sea and Aleutian Islands (BSAI) pollock trawl fishery and that the emergency regulation stay in effect for 180 days. Emergency action is necessary to address the severe ecological, economic, social, and public health concerns affecting Western and Interior Alaska, including the region's communities that depend on salmon. Since the submission of an emergency petition

[1] The Association of Village Council Presidents is an inter-Tribal non-profit consortium based in Bethel, Alaska, and is controlled by 56 federally-recognized Tribes. AVCP provides human, social, and other culturally relevant services to its member Tribes, which are located in villages throughout the Yukon-Kuskokwim Delta in an area of approximately 59,000 square miles.
[2] KRITFC represents the interests of 33 federally recognized Tribes in fisheries management, research, and monitoring, using Yup'ik and Upper Kuskokwim Dené Knowledge and the best available Western science.
[3] TCC, organized as Dena' Nena' Henash, or "Our Land Speaks," is a sovereign Tribal consortium with forty-two Tribal members across Interior Alaska, including thirty-seven federally recognized Tribes and two Alaska Native associations. TCC is also an Alaska Native non-profit corporation organized under the Alaska Native Claims Settlement Act ("ANCSA") to provide health and social services for the more than 18,000 Alaska Native people in the Interior Alaska region. TCC provides services for the interior 42 tribal communities, including 37 federally recognized Tribes. The TCC service area spans about 235,000 square miles.
[4] YRDFA is a recognized 501(c)(3) non-profit association of subsistence and commercial fishers with the mission of protecting and promoting all healthy fisheries and cultures along the Yukon River drainage.
[5] YRITFC represents 33 tribes along the Yukon River.

in 2021 to this effect, which the Department denied in January 2022,[6] the situation for Tribes and communities in the Kuskokwim River, Yukon River, and Norton Sound watersheds has continued and even worsened; for example, some areas have seen coho declines on top of the Chinook and chum crashes, compounding the food security and cultural emergency these communities are experiencing.

We additionally request that the Department urge the North Pacific Fishery Management Council (Council) to initiate a regular rulemaking process to scrutinize current Chinook salmon bycatch management while the emergency regulation is in effect to create meaningful and improved long-term Chinook salmon bycatch management following the expiration of the emergency regulation.

We recognize that the Council and the Department are taking steps to produce NEPA analyses and consider regulatory management action to minimize chum salmon bycatch—though as Western Alaska Tribal organizations, including some of our organizations, have communicated elsewhere[7], we find the current progress on this to be unsatisfactory—and that there are some measures in place to minimize Chinook salmon bycatch. However, more is needed to address the simultaneous Chinook salmon disaster in our communities. The Department must also take emergency action to eliminate Chinook bycatch to address some of the lowest Chinook runs and most restricted subsistence fishing seasons on record. We have attached the 2021 emergency petition for reference, and renew our request for emergency action.

The Tribal organizations submitting this petition represent nearly 100 Tribes and communities in Western Alaska—the communities directly affected by the collapse of salmon runs in these regions. They are supported by additional Tribal governments and allied organizations, who support the request of this petition though they may not be located within these watersheds or directly dependent upon salmon. Each of these Tribal governments work to protect traditional ways of life, culture, access to traditional food resources, and tribal sovereignty.

Background

Many Tribes in Western and Interior Alaska have been unable to meet their subsistence needs for salmon or participate in in-river commercial salmon fisheries for much of the past decade, but this year's calamitous declines in multiple species of salmon are a disaster that requires emergency action. In particular, the 2023 Chinook salmon returns presented one of the lowest

[6] KAWERAK, INC. *ET AL.,* 2021 EMERGENCY BYCATCH PETITION (Dec. 21, 2021), https://www.avcp.org/wp-content/uploads/2021/12/2021-12-22-Emergency-Bycatch-Petition-Final.pdf (attached); Letter from JANET COIT, Assistant Administrator for Fisheries, National Marine Fisheries Service, to Ms. Melanie Bahnke, President, Kawerak, Inc. (Jan. 25, 2022) [hereinafter "COIT Letter"] (attached). *See also* NOAA FISHERIES, *NOAA Fisheries Denies Request for Emergency Action on Bering Sea Salmon Bycatch* (Jan. 25, 2022), https://www.fisheries.noaa.gov/feature-story/noaa-fisheries-denies-request-emergency-action-bering-sea-salmon-bycatch.

[7] Letter to NMFS from Kawerak, KRITFC, and BSEG on November 14, 2023 pertaining to deficiencies in NPFMC October 2023 action regarding chum bycatch (attached). Kawerak, Inc. Resolution 2023-01, "A Resolution Requesting The North Pacific Fishery Management Council Reduce Chum Salmon Bycatch In The Bering Sea" (attached).

regional abundances on record. Yukon River subsistence salmon fishery closures began on June 2, 2023, in the Coastal District and District 1 and progressed upriver based on Chinook salmon run timing. The State of Alaska projected a Yukon River Chinook salmon run of 62,000 to 104,000 fish for the 2023 season; however, the preliminary estimate of 58,529 fish fell below projections.[8] Summer subsistence fishing on the Kuskokwim River also faced significant restrictions in the 2023 season due to below average run projections.[9] Norton Sound subsistence fishing in Subdistricts 5 and 6 faced restrictions owing to escapement concerns, with low king, chum, and pink runs noted as poor during the season, and the Pilgrim River faced restrictions owing to concerns related to sockeye escapement.[10] The people who subsistence fish throughout Western and Interior Alaska continue to sacrifice their catch to allow every possible fish to spawn, yet commercial groundfish trawlers are permitted to continue to catch thousands of salmon, many of which could otherwise reach Western Alaska rivers to help meet escapement goals and rebuild stocks.

Climate change continues to affect food systems and the ecosystem in disastrous ways. Salmon in particular, and especially Chinook salmon, are susceptible to climate change, increasing the necessity to mitigate controllable fishery impacts to these stocks.[11] Furthermore, the 2022 Typhoon Merbok, caused by record warm waters in parts of the North Pacific, hit Western Alaska coastal communities and the immediate impacts of the storm included damage to infrastructure, loss of stored subsistence foods, and disruption of the fall subsistence harvest season.[12] Communities are now realizing some of the longer-term impacts of the typhoon on their subsistence ways of life, including loss of fish camps, fishing gear, and plants and small

[8] ADF&G, Advisory Announcement, *2023 Yukon River Salmon Summer Fishery Announcement #26: 2023 Yukon RIver Preliminary Summer Season Summary* (November 7, 2023), http://www.adfg.alaska.gov/static/applications/dcfnewsrelease/1548184795.pdf

[9] ADF&G, Advisory Announcement, *Kuskokwim River Fishery Announcement #1: Kuskokwim River Subsistence Fishery Outlook and Front-End Closure, Emergency Order #3-S-WR-01-23* at 1 (May 26, 2023), https://www.adfg.alaska.gov/static/applications/dcfnewsrelease/1475130212.pdf; ADF&G, Advisory Announcement, *Kuskokwim River Fishery Announcement #3: Emergency Order #3-S-WR-03-23* (June 8, 2023), https://www.adfg.alaska.gov/static/applications/dcfnewsrelease/1479583175.pdf.

[10] ADF&G, Advisory Announcement, *Subsistence Salmon Fishing Schedule for the Nome, Unalakleet, Shaktoolik Subdistricts, and the Pilgrim River Correction* (June 14, 2023), http://www.adfg.alaska.gov/static/applications/dcfnewsrelease/1481551727.pdf. ADF&G, Advisory Announcement, *Subsistence Salmon Fishing Informational Update Unalakleet and Shaktoolik Subdistricts* (July 14, 2023), http://www.adfg.alaska.gov/static/applications/dcfnewsrelease/1511653983.pdf. ADF&G, Advisory Announcement, *Subsistence Salmon Fishing Informational Update For Unalakleet and Shaktoolik Subdistricts* (July 24, 2023), http://www.adfg.alaska.gov/static/applications/dcfnewsrelease/1517973740.pdf.

[11] ELIZABETH SIDDON, NOAA FISHERIES, ECOSYSTEM STATUS REPORT 2022: EASTERN BERING SEA, STOCK ASSESSMENT AND FISHERY EVALUATION REPORT at 24-26 (2022), https://apps-afsc.fisheries.noaa.gov/REFM/docs/2022/EBSecosys.pdf [hereinafter "2022 EASTERN BERING SEA STATUS REPORT"].

[12] 2022 EASTERN BERING SEA STATUS REPORT at 12; RICK THOMAN, *Opinion: Typhoon Merbok pounded Alaska's vulnerable coastal communities at a critical time*, ANCHORAGE DAILY NEWS (Sept. 19, 2022), https://www.adn.com/opinions/2022/09/19/opinion-typhoon-merbok-pounded-alaskas-vulnerable-coastal-communities-at-a-critical-time/.

mammals traditionally harvested before winter.[13] This recent and unforeseen event has created another harmful circumstance for Western and Interior Alaska communities where subsistence remains "a vital part of [the] cultural, economic, and social aspect[] of community life."[14]

The Department and the Council regulate salmon bycatch in the pollock trawl fishery under amendments 91 and 110 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands. These regulations provide a total cap for Chinook bycatch of 60,000 fish, with a performance standard of 47,591, but reduce that cap when an in-river index composite of returns to the Unalakleet (Norton Sound), Yukon, and Kuskokwim rivers is below 250,000 Chinook.[15] This year, the in-river index totaled 148,443 Chinook—the lowest regional Chinook salmon abundance on record,[16] and well below the 250,000 threshold—and the lower cap therefore took effect.[17]

The multi-species collapse of salmon stocks and the resulting restrictions on subsistence fishing in Western and Interior Alaska satisfies all three criteria described in the National Marine Fisheries Service's (NMFS) Policy Guidelines for the Use of Emergency Rules.[18]

Criteria for Emergency Relief

The Department can take emergency action under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to address unforeseen, serious conservation and management problems with Chinook salmon bycatch affecting Western and Interior Alaska. Under the MSA, the Secretary of Commerce is authorized to adopt emergency regulations when an emergency exists in any fishery.[19]

The Department's policy guidelines provide that "an emergency exists involving any fishery" when the situation:

1. "[r]esults from recent, unforeseen events or recently discovered circumstances;" and
2. "[p]resents serious conservation or management problems in the fishery;" and
3. "[c]an be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of

[13] Emily Schwing, Alaska Public Media, *A year after Typhoon Merbok, some coastal communities struggle to find subsistence foods*, (Oct. 12, 2023), https://alaskapublic.org/2023/10/12/a-year-after-typhoon-merbok-some-coastal-alaskans-struggle-to-find-beloved-subsistence-foods/.
[14] *See, e.g.,* CAROLINE L. BROWN *ET AL.*, ADF&G, SUBSISTENCE HARVESTS IN 8 COMMUNITIES IN THE KUSKOKWIM RIVER DRAINAGE AND LOWER YUKON RIVER, 2011, Technical Paper 364 at 458 (May 2014).
[15] 50 C.F.R. § 679.21(f); *see also* 75 Fed. Reg. 53,025 (Sept. 29, 2010) (Amendment 91); 81 Fed. Reg. 37,534 (June 10, 2016) (Amendment 110).
[16] Seafood News, *ADF&G's Three-River Index Lowest on Record, Pollock Fleet's Chinook Allocation Unchanged,* (September 20, 2023), https://www.seafoodnews.com/Story/1261925/ADFGs-Three-River-Index-Lowest-on-Record-Pollock-Fleets-Chinook-Allocation-Unchanged.
[17] Letter from SAM RABUNG, Director, Division of Commercial Fisheries, Alaska Department of Fish & Game, to Jon Kurland, Administrator, NOAA Fisheries, Alaska Region (Sept. 11, 2023).
[18] NMFS, Procedure 01-101-07, *Policy Guidelines for the Use of Emergency Rules* at 2-3 (Oct. 3, 2018), https://media.fisheries.noaa.gov/dam-migration/01-101-07.pdf [hereinafter "NMFS *Policy Guidelines*"]; 62 Fed. Reg. 44,421, 44,422 (Aug. 21, 1997).
[19] 16 U.S.C. § 1855(c).

> the impacts on participants to the same extent as would be expected under the normal rulemaking process."[20]

The Department must take action, consistent with its responsibilities to Tribes and its National Standards 2, 8, and 9 obligations, to address conservation concerns for the long-term health of salmon stocks and salmon-dependent communities and to reduce bycatch in the BSAI.

I. An emergency exists if a situation results from recent, unforeseen events, or recently discovered circumstances.

Western Alaska communities have watched as salmon populations have experienced problems over the past three to four decades. In the Kuskokwim region, population declines started with Chinook salmon and now extend to chum and coho salmon within the last three years.[21] Since 2021, multiple fisheries disasters have been declared by the Secretary of Commerce as a result of poor salmon returns across Western Alaska in multiple seasons and communities.[22] Another disaster declaration request for the 2022 Yukon River Salmon Fisheries was approved in October 2023, and a request for the 2022 Kuskokwim River Chinook, Chum, and Coho Salmon Fisheries is pending.[23] However, disaster declarations do not proactively address the causes leading to these catastrophic salmon declines, mitigate the wide-ranging ecosystem impacts due to the lack of spawners and eggs in tributaries, or compensate for the immense cultural, spiritual, and linguistic losses that Tribes experience when they can no longer engage in or pass to new generations their salmon-centered traditions and ways of life. The Department must take emergency action to proactively address the multi-species salmon crisis and not forgo its federal trust responsibility to Tribes while relying on reactive responses such as disaster declarations.

This year, the amount of Chinook salmon caught as bycatch in the BSAI pollock fishery is far above last year's total annual Chinook salmon bycatch amount. At the close of 2023, 11,855 Chinook salmon have been caught compared to 6,337 Chinook salmon in 2022.[24] Recently, over half of all Chinook salmon caught as bycatch in the pollock fishery originated from Western

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[20] NMFS *Policy Guidelines* at 2-3; 62 Fed. Reg. at 44,422.

[21] KUSKOKWIM RIVER INTER-TRIBAL FISH COMMISSION, 2022 KUSKOKWIM RIVER SALMON SITUATION REPORT at 3-7 (last updated Feb. 17, 2023) [hereinafter "KRITFC REPORT"] (attached).

[22] There have been four disaster declarations specific to Western Alaska salmon fisheries in the last three years: 2020 Alaska Norton Sound, Yukon River, Chignik, Kuskokwim River and Southeast Alaska Salmon Fisheries; 2021 Yukon River Salmon Fishery; 2021 Alaska Norton Sound Salmon Fisheries; 2021 Alaska Kuskokwim River Salmon Fishery. *See* NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, Fishery Disaster Determinations, ## 110, 118, 121, https://www.fisheries.noaa.gov/national/funding-and-financial-services/fishery-disaster-determinations (last visited July 17, 2023).

[23] *Id*., #127 and #136.

[24] NMFS, ALASKA REGION, BERING SEA CHINOOK SALMON BYCATCH REPORT (INCLUDES CDQ) (Jan. 16, 2024), https://www.fisheries.noaa.gov/sites/default/files/akro/car180_bs_with_cdq2023.html; *compare with* NMFS, ALASKA REGION, BERING SEA CHINOOK SALMON SEASONAL BYCATCH REPORT (INCLUDES CDQ) (Dec. 31, 2022), https://www.fisheries.noaa.gov/sites/default/files/akro/car181_bs_with_cdq2022.html.

Alaska rivers.[25] Over a 10-year average, genetic analysis of Chinook salmon captured as bycatch in the BSAI pollock trawl fishery indicates 45% originated from Western Alaska rivers.[26]

At the same time, Chinook salmon returns in river systems in Western and Interior Alaska have remained severely depressed. The 2023 end-of-season cumulative catch per unit effort of Chinook salmon at the Bethel test fishery, at a mere 382 fish, was the lowest in the last five years and 37% below the 2018–2022 average; and it is the third lowest in the recent ten-year time series, falling 32% below the 2013–2022 average.[27] The 2023 preliminary estimated cumulative passage of Yukon River Chinook salmon past Pilot Station Sonar was 58,529 fish (90% C.I. 41,191 to 72,867), which was the second lowest on record and only slightly better than 2022, but still approximately 67% below the 2003 - 2022 average of 177,431 Chinook salmon. The average length of Chinook salmon observed at Pilot Station was the third smallest on record since 1995 at only 721 mm and well below the historical average of 743 mm, which suggests continued ecosystem stress in BSAI marine waters.[28] In Canada, these catastrophically low runs have led to calls to recognize Chinook as "functionally extinct" in the Yukon River, with ecosystem-wide implications.[29] Historically low Chinook escapement numbers were reported in many rivers in the Norton Sound-Port Clarence region, including the Kwiniuk (second lowest since 1985), Nome (lowest since 1993), North (lowest since 1984), Pilgrim (lowest since 1997), Shaktoolik (third lowest since 2014), Snake (fourth lowest since 1996), Unalakleet (lowest since 2010), and Ungalik (lowest since 2020) Rivers.[30]

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[25] *See, e.g.,* JAMES IANELLI *ET AL.*, CHAPTER 1: ASSESSMENT OF THE WALLEYE POLLOCK STOCK IN THE EASTERN BERING SEA at 8 (Dec. 2022) ("The majority (about 56%) of Chinook salmon caught as bycatch in the pollock fishery originate from western Alaskan rivers."); COUNCIL, BERING SEA SALMON BYCATCH UPDATE (Nov. 2022), https://www.npfmc.org/wp-content/PDFdocuments/bycatch/BeringSeaSalmonBycatchFlyer.pdf [hereinafter "2022 BERING SEA SALMON BYCATCH UPDATE"] (estimating origin of Chinook salmon bycatch in pollock fishery); COUNCIL, SALMON BYCATCH COMMITTEE, SUMMARY OF SUBSISTENCE HARVESTS IN THE YUKON AND KUSKOKWIM MANAGEMENT AREAS at 1 (Mar. 2023), https://meetings.npfmc.org/CommentReview/DownloadFile?p=b4c2eb40-2c3a-4cd5-b2b1-c7bd6f7798e4.pdf&fileName=4.%20Yukon%20Kuskokwim%20Subsistence%20Harvest%20Overview_SBC_March2023.pdf [hereinafter "SUMMARY OF SUBSISTENCE HARVESTS IN THE YUKON AND KUSKOKWIM"] (approximately 54% percent of Chinook bycatch in 2020 were caught in Bering Sea pollock fishery).

[26] C.M. GUTHRIE III *ET AL.*, *Genetic Stock Composition Analysis of the Chinook Salmon (Oncorphynchus tshawytscha) Bycatch from the 2021 and 2022 Bering Sea Pollock Trawl Fishery* at iii (Apr. 2023) (proportional contribution of Western Alaska stocks from 2011-2020).

[27] ADF&G, *AYK Database Management System, Project: Bethel Test Fishing,* https://www.adfg.alaska.gov/CF_R3/external/sites/aykdbms_website/OBIReportView.aspx?origin=~/ProjectInformation.aspx (last visited November 30, 2023).

[28] ADF&G, Advisory Announcement, *2023 Yukon River Salmon Summer Fishery Announcement #26: 2023 Yukon RIver Preliminary Summer Season Summary* (November 7, 2023), http://www.adfg.alaska.gov/static/applications/dcfnewsrelease/1548184795.pdf

[29] LAWRIE CRAWFORD, *Chinook salmon now 'functionally extinct,'* PENTICTON HERALD (Jan. 5, 2023), https://www.pentictonherald.ca/spare_news/article_451af66a-d3b3-5805-8f99-3b886d47d167.html#:~:text=At%20the%20post-season%20Yukon,to%20fulfill%20their%20ecological%20function.

[30] ADF&G, *Escapement Monitoring Inseason and Historical Data; Norton Sound & Kotzebue Management Area Commercial Salmon Fisheries*. https://www.adfg.alaska.gov/index.cfm?adfg=commercialbyareanortonsound.salmon_escapement

II. An emergency exists if a situation presents serious conservation or management problems for the fishery.

The collapse of Chinook salmon runs in multiple river systems presents a serious conservation concern for salmon stocks as well as a management problem not only for the pollock fishery, but also for subsistence and directed salmon fisheries.

Communities in Western and Interior Alaska continue to endure some of the most restrictive subsistence fishing seasons on record.[31] Even with significant restrictions on subsistence fishing and closures of commercial salmon fisheries, meeting escapement goals for Chinook salmon in Western Alaska has been challenging, and, in some cases, escapement goals have not been met.[32] These stark statistics demonstrate that there is a serious conservation concern for Western Alaska Chinook salmon and a management concern with bycatch that contributes to the conservation concern.

For example, treaty obligations of the United States of America to Canada concerning Yukon River Chinook salmon highlight the serious conservation and management problems associated with Prohibited Species Catch of Chinook salmon in the BSAI pollock fishery. Only 27,800 Yukon River Chinook salmon of Canadian origin passed the Pilot Station Sonar, with only 14,752 Chinook salmon enumerated passing the Eagle Sonar at the Canadian border, which is 70% below the historical average passage and the second lowest on record, above only 2022. During the 10-year period 2013-2022, Pacific Salmon Treaty obligations of the United States to Canada were achieved only 50% of the time; Pacific Salmon Treaty border passage obligations continued to go unmet in 2023. The Treaty, as amended through June 2023, states, "The Parties [U.S. and Canada] 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."[33]

The loss of salmon in the Kuskokwim River, Yukon River, and Norton Sound watersheds is not just an emergency—it is a crisis. Every fish caught as bycatch eliminates significant genetic potential and opportunities for vulnerable stocks to rebuild. The loss of even one spawning female Chinook salmon is a loss of several thousand potential salmon in the next generation; each spawning female can produce between 3,000 and 14,000 eggs.[34] Emergency action is

[31] KRITFC Report at 3-4; *see also supra p. 2* nn.2 & 3 (ADF&G Advisory announcements showing recent restrictions on subsistence salmon fishing).

[32] *See, e.g.,* ADF&G, *2022 Yukon River Salmon Summer Fishery Announcement #19, 2022 Yukon River Summer Season Summary* at 4 & 7, Tbl. 1 (Nov. 21, 2022), https://www.adfg.alaska.gov/static/applications/dcfnewsrelease/1445996671.pdf (last visited Aug. 2, 2023) [hereinafter "2022 Yukon River Summer Season Summary"] (in 2022, escapement goals were not met for Chinook salmon on the Yukon River).

[33] Pacific Salmon Commission Treaty Between the Government of Canada and the Government of the United States of America Concerning Pacific Salmon, as amended through June 2023, Chapter 8, p. 117.

[34] NMFS, *Final Environmental Assessment/Regulatory Impact Review for Proposed Amendment 110 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area* at 95*,* (March 2016) [hereinafter "Final Environmental Assessment"].

necessary to prevent further serious damage to the fishery resource for not only the survival of these species, but for the future of our communities and Tribes.

III. An emergency exists if a situation can be addressed through emergency regulations for which the immediate benefits outweigh the value of normal rulemaking.

The normal Council and MSA rulemaking process for addressing broad changes to Chinook salmon bycatch management is not available in time for the 2024 BSAI pollock A and B seasons. The need for immediate action to protect subsistence needs and salmon populations significantly outweighs the benefit of advance notice and public comment through a normal rulemaking process.

Immediate action is needed to address these serious conservation and management concerns because, if the Department does not act, the pollock trawl fleet will continue to catch thousands of salmon as bycatch, leading to continued restrictions on subsistence and commercial salmon fishing in Western and Interior Alaska in 2023 and beyond. Immediate action to eliminate Chinook salmon bycatch will have conservation and community benefits by allowing more fish from these severely stressed populations to reach their spawning rivers so that they have a chance to begin recovering, and provide greater opportunities for subsistence-dependent communities to harvest the salmon that are central to their ways of life and livelihoods. Impact rates of bycatch in the BSAI fleet cannot calculate the genetic and cultural value of a single fish that returns to its natal stream; every fish that reaches the rivers is critical.

Requested Action and Duration

We ask the Department to adopt an emergency regulation instituting a cap of zero on any further Chinook salmon bycatch in the Bering Sea and Aleutian Islands (BSAI) pollock trawl fishery and that the emergency regulation stay in effect for 180 days. In addition, we request that the Council and the Department consider regulatory approaches to create meaningful, improved long-term Chinook salmon bycatch management solutions along with the current chum salmon bycatch rulemaking.

Response to Previous Denial

Despite the significant portion of Chinook salmon bycatch originating from Western and Interior Alaska rivers, the Department denied the 2021 petition for emergency action to limit chum and Chinook bycatch because, in its view, "[t]he best available scientific information indicates that Chinook salmon bycatch in the Bering Sea pollock fishery comprises less than three percent and chum salmon bycatch comprises less than one percent of the returns to Western Alaska river systems."[35] Narrowly focusing on the proportion of salmon that would have returned to spawn in a given year is not helpful to understanding the overall effect of bycatch on Western Alaska salmon stocks. Chinook salmon, in many places, are not meeting state or federal "sustainable escapement goals."[36] Therefore the Department has an obligation to make sure every possible

[35] COIT Letter at PDF 2.

[36] *See e.g.,* 2022 Yukon River Summer Season Summary at 7, Tbl. 1 (showing no escapement goals met for Chinook salmon at selected Yukon River tributaries in 2022); ADF&G, Memorandum, *Arctic-Yukon-Kuskokwim,*

fish makes it back to the rivers so vulnerable fish stocks can recover to a point that they are once again sustainable. Bycatch or waste of any amount of dwindling salmon stocks are catastrophic and the Department must take emergency action to proactively "ensure the sustainability of fishery resources and associated ecosystems for the benefit of future, as well as current generations."[37]

The Department cannot rely on the notion that action cannot be taken because "[c]losure of the Bering Sea pollock trawl fishery [...] is unlikely to result in meeting escapement goals or substantively increase the likelihood of improving subsistence and commercial harvests" this year.[38] The immediate benefits of stopping bycatch outweigh the value of advance notice because every fish matters—not only for this year's harvest, but for the future of these distressed fish stocks. As previously mentioned, a single female Chinook salmon and thousands of her eggs removed from the ecosystem robs the potential of thousands of salmon smolt to rebuild stocks, with rippling effects for generations of a population.[39] Western and Interior Alaska communities have sacrificed their salmon catch to help meet escapement goals for future runs, and the Department must act to ensure that bycatch by the BSAI pollock fleet does not continue because it could diminish any hopes of recovery for the struggling stocks. Further, the Council and the Department cannot favor economic gain over conservation.[40] The harm this salmon crisis is causing to our communities is incalculable. The Council and the Department have a responsibility to manage the entire BSAI ecosystem in a sustainable way and for the Tribes and communities that depend on it, not solely to produce the highest economic value for one group.

The Department likewise has a federal trust responsibility to ensure the well-being of Tribes and protection of Tribal resources.[41] Notably, President Biden recently reaffirmed his "commitment to fulfilling Federal trust and treaty responsibilities to Tribal Nations."[42] The Department cannot

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Salmon Escapement Goal Review (Mar. 17, 2022), https://www.adfg.alaska.gov/static/regulations/regprocess/fisheriesboard/pdfs/2022-2023/ws/2022%20AYK%20EG%20Review.pdf (defining "sustainable escapement goal").

[37] COUNCIL, Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area at ES-2, Tbl. ES-1 (Nov. 2020), https://www.npfmc.org/wp-content/PDFdocuments/fmp/BSAI/BSAIfmp.pdf [hereinafter "Fishery Management Plan"].

[38] COIT Letter at PDF 2.

[39] NMFS, *Final Environmental Assessment* at 95.

[40] *See, e.g.*, 16 U.S.C. § 1801(b)(1) (explaining that the purpose of the MSA is to "conserve and manage" fishery resources); *id.* § 1851(a)(5) (National Standard 5 encouraging "efficiency in utilization of fishery resources," but also cautioning that conservation and management measures may not be adopted for the sole purpose of economic allocation); *id.* § 1851(a)(8) (the Department must consider economic impacts on fishing communities); 50 C.F.R. § 600.345(b)(1) (consideration of the importance of fishery resources to fishing communities is done "within the context of the conservation requirements of the Magnuson-Stevens Act" and may not "compromise the achievement of conservation requirements and goals."

[41] THE SECRETARY OF THE INTERIOR, Order No. 3335, *Reaffirmation of the Federal Trust Responsibility to Federally Recognized Indian Tribes and Individual Indian Beneficiaries* (Aug. 20, 2014), https://www.doi.gov/sites/doi.gov/files/migrated/news/pressreleases/upload/Signed-SO-3335.pdf.

[42] PRESIDENT JOSEPH R. BIDEN JR., *Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships* (Jan. 26, 2021), https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-tribal-consultation-and-strengthening-nation-to-nation-relationships/. *See also* Exec. Order No. 13175, 65 Fed. Reg. 67,249 (Nov. 6, 2000) (Memorandum acknowledging American Indian and Alaska Native Tribal Nations are sovereign governments requiring "regular, meaningful, and robust consultation"

meet its obligations to Tribes or to ecosystem-based fisheries management[43] while disclaiming responsibility for catastrophic salmon declines. The Department must take action to address the causes of these declines that are within its control. In this case, that includes taking action to eliminate Chinook bycatch to allow critical salmon escapement that will help rebuild stocks and protect traditional and cultural practices that depend on salmon.

Deficiencies in Fisheries Management that have Contributed to this Emergency

The Department has not fulfilled its duty to ensure a fair and equitable allocation of resources throughout the ecosystem and among fishing communities. Further, the Department is required by law to meet all of its MSA National Standard obligations.[44] National Standard 2 requires that management measures be "based upon the best scientific information available."[45] Further, the consideration of Traditional Knowledge (TK) is required under National Standard 2's inclusivity criteria,[46] but has not been meaningfully incorporated into the Alaska federal fishery management process.[47] For example, it is a widely held tenet of Western and Interior Alaska Traditional Knowledge that waste—which salmon bycatch in the BSAI pollock fishery embodies—has significant negative impacts on natural resources, with which humans exist in a reciprocal relationship. Additionally, TK holders in the Norton Sound region have documented that problems with salmon populations began approximately three to four decades ago, and the impacts of bycatch have been implicated in problems with salmon populations.[48] Information such as this exists and has been available for years but has not been used in management.

The Department is failing to meet its National Standard 9 objective by setting catch allowances based on historical bycatch numbers without accounting for drastically low salmon populations or the needs of Tribal communities. NMFS again set the 2023 Chinook salmon prohibited species catch limit at 45,000 because it determined that 2022 was a low Chinook salmon abundance year, based on the State of Alaska's estimate that Chinook salmon abundance in Western Alaska is less than 250,000 Chinook salmon.[49] Historical bycatch levels have not reached this cap since 2007 and likely never will in the foreseeable future, not because of efforts to avoid salmon, but due to low salmon abundance.[50] The bycatch limits are effectively no cap

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especially as the "Nation faces crises related to health, the economy, racial justice, and climate change – all of which disproportionality harm Native Americans.")

[43] NOAA Fisheries, *"Understanding Ecosystem-Based Fisheries Management,"* https://www.fisheries.noaa.gov/insight/understanding-ecosystem-based-fisheries-management (last visited Aug. 1, 2023).

[44] 16 U.S.C. § 1851.

[45] *Id*. § 1851(a)(2); 50 C.F.R. § 600.315(a).

[46] 50 C.F.R. § 600.315(a)(6)(ii)(C).

[47] JULIE RAYMOND-YAKOUBIAN *ET AL*., *The incorporation of traditional knowledge into Alaska federal fisheries management*, 78 MARINE POLICY 132 (2017), http://dx.doi.org/10.1016/j.marpol.2016.12.024.

[48] KAWERAK, INC., *"Always taught not to waste": Traditional Knowledge and Norton Sound/Bering Strait Salmon Populations*, 2015 Arctic-Yukon-Kuskokwim Sustainable Salmon Initiative Project 1333, Final Product (2015), https://kawerak.org/wp-content/uploads/2018/04/TK-of-Salmon-Final-Report.pdf.

[49] Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands; Final 2023 and 2024 Harvest Specifications for Groundfish, 88 Fed. Reg. 14,926, 14,941 (Mar. 10, 2023).

[50] NMFS, ALASKA REGION, Chinook salmon mortality in BSAI groundfish fisheries (including pollock) (Nov. 13, 2023), https://www.fisheries.noaa.gov/sites/default/files/akro/chinook_salmon_mortality2023.html [hereinafter "BSAI Chinook Salmon Mortality Estimates"].

at all—bycatch is below the cap because fish populations have declined so much that there are not as many fish to catch. The Department and the Council need to acknowledge that the downward trend in bycatch directly correlates with decreasing Chinook salmon in the BSAI and adjust management practices accordingly.

The Department's current management practices are failing to meet many of the objectives of the BSAI Fisheries Management Plan.[51] A non-exhaustive list of objectives which have not been met include ensuring sustainable opportunities for subsistence,[52] promoting management that does not disrupt existing social and economic structures,[53] incorporating ecosystem factors and considerations,[54] reducing waste to biologically and socially acceptable levels,[55] incorporating and enhancing collection of Traditional Knowledge for use in fishery management,[56] and increasing Alaska Native participation and consultation in fishery management.[57]

The Council and the Department are also failing to properly conceptualize and address climate change in terms of management of the BSAI pollock fishery. While particular aspects and effects of climate change are affecting salmon stocks, climate change must also be understood as a context in which the Council and the Department are required to manage, not simply something to blame for fishery problems and an excuse for not managing appropriately in light of them. Climate change is an added stressor on salmon and other marine species, and the Council and the Department should change management—including management of salmon bycatch—to support a more climate-resilient ecosystem. If climate change is leading to reduced salmon numbers, the Council and the Department must reduce the amount of salmon bycatch being taken in that changed environmental context in order to ensure sustainability of salmon stocks. It is notable that the Council only has one small body devoted to climate change—the Bering Sea Fishery Ecosystem Plan Climate Change Taskforce—and even that body has essentially languished for years.

The Council is also failing to meet important policies that are intended to help guide and define its approach to conservation and management of the fisheries. For example, the 2014 Ecosystem Policy states:

> The Council intends that fishery management explicitly take into account environmental variability and uncertainty, changes and trends in climate and oceanographic conditions, fluctuations in productivity for managed species, and associated ecosystem components, such as habitats and non-managed species, and relationships between marine species. Implementation will be responsive to changes in the ecosystem, and our understanding of those dynamics, incorporate the best available science,

[51] *See* Fishery Management Plan at 4-7 (Management Objectives in the Fishery Management Plan for Groundfish of the BSAI Management Area).
[52] *Id.* at 5, #6.
[53] *Id.* at 5, #7.
[54] *Id.* at 5, #13.
[55] *Id.* at 5, #21.
[56] *Id.* at 6, ##36 & 37.
[57] *Id.* at 6, #38.

> including local and traditional knowledge, and engage scientists, managers, and the public.[58]

The cumulative impacts over time of waste on the ecosystem are not being taken into account. For instance, over one million Chinook have been wasted as bycatch in approximately the last three decades, in addition to many millions more chum.[59] Bycatch is now scraping away at what little remains, wasting the survivors of climate change, and demonstrating that the resources Tribal people depend on are acceptable to be viewed and treated as waste in comparison to the directly harvested fish which create enormous profit and feed other populations. This all suggests continued colonial federal fishery management as part of a long chain of Federal actions treating Tribes as inconvenient obstacles to be overcome.

Collectively, these are systemic scientific, policy, management, and moral failures which have reached emergency levels, and are chronic failures unequivocally indicating that the normal rulemaking process is incapable of adequately addressing these issues. We urge you to uphold your "commit[ment] to a comprehensive review of our current salmon bycatch management measures."[60]

Conclusion

Chinook salmon stocks and the communities that rely on them in Western and Interior Alaska are in crisis, and bycatch in the pollock fleet takes a significant portion of the fish that would otherwise be available to meet escapement goals, allow for the recovery of salmon stocks, and provide for subsistence and commercial salmon fishing in these regions. The past year's three river index was the lowest on record, demonstrating the need for urgent action to prevent the loss of Chinook salmon across Western and Interior Alaska. Delaying action will allow the continued bycatch of these fish, meaning that subsistence fishing will continue to be severely restricted, salmon will suffer severe ecological consequences, and Western and Interior Alaska communities will suffer economic, social, and public health consequences. Chinook salmon stocks have reached a crisis point where all agencies must take every action within their authority to ensure that every possible fish makes it back to the rivers to support the recovery of these depleted stocks. The Department has the authority to take immediate action to address bycatch in the pollock fishery until a permanent rule can be implemented and we request that you do so to prevent further catastrophic and irreparable harms. Further, any efforts in addressing Chinook salmon bycatch should not diminish the Department and Council's current efforts addressing limits to chum salmon bycatch given that our communities are living through a multi-species, multi-year salmon collapse with severe threats to our food, cultural, spiritual, and economic security.

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[58] COUNCIL, Ecosystem Policy (2014), https://www.npfmc.org/management-policies/.
[59] BSAI Chinook Salmon Mortality Estimates; NMFS, Non-Chinook salmon mortality in BSAI groundfish fisheries (including pollock) (2023), https://www.fisheries.noaa.gov/sites/default/files/akro/chum_salmon_mortality2023.html.
[60] COIT Letter at PDF 3.

Sincerely,

Vivian Korthuis
Chief Executive Officer
Association of Village Council Presidents

Kevin Whitworth
Executive Director
Kuskokwim River Inter-Tribal Fish Commission

Brian Ridley
Chief/Chairman
Tanana Chiefs Conference

Serena Fitka
Executive Director
Yukon River Drainage Fisheries Association

Karma Ulvi
Chair
Yukon River Inter-Tribal Fish Commission

Attachments:

- KAWERAK, INC. *ET AL.,* 2021 EMERGENCY BYCATCH PETITION (Dec. 21, 2021)
- Letter from JANET COIT, Assistant Administrator for Fisheries, NMFS, to Mr. Mike Williams Sr., Chair, Kuskokwim River Inter-Tribal Fish Commission (Jan. 25, 2022)
- KUSKOKWIM RIVER INTER-TRIBAL FISH COMMISSION, 2022 KUSKOKWIM RIVER SALMON SITUATION REPORT (last updated Feb. 17, 2023)
- Letter from KAWERAK, INC., KUSKOKWIM RIVER INTER-TRIBAL FISH COMMISSION, AND BERING SEA ELDERS GROUP to JON KURLAND, Regional Administrator, NMFS Alaska Region (Nov. 14, 2023)
- KAWERAK, INC., RESOLUTION 2023-01 (March 15, 2023)

KAWERAK. INC.

REPRESENTING
Brevig Mission
Sitaisaq
Council
Diomede
Iŋaliq
Elim
Niviarcaurluq
Gambell
Sivuqaq
Golovin
Chinik
King Island
Ugiuvak
Koyuk
Kuuyuk
Mary's Igloo
Qawiaraq
Nome Eskimo
Sitnasuak Inuit
Savoonga
Sivungaq
Shaktoolik
Saktuliq
Shishmaref
Qikiqtaq
Solomon
Aŋuutaq
St. Michael
Taciq
Stebbins
Tapraq
Teller
Tala
Unalakleet
Uŋalaqłiq
Wales
Kiŋigin
White Mountain
Iġałuik / Nutchirviq

RESOLUTION 2023-01

A RESOLUTION REQUESTING THE NORTH PACIFIC FISHERY MANAGEMENT COUNCIL REDUCE CHUM SALMON BYCATCH IN THE BERING SEA

WHEREAS, the North Pacific Fishery Management Council (NPFMC), in association with the National Marine Fisheries Service, is charged with responsible management of marine fisheries resources in Alaska; and

WHEREAS, Kawerak, Inc. is a tribally authorized non-profit Tribal consortium whose mission is to assist, promote and provide programs and services to improve the social, economic, educational, and cultural well-being of the people within the Bering Strait region; and

WHEREAS, the Tribes of the Bering Strait region include: Brevig Mission, Council, Diomede, Elim, Gambell, Golovin, King Island, Koyuk, Mary's Igloo, Nome, Savoonga, Shaktoolik, Shishmaref, Solomon, Stebbins, St. Michael, Teller, Unalakleet, Wales and White Mountain; and

WHEREAS, the Bering Strait region has experienced long-standing problems related to chum abundance, and Western and Interior Alaska have collectively experienced sharp declines in recent years, all amidst long-running waste of chum through bycatch in the Eastern Bering Sea pollock fishery; and

WHEREAS, subsistence fishing activities are a priority for the residents of the Bering Strait region and constitute a vital role in our cultures and traditions, and these activities have been negatively impacted by the loss of chum salmon from our region's rivers; and

WHEREAS, our Tribes and communities are committed to our traditional values of not wasting, sharing, respect, and reciprocity (among others), including in relation to salmon and the environment; and

WHEREAS, the North Pacific Fishery Management Council is considering developing measures to reduce incidental chum salmon bycatch in the Bering Sea pollock trawl fishery; and

WHEREAS, Kawerak, Inc. believes the explicit goal of the NPFMC, the pollock industry, and the National Marine Fisheries Service should be zero bycatch of chum salmon; and

WHEREAS, proposed alternatives must adequately recognize the importance of this issue to the Tribes of the Bering Strait region and other western Alaska and Interior communities, and emphasize the devastating impacts of chum bycatch on the cultures, traditions, health and economies of our regions; and

NOW THEREFORE BE IT RESOLVED, that Kawerak, Inc. requests that the NPFMC take steps, beginning with analysis and including implementation of regulation, towards significant reduction of chum bycatch in the Eastern Bering Sea pollock fishery; strive towards a goal of zero bycatch across all species, including chum and chinook; promote improved data collection, modeling and technology to effectuate these conservation goals; and incorporate Alaska Native Traditional Knowledge and values, and meaningfully collaborate with Tribes in the process of doing this.

CERTIFICATION

We, the undersigned Chairman and Secretary of the Kawerak, Inc. Board of Directors hereby certify that the foregoing resolution was adopted by majority vote of the Board during a duly called meeting on March 15, 2023.

By: _____ _____

Kawerak Board Chairman Kawerak Board Secretary

December 21, 2021

The Honorable Gina M. Raimondo
Secretary of Commerce
U.S. Department of Commerce
1401 Constitution Ave N.W.
Washington, DC 20230

Dear Secretary Raimondo,

Kawerak, Inc., the Association of Village Council Presidents, the Kuskokwim River Inter-Tribal Fish Commission, the Yukon River Inter-Tribal Fish Commission, the Aleut Community of St. Paul Island, and the Bering Sea Elders Group respectfully request that the Department of Commerce ("the Department") takes emergency action to eliminate Chinook salmon bycatch and set a cap on chum salmon bycatch in the Bering Sea pollock trawl fishery in the 2022 season. Emergency action is necessary to address severe and unforeseen ecological, economic, social, and public health concerns affecting Western Alaska and Interior Alaska communities that depend on salmon. In the summer and fall of 2021, communities in the Yukon and Kuskokwim regions experienced a collapse of both Chinook and chum salmon that prevented Tribes from harvesting the amount of fish necessary for subsistence, creating a food security disaster for the region. These losses have also led to a cultural crisis as communities are unable to practice their traditional ways-of-life without salmon. In this context, every fish caught by the pollock trawl fleet is critical. Western Alaska and Interior Alaska communities have sacrificed their salmon catch to help meet escapement goals for future runs and the Department must ensure that bycatch by the pollock fleet does not continue to contribute to the ongoing ecosystem collapse.

The Tribes and Tribal organizations submitting this petition represent nearly 110 Tribes and communities in the Kuskokwim and Yukon watersheds—the communities directly affected by the collapse of salmon runs in these regions. The Tribal organizations and the Tribal governments they represent work to protect traditional ways of life, culture, and access to traditional food resources.

Kawerak, Inc., a regional Native Non-Profit consortium for the Bering Straits region, provides social, educational, construction, and other services to the people of the Bering Straits region on behalf of the region's 20 Tribal governments. Teaching subsistence values and preserving the subsistence way of life of the people in the region—who are primarily Inupiat, Yup'ik, and St. Lawrence Island Yupik—are among Kawerak's core priorities.

The Association of Village Council Presidents is an inter-Tribal non-profit consortium. It is based in Bethel, Alaska, and is controlled by 56 federally-recognized Tribes. AVCP provides human, social, and other culturally relevant services to its member Tribes, which are located in villages throughout the Yukon-Kuskokwim Delta in an area of approximately 59,000 square miles. AVCP has long been committed to advocating for the protection of the Bering Sea and its resources.

The Kuskokwim River Inter-Tribal Fish Commission represents the interests of the 33 federally recognized Tribal governments in the Kuskokwim River region in fisheries assessment and sustainable fisheries management. Its 33 Tribally-appointed fish commissioners, seven executive council members, and four in-season managers combine Traditional Knowledge and western science to conservatively manage Kuskokwim fisheries according to Yupik and Athabascan Dené values, subsistence harvest needs, and escapement targets aimed at rebuilding depleted salmon populations. The values at the core of the Commission's work are social and environmental justice, equitable and sustainable salmon harvests throughout the watershed, and unity as one fishing people along the Kuskokwim River.

The Yukon River Inter-Tribal Fish Commission was founded on Tribal unity for the health and well-being of Tribal members, future generations, and all Alaskans and Canadians who rely on the health of the Yukon River fisheries. The Commission is committed to conserving, restoring, and providing for Tribal use of fisheries based on indigenous knowledge systems, scientific principles, and sound management. It represents 28 federally recognized Tribes along the Yukon River in Alaska, from Kotlik to Eagle. The Fish Commission's geographic area covers the following ANILCA federal lands and waters used by the member Tribes: Yukon Delta, Koyukuk, Innoko, Nowitna, Kanuti, and Yukon Flats National Wildlife Refuges and the Yukon-Charley Rivers National Preserve. Member Tribes rely on the waters adjacent to or within these National Wildlife Refuges and National Preserve for subsistence, harvesting all five species of Pacific salmon and other fish species such as sheefish, burbot, cisco, and pike.

The Aleut Community of St. Paul Island is the federally recognized Tribal Government for St. Paul Island, the governmental venue through which the Unangan (or "the Aleut People" in the Unangam Tunuu language) of St. Paul Island fulfill their intrinsic rights and responsibilities and support, recollect, practice, and pass on their culture. The Tribal Government leads efforts to ensure and strengthen political sovereignty, economic self-sufficiency, continued cultural practices, Tribal self-determination and self-governance, and the overall health, welfare, and safety of Tribal members.

The Bering Sea Elders Group (BSEG) is an association of Elder Representatives appointed by 38 Tribal governments in the Yukon-Kuskokwim and Bering Strait regions of Western Alaska. BSEG's mission is to work together to protect the traditional ways of life and the ocean web of life that supports the resources that BSEG member Tribes and future generations depend on.

Tribes in Western and Interior Alaska have been unable to meet their subsistence needs for salmon or participate in in-river commercial salmon fisheries for most of the past decade, but this year's near total collapse of both Chinook and chum salmon stocks is a disaster that requires emergency action. The 2021 chum salmon run was the lowest on record and significant chum salmon

management restrictions were put in place for the first time. Communities in Western and Interior Alaska have previously relied on chum salmon in years of poor Chinook abundance, but, with poor returns for both species, communities face a dire situation.[1] Donated fish were flown in from other areas of the state and communities have requested disaster declarations to assist in recovering from these poor harvests. But this type of assistance does not compensate for the loss of critical food resources in a region that is already food insecure, nor for the loss of opportunities to pass on traditional knowledge and ways-of-life to younger generations.[2]

The majority of Chinook and chum salmon caught as bycatch in the Bering Sea and Aleutian Islands are caught in the pollock trawl fishery. A significant portion of the salmon bycatch caught in the pollock trawl fisheries consists of fish otherwise destined for the Kuskokwim and Yukon Rivers. The over 13,000 Chinook caught as bycatch in 2021, an estimated 40 to 60 percent of which would return to coastal and Interior Alaska, are a critical portion of the fish needed to feed people, support traditional practices, and meet escapement goals.[3] Likewise, the 530,000 chum salmon caught as bycatch, around 16 percent of which would return to the Kuskokwim and Yukon Alaska rivers, are critical to meeting subsistence needs and escapement goals for these fish.[4] Although bycatch is not the only factor contributing to the crash in salmon stocks, it is an important factor and one that the Department can regulate. Where the evidence shows an ongoing and disastrous collapse, the Department must take action, consistent with its National Standards 2, 8

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[1] KUSKOKWIM RIVER INTER-TRIBAL FISH COMMISSION, KUSKOKWIM RIVER SALMON SITUATION REPORT 5-6 (Sept. 2021) [hereinafter KRITFC REPORT].

[2] *See id.* at 7; CAROLINE L. BROWN, ET AL., ALASKA DEPARTMENT OF FISH & GAME, SUBSISTENCE HARVESTS IN 8 COMMUNITIES IN THE CENTRAL KUSKOKWIM RIVER DRAINAGE, 2009 364 (Jan. 2012) [hereinafter ADF&G REPORT]; Robert J. Wolfe & Assocs., *People and Salmon of the Yukon and Kuskokwim Drainages and Norton Sound: Fishery Harvests, Culture Change, and Local Knowledge Systems*, AM. FISHERIES SOC'Y SYMPOSIUM 70, 373 (2009); KAISU & TERO MUSTONEN WITH THE PEOPLE OF UNALAKLEET, SNOWCHANGE, IT HAS BEEN IN OUR BLOOD FOR YEARS AND YEARS THAT WE ARE SALMON FISHERMEN: A BOOK OF ORAL HISTORY FROM UNALAKLEET, ALASKA, USA 32-35, 41-52 (2009), *available at* http://www.snowchange.org/pages/wp-content/uploads/2014/07/Unalakleet.pdf (describing changes in salmon fishing and the loss of opportunities to pass on cultural traditions); BRENDEN RAYMOND-YAKOUBIAN & JULIE RAYMOND-YAKOUBIAN, KAWERAK, INC., "ALWAYS TAUGHT NOT TO WASTE": TRADITIONAL KNOWLEDGE AND NORTON SOUND/BERING STRAIT SALMON POPULATIONS (2015), *available at* https://kawerak.org/wp-content/uploads/2018/04/TK-of-Salmon-Final-Report.pdf (describing the interconnection between salmon and culture in the Norton Sound and Bering Straits regions).

[3] NORTH PACIFIC FISHERY MANAGEMENT COUNCIL, BERING SEA SALMON BYCATCH UPDATE 1-2 (Sept. 2021) [hereinafter BERING SEA SALMON BYCATCH UPDATE] (estimating origin of Chinook salmon bycatch in pollock fishery); C.M. Guthrie III, et al., NOAA Technical Memorandum NMFS-AFSC-418: *Genetic Stock Composition Analysis of the Chinook Salmon (Oncorhynchus tshawytscha) Bycatch from the 2019 Bering Sea Pollock Trawl Fishery* 16 (May 2021) (summarizing historical Chinook bycatch stock composition); NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION BERING SEA CHINOOK SALMON BYCATCH REPORT (Nov. 20, 2021), *available at* https://www.fisheries.noaa.gov/sites/default/files/akro/car180_bs_with_cdq2021.html; *see also* KRITFC REPORT, *supra* note 1, at 2, 5, 9.

[4] BERING SEA SALMON BYCATCH UPDATE at 1 (estimating origin of chum salmon bycatch in pollock fishery); C.M. Kondzela, et al., NOAA Technical Memorandum NMFS-AFSC-422: *Genetic Stock Composition Analysis of Chum Salmon from the Prohbited Species Catch of the 2019 Bering Sea Walleye Pollock Trawl Fishery* 16, 29 (Aug. 2021) (summarizing historical chum salmon bycatch stock composition); National Marine Fisheries Service, *Non-Chinook salmon mortality in BSAI pollock directed fisheries 1991-2021* (Nov. 26, 2021), *available at* https://www.fisheries.noaa.gov/sites/default/files/akro/chum_salmon_mortality2021.html; *see also* KRITFC REPORT, *supra* note 1, at 2, 6, 9.

and 9 obligations, to address these conservation concerns for the long-term health of salmon stocks and salmon-dependent communities and reduce bycatch in the Bering Sea.

We request that the Department adopt an emergency regulation prohibiting Chinook salmon bycatch during the 2022 season of the pollock trawl fishery in the Bering Sea/Aleutian Islands and establishing a cap for chum salmon bycatch. In addition, we ask the Department to initiate action to reduce salmon bycatch beyond the 2022 season and address declining Chinook and chum salmon runs over the long term.

Background

Chinook and chum salmon have faced a multi-year decline in coastal Western Alaska and n the Kuskokwim and Yukon Rivers. With directed salmon fisheries closed and subsistence fishing severely restricted, communities in Western and Interior Alaska have sacrificed their harvest of these critical fish to help meet escapement goals, yet hundreds of thousands of these fish continue to be caught as bycatch. This year, 2021, was the eighth year that Chinook runs have been too low to support subsistence needs and the first year that once-abundant chum salmon returns have been even lower than Chinook returns, resulting in significant restrictions on fishing for both species.[5] This, in turn, increased pressure on other fish stocks as communities sought to replace Chinook and chum salmon with other food sources.[6] Communities have requested disaster assistance in previous years and again this year, but little action has been taken to ensure the communities do not continue to suffer consecutive and ongoing disasters.

The availability of salmon is particularly critical for coastal communities and communities on the Yukon and Kuskokwim Rivers, where subsistence is central to community existence and more households report food insecurity than in other areas of the state and nation.[7] Traditionally harvested foods make up over 30 percent of the diet for residents of Interior Alaska, and salmon constitutes more than 50 percent of that food in the Yukon-Kuskokwim Delta.[8] Similarly, for some Norton Sound region communities, salmon can comprise over 30 percent of the foods harvested.[9] Over half of all the Chinook salmon caught for subsistence statewide are caught in the Kuskokwim region, where salmon are over 85 percent of the subsistence harvest by poundage.[10] Mean per capita incomes in the Yukon and Kuskokwim regions are about half that of Fairbanks or Anchorage, and even less when adjusted to account for the high cost of store bought food.[11] Wild harvested traditional foods are therefore particularly important in this region.

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[5] *See* KRITFC REPORT, *supra* note 1, at 6.

[6] *Id.* at 7; *see also* Wolfe, *supra* note 2, at 373.

[7] ADF&G REPORT, *supra* note 2, at 369-70.

[8] KRITFC REPORT, *supra* note 1, at 3-4.

[9] YUKON RIVER INTER-TRIBAL FISH COMMISSION, YUKON KING SALMON AND CHUM SALMON SITUATION REPORT 4 (Sept. 21, 2021) [hereinafter "YRITFC REPORT"]; Austin Ahmasuk, et al., Kawerak, Inc., *North Pacific Research Board Project Final Report Project #643, A Comprehensive Subsistence Use Study of the Bering Strait Region* 291-95 (2008), *available at* https://meridian.allenpress.com/jfwm/article-supplement/204262/pdf/fwma-08-01-10_s01/.

[10] KRITFC REPORT, *supra* note 1, at 3.

[11] *See* Wolf *supra* note 2, at 353.

But salmon are not only critical to meet food needs; harvesting and sharing salmon is also at the core of traditional practices and values.[12] Salmon are shared through inter- and intra-community networks and fishing at fish camps provides an opportunity to share traditional knowledge and practices with younger generations.[13] These practices are central to the existence and food sovereignty of the Tribes in this region and the loss of these opportunities is not compensable.

The Department and the North Pacific Fishery Management Council regulate salmon bycatch in the pollock trawl fishery under amendments 91 and 110 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands. These regulations provide a total cap for Chinook bycatch of 60,000 fish, with a performance standard of 47,591, but reduce that cap when an in-river index is below 250,000 Chinook.[14] This year, in-river returns were below the 250,000 index and the lower cap therefore took effect.[15] There is no cap on chum bycatch.

Despite these regulations and the restrictions on subsistence and commercial salmon fishing in Western Alaska, bycatch of both Chinook and chum salmon has been gradually increasing in recent years.[16]

Requested action

We ask the Department to adopt emergency regulations limiting Chinook bycatch in the pollock fishery for the 2022 season to zero fish and adopting a hard cap for chum salmon bycatch.

In addition, we request that the Department engage in meaningful consultation with Tribes in/ Western and Interior Alaska to develop long-term measures to reduce salmon bycatch, ensure the long-term health of salmon stocks in Western and Interior Alaska, and meet the subsistence needs of communities in the regions.

The collapse of multiple salmon stocks is an emergency.

The Department can take emergency action under the Magnuson Stevens Act (MSA) to address the unforeseen, serious conservation and management problems with Chinook and chum salmon bycatch affecting Western and Interior Alaska. Under the MSA, the Secretary of Commerce is

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[12] *See* MUSTONEN, *supra* note 2; RAYMOND-YAKOUBIAN, *supra* note 2; *see also* KRITFC REPORT *supra* note 1, at 7; YRITFC REPORT *supra* note 9, at 6.

[13] *See* KRITFC REPORT, *supra* note 1, at 7; YRITFC REPORT *supra* note 9, at 6; Wolfe *supra* note 2, at 367-74.

[14] 50 C.F.R. § 679.21(f); *see also* 75 Fed. Reg. 53,025 (Sept. 29, 2010) (Amendment 91); 81 Fed. Reg. 37,534 (June 10, 2016) (Amendment 110).

[15] Letter from Sam Rabung, Director, Division of Commercial Fisheries, Alaska Department of Fish & Game, to Dr. James Balsiger, Administrator, NOAA Fisheries, Alaska Region (Sept. 22, 2021).

[16] *See* KRITFC REPORT *supra* note 1, at 9-10; National Marine Fisheries Service, *Non-Chinook salmon mortality in BSAI pollock directed fisheries 1991-2021* (Nov. 26, 2021), *available at* https://www.fisheries.noaa.gov/sites/default/files/akro/chum_salmon_mortality2021.html; National Marine Fisheries Service, *Chinook salmon mortality in BSAI pollock directed fisheries 1991-2021* (Nov. 26, 2021), *available at https://www.fisheries.noaa.gov/sites/default/files/akro/chinook_salmon_mortality2021.html.*

authorized to adopt emergency regulations when an emergency exists in any fishery.[17] The Department's policy guidelines provide that "an emergency exists involving any fishery" when the situation:

1. results from the "recent, unforeseen events or recently discovered circumstances";
2. presents "serious conservation or management problems in the fishery"; and
3. can be addressed through emergency regulations for which "the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process."[18]

The collapse of salmon fisheries and resulting restrictions on subsistence fishing in Western and Interior Alaska meets these criteria.

First, this year's multi-species failure is unprecedented and the full scope of the disaster has only recently become apparent. The 2021 chum salmon run was the lowest on record in the Kuskokwim region and similarly low in the Yukon region, with multiple indicators showing runs more than 95 percent below 20-year averages.[19] Escapement goals were not met in multiple locations, subsistence fishing was severely restricted, and there were no commercial fishing openings for chum salmon.[20] At the same time, Chinook runs on the Kuskokwim were 47 percent below the long-term average and similarly low in the Yukon, with restrictions implemented for both commercial and subsistence Chinook fishing.[21] As described above, the combination of these circumstances is catastrophic for Western and Interior Alaska communities that depend on salmon and, in recent years of low Chinook abundance, have relied on chum salmon as a partial substitute for some of the unavailable Chinook.

Second, the collapse of Chinook and chum runs presents a serious conservation concern for salmon stocks as well as a management problem not only for the pollock fishery, but also for subsistence and directed salmon fisheries. Even with significant restrictions on subsistence fishing and closure of commercial salmon fisheries, meeting escapement goals for Chinook and chum salmon in Western and Interior Alaska has been challenging, and, in some cases, escapement goals have not

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[17] Magnuson-Stevens Fishery Conservation and Management Act, Pub. L. No. 94-265, § 305, 16 U.S.C. § 1855(c).

[18] NMFS Instruction 01-101-07, *Policy Guidelines for the Use of Emergency Rules* at 2-3 (Mar. 31, 2008); 62 Fed. Reg. 44422 (Aug. 21, 1997).

[19] *See* Division of Commercial Fisheries, Alaska Department of Fish & Game, *Advisory Announcement: Kuskokwim River Salmon Fishery Announcement #14 2021 Preliminary Kuskokwim Area Season Summary* at 3-4, 9 (Nov. 4, 2021), *available at* https://www.adfg.alaska.gov/static/applications/dcfnewsrelease/1345527186.pdf [hereinafter *2021 Preliminary Kuskokwim Area Season Summary*]; Division of Commercial Fisheries, Alaska Department of Fish & Game, *Advisory Announcement: 2021 Yukon River Summer Season* Summary at 7-8, 12 (Oct. 26, 2021), *available at* https://www.adfg.alaska.gov/static/applications/dcfnewsrelease/1344517999.pdf [hereinafter *2021 Yukon River Season Summary*]; *see also* KRITFC REPORT, *supra* note 1, at 6; YRITFC REPORT, *supra* note 9, at 8.

[20] *See supra*, note 19 (sources discussing Yukon and Kuskokwim runs and escapement goals).

[21] *See 2021 Yukon River Summer Season Summary*, *supra*, note 18 at 7, 11; *2021 Preliminary Kuskokwim Area Season Summary supra* note 18, at 4-6, 8; *see also* KRITFC REPORT, *supra* note 1, at 6; YRITFC REPORT, *supra* note 9, at 8 (citing ADF&G data).

been met.[22] The failure to meet the three system, 250,000 in-river run size for Chinook this year required a lower cap for Chinook bycatch in the pollock fleet,[23] but even with that lower cap, bycatch contributes significantly to the low run sizes. These stark statistics demonstrate that there is a serious conservation concern for Alaska Chinook and chum salmon and a management concern with bycatch that contributes to the conservation concern.

Third, immediate action is needed to address these serious conservation and management concerns because, if the Department does not act, the pollock trawl fleet will continue to catch hundreds of thousands of salmon as bycatch during the 2022 season, contributing to continued restrictions on subsistence and commercial salmon fishing in Western Alaska in 2022. Without emergency regulation, the pollock fleet could catch over 45,000 Chinook salmon and an unlimited number of chum salmon without consequence for the pollock fleet, and with devastating results for salmon returns and our Tribes and communities that depend on them. Immediate action to eliminate Chinook bycatch and reduce chum bycatch will have conservation and community benefits by allowing more fish from these severely stressed populations to reach their spawning rivers and provide greater opportunity for subsistence-dependent communities to harvest the salmon that are central to their livelihoods and traditions. In this context, every fish that reaches the rivers is critical. The majority of Chinook salmon bycatch is caught during the pollock A season, which will start before the Department can take action under the normal rulemaking process.[24] The facts related to bycatch and subsistence needs are known and the need for immediate action to protect subsistence needs and salmon populations significantly outweighs the benefit of advance notice and public comment through a normal rulemaking process.

Emergency action is needed to mitigate severe ecological, economic, social, and public health consequences for salmon-dependent communities in Western and Interior Alaska.

Emergency action is justified in this circumstance to prevent serious ecological, economic, social, and public health consequences that will result if the pollock trawl fleet takes salmon bycatch during the upcoming season. Under the Department's policy guidelines, the Department may take emergency action to address any of the following situations:

(1) **Ecological**—(A) to prevent overfishing as defined in a fishery management plan (FMP), or as defined by the Secretary in the absence of an FMP, or (B) to prevent other serious damage to the fishery resource or habitat; or
(2) **Economic**—to prevent significant direct economic loss or to preserve a significant economic opportunity that otherwise might be foregone; or
(3) **Social**—to prevent significant community impacts or conflict between user groups; or
(4) **Public health**—to prevent significant adverse effects to health of participants in a fishery or to the consumers of seafood products.[25]

[22] *See supra*, notes 19-20.

[23] *See supra*, note 15.

[24] *See supra*, note 3.

[25] NMFS Instruction 01-101-07, *Policy Guidelines for the Use of Emergency Rules* at 2-3 (Mar. 31, 2008); 62 Fed. Reg. 44422 (Aug. 21, 1997).

All of these circumstances are present here.

Ecological: Emergency action is needed to prevent serious damage to a fishery resource—in this case, Chinook and chum salmon, which are important subsistence and commercial fishery resources. Returns for Chinook and chum salmon stocks in Western and Interior Alaska are at disastrously low levels, with chum salmon reaching a historic low in 2021.[26] Bycatch in the pollock trawl fishery takes—and wastes—a significant number of fish destined for coastal western Alaska and the Kuskokwim and Yukon rivers when those salmon stocks are at low levels and, in some cases, not meeting escapement goals. Other factors, including ocean conditions, likely contribute to the decline in these salmon populations as well. With these stressors, salmon populations in Western and Interior Alaska cannot sustain the significant losses of fish to pollock bycatch. Allowing bycatch to continue at current rates has serious ecological consequences and contributes to the continued shutdown of directed commercial salmon fisheries and restrictions on subsistence fishing.

The Department has an obligation to protect fishery resources and must take emergency action to regulate the factors it can control to minimize the unacceptable ecological consequences of bycatch for salmon populations.

Economic: Salmon bycatch in the pollock fisheries results in a direct economic loss to communities in Western and Interior Alaska and the Department must take action to mitigate those losses. Communities have asked the North Pacific Fisheries Management Council to support disaster declarations for the region because of the effects of the salmon fishing closures.[27]

As described above, Western and Interior Alaska communities rely heavily on traditionally harvested salmon. In many communities in this region, salmon makes up the vast majority of subsistence food harvest each year and nearly all households rely on salmon as a food source. [28] Fish are also shared among households, creating networks within communities.[29] In pure economic terms, the value of salmon contributes significantly to household income in this cash-poor region of the state.[30] Even where it is possible to substitute other fish or game, increased costs for gas to reach more distant locations, added costs for different type of fishing nets or hunting equipment, and losses associated with the increased effort to hunt or fish for these other sources create economic burdens. Where it is not possible to shift effort to other fish or game, communities must rely on store bought meat at significant cost.

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[26] *See supra*, notes 19-21.

[27] KRITFC REPORT, *supra* note 1; YRITFC REPORT, *supra* note 9; Olivia Ebertz, *YRDFA To Seek Second Disaster Declaration For Yukon Fish While First Sits In Limbo*, KYUK (July 9, 2021) https://www.kyuk.org/hunting-fishing/2021-07-09/yrdfa-to-seek-second-disaster-declaration-for-yukon-fish-while-first-sits-in-limbo.

[28] *See* Caroline L. Brown, et al., Alaska Department of Fish & Game, *Subsistence Harvests in 8 Communities in the Central Kuskokwim River Drainage, 2009* 350-51 (Jan. 2012).

[29] *Id.* at 367-68.

[30] *See supra*, notes 7-10.

Small-scale commercial salmon fishing is also a major source of local employment.[31] With commercial salmon fishing closures, the region has lost an important employment source. Because a significant percentage of the Chinook and chum bycatch caught by the pollock fishery is Western and Interior Alaska salmon, taking action to eliminate and reduce this bycatch is imperative to avoid these economic consequences.

Social and Public Health: Traditional practices and food harvesting have significant social and public health benefits for Alaska Native people. Protecting and fostering these practices is essential, and depends, in part, on a healthy salmon harvest.

Traditional foods, including salmon, are the healthiest food source for Alaska Native people and are especially important during the current pandemic. Salmon are healthy foods, high in omega-3s that have been shown to lower the risk of a variety of chronic diseases in people from this region.[32] Reliance on store bought foods increases rates of obesity, diabetes, heart disease, and other negative health consequences.

In addition, salmon are a culturally preferred food that contributes to the continuation of traditional practices which support and facilitate community relationships and foster cultural connections that build individual and community well-being.[33] The importance and urgency of supporting these practices cannot be overstated.

The loss of salmon fishing opportunities on the Kuskokwim and Yukon Rivers is the loss of a way of life for communities in Western and Interior Alaska. Traditions, values and knowledge are passed down to younger generations while harvesting salmon at fish camps, but, with few fish to harvest, families may not be able to spend this time sharing healthy traditions and building community.[34] In 2021, communities in the Kuskokwim watershed were able to meet less than one-third of their long term salmon harvest needs.[35] They have not been able to meet the "amount necessary for subsistence" since 2010.[36] In previous years with low Chinook returns, people were able to harvest more chum salmon to supplement low Chinook harvests, but this year, with a collapse of chum stocks as well, no chum salmon were available.

With the unacceptable social and public health consequences that result from the loss of subsistence salmon in Western and Interior Alaska, every fish matters and the Department must take action to eliminate Chinook bycatch and reduce chum bycatch in the pollock fleet so that these critical stocks have an opportunity to rebuild and thrive to support future generations.

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[31] *See* Wolfe, *supra* note 2, at 355.

[32] Z Makhoul et al, *Associations of obesity with triglycerides and C-reactive protein are attenuated in adults with high red blood cell eicosapentaenoic and docosahexaenoic acids*, EUROPEAN J. OF CLINICAL NUTRITION (2011).

[33] Christopher R. DeCout et al, *Traditional Living and Cultural Ways as Protective Factors Against Suicide: Perceptions of Alaska Native University Students*, INT'L J. OF CIRCUMPOLAR HEALTH (2013).

[34] YRITFC REPORT, *supra* note 9, at 6.

[35] KRITFC REPORT, *supra* note 1, at 9.

[36] *Id.*

Conclusion

Chinook and chum salmon populations and the communities that rely on them in Western and Interior Alaska are in crisis and bycatch in the pollock fleet takes a significant portion of the fish that would otherwise be available to meet escapement goals and provide for subsistence and commercial salmon fishing in this region. Allowing continued bycatch of these fish means that subsistence fishing will continue to be severely restricted, salmon will suffer severe ecological consequences, and Western and Interior Alaska communities will suffer economic, social, cultural, and public health consequences. The Department has the authority to take action to address bycatch before the opening of the 2022 pollock fishery and we request that you do so to address and prevent further catastrophic harms.

Sincerely,

Melanie Bahnke
President
Kawerak, Inc.

Vivian Korthuis
Chief Executive Officer
Association of Village Council Presidents

Mike Williams Sr.
Chair
Kuskokwim River Inter-Tribal Fish Commission

Brooke Woods
Chairwoman
Yukon River Inter-Tribal Fish Commission

Amos Philemonoff
President
Aleut Community of St. Paul Island

Mellisa Johnson
Executive Director
Bering Sea Elders Group

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
1315 East-West Highway
Silver Spring, Maryland 20910
THE DIRECTOR

January 25, 2022

Mr. Mike Williams Sr.
Chair
Kuskokwim River Inter-Tribal Fish Commission

Dear Mr. Williams,

Thank you for your letter dated December 21, 2021, regarding bycatch of Chinook and chum salmon in the Bering Sea Pollock fishery. In your letter, Kawerak, Inc., the Association of Village Council Presidents, the Kuskokwim River Inter-Tribal Fish Commission, the Yukon River Inter-Tribal Fish Commission, the Aleut Community of St. Paul Island, and the Bering Sea Elders Group request emergency action be taken to eliminate Chinook salmon bycatch and set a cap on chum salmon bycatch in the Bering Sea pollock trawl fishery in 2022 to address the severe and unforeseen ecological, economic, social, and public health concerns affecting Western Alaska and Interior Alaska communities that depend on salmon.

I understand the people in Western Alaska have suffered significant cultural and economic losses resulting from low Chinook salmon runs since 2008 and most recently the Chinook and chum salmon failures in the Yukon River system in 2021. These losses affect critical food resources in a region that is experiencing food insecurity and the loss of opportunities to pass on traditional knowledge and ways-of-life to younger generations due to the continued poor returns in Western Alaska. In fact, U.S. Secretary of Commerce Gina M. Raimondo announced her determination, at the request of the Governor of Alaska, that multiple fishery disasters occurred from 2018 to 2021 across the State.[1] Nonetheless, for the reasons stated below, I am writing to deny the emergency petition. Please know that the NOAA Fisheries staff in the Alaska Regional Office and I are committed to working with you and the North Pacific Fishery Management Council (Council) to review and examine the impacts of salmon bycatch on Western Alaska.

I and the Alaska Regional Office engaged with Tribes during the consideration of this petition. The Alaska Regional Office held a salmon bycatch listening session on January 11, 2022 and consulted with Tanana Chiefs Council on January 21, 2022. I appreciate amount of time it took to engage with us and all the valuable information shared.

[1] NOAA Fisheries Fishery Disaster News release is available at: https://www.noaa.gov/news-release/secretary-of-commerce-issues-multiple-fishery-disaster-determinations-for-alaska.

THE ASSISTANT ADMINISTRATOR
FOR FISHERIES

Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) allows NOAA Fisheries to undertake emergency action in certain circumstances. While providing some exceptions to the procedural requirements of the MSA, the underlying action must still be within the statutory authority of NOAA Fisheries, including the ten national standards. Specific to this petition, the most relevant statutory authority stems from National Standard 9 [MSA Section 301(a) (9)] which requires that fishery conservation and management measures "shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch." Thus, in evaluating whether to grant the petition, NOAA Fisheries must examine whether the emergency criteria are met and whether the petition contains information indicating that the petitioned bycatch reduction measure is practicable. In this instance, the petition does not indicate that the complete elimination of Chinook bycatch would be practicable and therefore cannot be granted.

In addition, NMFS analyzed the request using NMFS's Policy Guidelines for the Use of Emergency Rules (NMFS Policy Procedure 01-101-07 published in the Federal Register (62 FR 44421, August 21, 1997)) that, among other considerations, define three criteria that must be met to determine that an emergency exists. The phrase "an emergency exists involving any fishery" is defined as a situation that:

> (1) Results from recent, unforeseen events or recently discovered circumstances;
>
> (2) Presents serious conservation or management problems in the fishery; and
>
> (3) Can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts to the same extent as would be expected under the normal rulemaking process.

All three criteria must be met for NMFS to approve a petition for emergency action and implement emergency regulations.

Based on a review of the best available scientific information, the petition does not meet all three of these criteria. I recognize the ongoing decline of Chinook and chum salmon fisheries in Western Alaska. Scientific information indicates that there are changes to the marine ecosystem and environmental factors that continue to affect Chinook and chum salmon returns. I also recognize that Chinook and chum salmon bycatch, at any level, is a key concern. The best available scientific information indicates that Chinook salmon bycatch in the Bering Sea pollock fishery comprises less than three percent and chum salmon bycatch comprises less than one percent of the returns to Western Alaska river systems. Closure of the Bering Sea pollock trawl fishery in 2022 is unlikely to result in meeting escapement goals or substantively increase the likelihood of improving subsistence and commercial harvests in 2022. Additionally, other fisheries in the Bering Sea would continue to contribute to Chinook and chum salmon bycatch.

At its October 2021 and December 2021 meetings, the Council received public comments

and testimony from numerous subsistence and commercial salmon stakeholders including individuals representing Tribal organizations, fishery organizations, and individual participants requesting emergency action to eliminate Chinook salmon bycatch in the Bering Sea pollock fishery. The Council did not recommend emergency action; however, the Council requested an updated bycatch impact analysis (also known as an adult equivalency or AEQ analysis) and a stock status update from the Alaska Department of Fish and Game on the status of Western Alaska Chinook and chum salmon stocks.[2]

The Council also requested the staff report include recommendations to evaluate impacts of chum salmon bycatch by the pollock fishery with currently available data. These reports are currently scheduled to be reviewed by the Council in June 2022 and are the first step toward initiating action to develop long-term salmon bycatch reduction measures. I believe this is the best approach to develop such measures, ensure the long-term health of salmon stocks in Western and Interior Alaska, and meet the subsistence needs of communities in the regions. I am committed to a comprehensive review of our current salmon bycatch management measures. I understand your concerns about the current Chinook salmon bycatch limit and the lack of a chum salmon bycatch limit. I encourage you to engage in the Council process as we examine our current management approach and consider the best way to address our mandates for bycatch under the MSA.

Additionally, NOAA Fisheries continues to support a variety of research efforts in the Northern Bering Sea Region which contribute to our understanding of salmon run declines. In an annual survey, we gather information on ecosystem indicators which helps us understand the impact of sea ice loss on juvenile salmon. NOAA Fisheries also prioritizes research on ecosystem-based management, including adaptive, resilient, climate-ready fisheries management. Specific to salmon in the North Pacific, NOAA Fisheries supports a variety of research activities including genetics stock composition, salmon bycatch in federally-managed fisheries, and abundance estimation.

I continue to support and encourage participation of Tribal members in the Council process broadly and specifically as representatives from Alaska. I support the Council's Local Knowledge, Traditional Knowledge, and Subsistence (LKTKS) Task Force which was initiated by the Council in December 2018 with the goal of developing protocols for using LK and TK in management, and to understand the impacts of Council decisions on subsistence resources, users, and practices. More specifically, this Task Force aims to provide a roadmap for operationalizing LK and TK (potentially through processes like Co-Production of Knowledge) in the short- to long-term, as well as to formulate methods for assessing the likelihood a given Council action may affect subsistence resources, the ability of users to access those resources, or impact subsistence practices. NOAA Fisheries supports and participates on this Task Force.

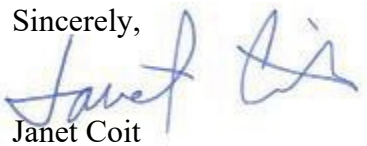
Please be assured of our full cooperation in the development of long-term management measures to limit Chinook and chum salmon bycatch and our commitment to consultation

[2] Draft Council motion E1 Staff Tasking – Salmon Bycatch available from https://meetings.npfmc.org/CommentReview/DownloadFile?p=01eef937-8ca9-4187-a27e-b7730af04699.pdf&fileName=E1%20Motion%20-%20Salmon%20Bycatch.pdf.

and engagement with Alaska Native Tribes and Tribal organizations during this forthcoming process.

If you have any questions, please contact Robert D. Mecum, Acting Regional Administrator, Alaska Region at doug.mecum@noaa.gov or (907) 586-7221.

Sincerely,



Janet Coit
Assistant Administrator
for Fisheries

Attachments

Cc: Samuel Rauch, Deputy Assistant Administrator
Robert D. Mecum, Acting Administrator, Alaska Region

2022 Kuskokwim River Salmon Situation Report

KUSKOKWIM RIVER
INTER-TRIBAL FISH COMMISSION

Last updated February 17, 2023. Photo courtesy: Jonathan Samuelson.

Introduction

This situation report documents the current Chinook, chum, and coho salmon disasters on the Kuskokwim River and their impacts on the 33 subsistence-dependent communities in its watershed. The aim of the Kuskokwim River Inter-Tribal Fish Commission (KRITFC) in this report is to communicate the magnitude of our subsistence salmon declines and articulate the critical need for a new conservation-based, ecosystem-wide management approach, particularly in the marine environment. These multi-year, multi-species salmon declines threaten food, cultural, spiritual, and economic security in the Kuskokwim drainage, and they demand attention and immediate action by all management entities.

While this report focuses on the impacts of these salmon stock collapses in the Kuskokwim drainage, we are acutely aware of other watersheds in Western and Interior Alaska experiencing the same, if not more severe, declines. Moreover, this situation report is not meant to diminish our gratitude for the fish we have been able to harvest along the Kuskokwim. Rather, it is meant to be an honest documentation of the experiences of our communities during salmon shortages so we can act effectively and equitably to maintain our fishing ways of life for future generations.

About the Kuskokwim River Inter-Tribal Fish Commission

KRITFC represents the interests of the 33 federally recognized Tribes of the Kuskokwim River in salmon management, research, and monitoring to protect and sustain our salmon fisheries and traditional ways of life. The work of our 27 Tribally appointed Fish Commissioners, 7 Executive Council members, and 5 In-Season Managers uses both our Yupik and Athabascan Dené Indigenous Knowledge and the best available Western science, and centers our values of unity, sharing in abundance and scarcity, respect for all life, and stewardship for our ancestors and future generations.

At A Glance: The Status of Kuskokwim River Salmon Runs, Subsistence Harvests, & Causes of Decline

- 2022 is the **seventh year in a row of successful collaborative salmon management** between KRITFC and the U.S. Fish and Wildlife Service at Yukon Delta National Wildlife Refuge.
- Chinook salmon escapement goals were met in 2022 because of **continued sacrifices and conservation efforts by Kuskokwim subsistence communities,** who only met about **one-third of their long-term Chinook salmon subsistence harvest needs**.
- **Chum salmon returns remain unprecedentedly low** in the Kuskokwim River, and **2022 is the third year of an alarmingly steep decline of coho salmon**.
- The sockeye salmon run remains strong, but it is not possible to harvest them in large numbers without impacting declined Chinook and chum salmon populations.
- **The 2022 season was the most restricted subsistence fishing season** ever seen on the Kuskokwim.
- With the coho salmon decline, it becomes clear that **Kuskokwim River communities now face a multi-species salmon collapse.** There appears to no longer be any highly abundant "backup" salmon species to fill unmet food security needs.
- Massive intercept catches of chum salmon occurred in the South Alaska Peninsula area (Area M) commercial salmon fisheries during June 2021 and 2022. The most recent and rigorous genetic analyses of samples from these fisheries showed that **Coastal Western Alaska stocks comprise an average of 18–57% of the chum salmon harvested in Area M, and between 210,000–788,000 Coastal Western Alaska chum salmon were intercepted there in the two-year period of 2021 to 2022**.
- While the bycatch of Chinook salmon in the Bering Sea-Aleutian Island pollock fishery has declined, chum salmon bycatch remains high, with **no chum salmon bycatch caps** in place by federal managers.

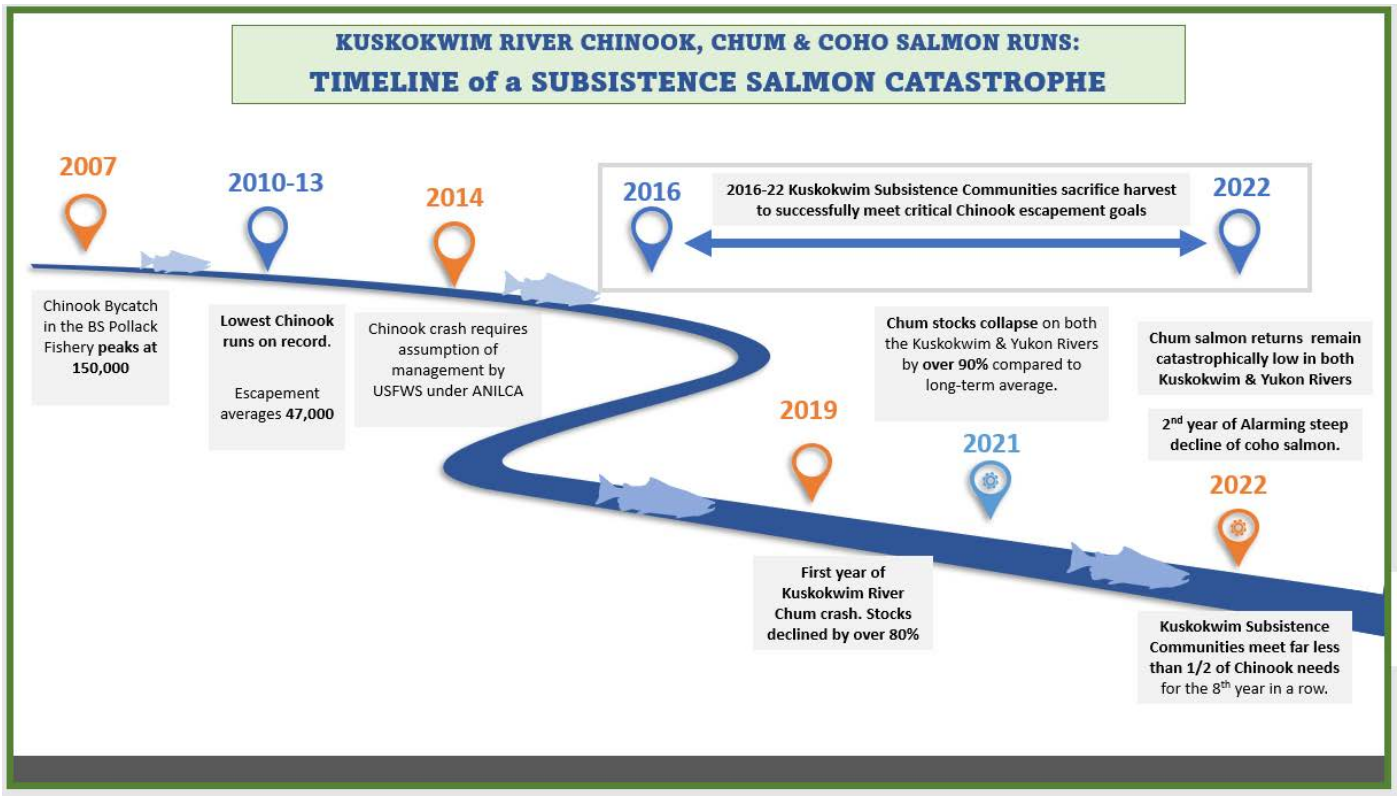


Figure 1: Timeline of a subsistence salmon catastrophe on the Kuskokwim River.

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The Multi-Species Salmon Collapse Threatens Our Well-Being & Way of Life

The Kuskokwim River has historically supported the largest subsistence salmon fishery in the State of Alaska, both based on the number of residents in the 33 villages who participate in the fishery and the number of salmon harvested (Fall et al. 2011). With some of the lowest per capita monetary incomes and highest poverty rates in the state, this region is characterized by a high production of wild foods for local use (Wolfe and Walker 1987).

Over the past thirty years, village residents in the Kuskokwim region have annually harvested over 360 pounds of wild foods per person for human consumption, with fish comprising up to 85% of the total poundage of subsistence harvests, and salmon contributing up to 53% of subsistence harvests (Simon et al. 2007; Wolfe et al. 2011). Residents harvest all five species of Pacific salmon: Chinook, chum, coho, pink, and sockeye. Historically, one out of every two Chinook salmon caught for subsistence in the state was harvested by Kuskokwim River communities. In other words, salmon-dependent communities in the Kuskokwim watershed utilize half of all Chinook salmon harvested for subsistence state-wide.

The importance of salmon, particularly Chinook salmon, to residents extends well beyond nutrition and economy to include socio-cultural identities and a way of life (Ikuta et al. 2013). The Indigenous people of the Kuskokwim —from our Yupik communities at the coast to our Upper Kuskokwim Athabascan Dené Tribes of the Interior headwaters—are, have been, and will always be salmon people. Salmon are essential to our physical, economic, cultural, and spiritual wellbeing.

From the late 1970's into the mid-1990's, the Kuskokwim River saw large runs of Chinook, chum and coho salmon, supporting significant commercial fisheries in addition to meeting subsistence needs in much of the watershed.

For example, between 1990 and 1995, an average of over 1.5 million salmon of multiple species were harvested in the commercial fisheries alone (Figure 2).

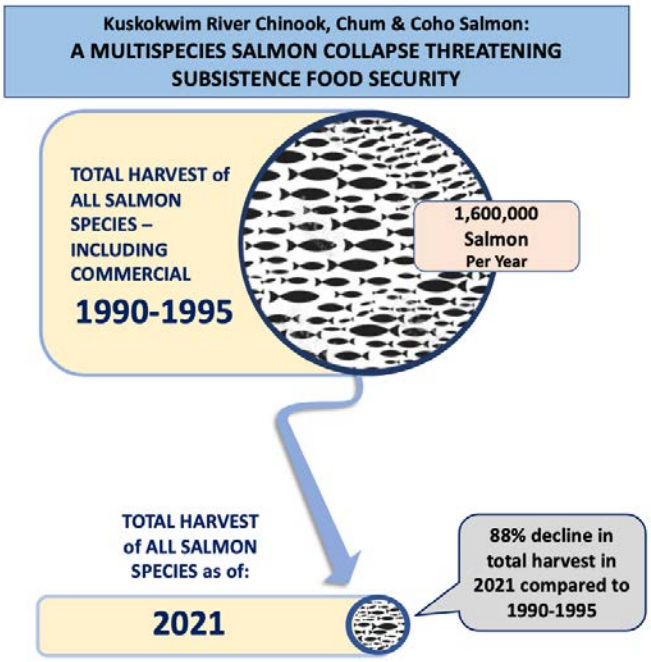

Figure 2: Total subsistence and commercial harvest of all Kuskokwim River salmon species, 1990–1995 compared to 2021. Note: Final 2022 estimates were not available for use at the time of this graphic's creation.

As of 2022, the Kuskokwim River is experiencing a catastrophic multi-species salmon decline not seen in living memory, and our Elders, youth, and entire communities are suffering because of it. Since at least 2009, subsistence-dependent communities in the Kuskokwim drainage have witnessed steep declines in their salmon populations, beginning with Chinook salmon and now, within the past three years, extending to chum and coho salmon (Figures 1 & 2).

Due to the multi-species nature of the salmon collapse and the complete closure of much of the coho salmon run, the 2022 season was the most restricted subsistence fishing season ever seen on the Kuskokwim.

The State of Alaska Department of Fish and Game (ADF&G) closed all subsistence gillnet fishing in the flowing waters of the Kuskokwim River from August 17 through September 15, including fishing for non-salmon fishes. Because of prolonged conservation closures, subsistence fishing families not only faced salmon harvest restrictions, but also experienced challenges harvesting whitefish and other non-salmon species that are critical for traditional diets and well-being.

In the recent past, the subsistence harvest of chum and coho could help make up for the absence of Chinook salmon. This was not possible in 2022 with the steep decline of coho salmon on top of the Chinook and chum crashes. And, while sockeye salmon have increased in abundance, it is not possible to target them without potentially overharvesting the declined Chinook and chum populations present in the river at the same time. Kuskokwim River communities are realizing that there is no longer any "backup" salmon species to fill unmet salmon needs, leaving us with a heavy reliance on whitefish, moose, and other subsistence resources, as well as on store-bought foods of significantly less nutritional and cultural value. These current dramatic multi-species salmon declines are thus threatening food security and overall well-being within the Kuskokwim region, as well as the health of our drainage-wide ecosystem.

Impacts of the Prolonged Chinook Salmon Crash (2009–2022)

Since at least 2009, the Chinook salmon (king salmon, *kiagtaq, taryaqvak, gas, Oncorhynchus tshawytscha)* populations in the Kuskokwim River have crashed and remain severely depressed through the 2022 season. Many fishing families in upriver communities, including Nikolai, McGrath, and Takotna, reported Chinook salmon declines dating back to 2000 when average household harvests decreased to approximately half of what they had been in the 1990s.

The preliminary 2022 Kuskokwim River Chinook salmon total run estimate shows a midpoint of about 143,600 fish, and an estimated escapement of about 105,700 fish (though preliminary estimates are considerably uncertain because poor weather prevented aerial surveys) (Rabung 2022). This is about 41% below the long-term total run

average from 1976 to 2009 (Figure 3). During the run, subsistence-dependent communities were heavily regulated with very few limited harvest opportunities per week and net size and gear restrictions to try to meet the critical escapement goals. As a result of the sacrifices of subsistence users working to rebuild the Chinook salmon stocks, the drainage-wide Chinook salmon escapement goal (65,000–120,000 fish) has been achieved every year that KRITFC and U.S. Fish and Wildlife Service at Yukon Delta National Wildlife Refuge (YDNWR) have collaboratively managed the run, including 2022.

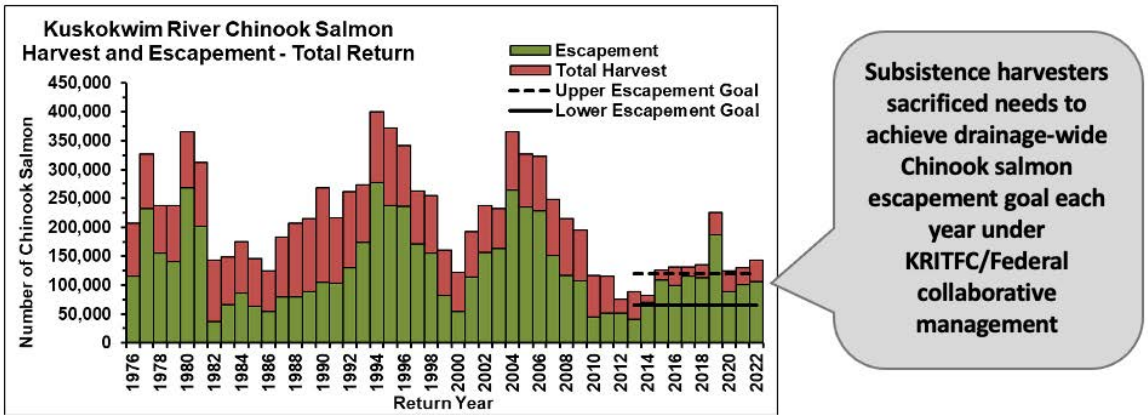

Figure 3: Kuskokwim River Chinook salmon escapement and total harvest by all user groups, 1976–2022. Note: 2022 data is preliminary. Source: Rabung 2022.

Despite Chinook salmon escapement goals being met throughout the period of KRITFC–YDNWR co-management, the Kuskokwim River Chinook salmon run remains concerning because of the inability to maintain expected historic yields, or harvestable surpluses, above the stock's escapement needs, despite the use of management measures aimed at rebuilding the stock. As a result, Kuskokwim River residents have not been able to meet their long-term harvest levels—termed amounts reasonably necessary for subsistence (ANS) by the Alaska Board of Fisheries (BOF)—of 67,200–109,800 fish since 2010 (Figure 4).

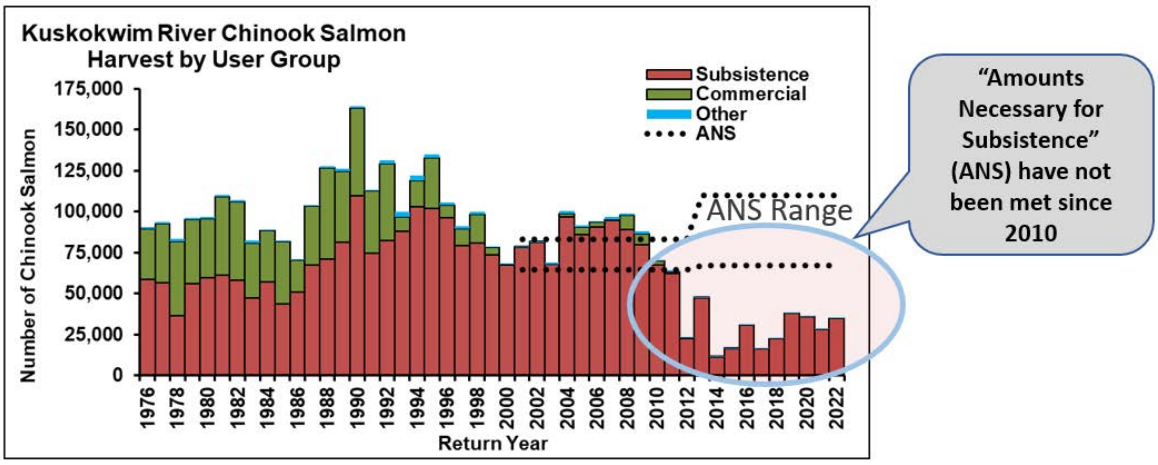

Figure 4: Kuskokwim River Chinook salmon harvest by user groups during 1976—2022, showing that long-term subsistence harvest needs (based on ANS) in the watershed have not been meet since 2010. Note: 2022 data is preliminary. Source: ADF&G AYK Database Management System.

While post-season household harvest surveys have yet to be published to estimate total salmon harvests during the 2022 season, based upon the in-season community-based harvest monitoring program operated by KRITFC, Orutsararmiut Native Council, and YDNWR, we estimate at this time that residents of the Kuskokwim River met only about one-third of their average long-term Chinook salmon harvest needs. Moreover, as the average size of Chinook salmon returning to the Kuskokwim has decreased, subsistence fishers are not only harvesting fewer numbers of fish but fewer total pounds of fish (Ohlberger et al. 2018). This compounds the food security crisis already unfolding with declined Chinook salmon stocks and restricted harvest opportunities.

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> June 16 was not a good day. Many Kalskag fishermen started at 6:00 am or 8:00 am and fished for eight to ten hours, with a range of zero to five Chinook salmon caught. One person caught ten kings after fishing almost the whole opener. Some are waiting because they can't afford to spend the whole day out for one or two fish. It was a hard day.
>
> *Megan Leary, Aniak (Native Village of Napaimute)*

Continued Recent Chum Salmon Crash (2020–2022)

Chum salmon (dog salmon, *aluyak, iqalluk, neqepik, srughot'aye, O. keta)* have been especially important for food security during years of poor Chinook salmon returns. Because of their lower fat content, they also provide unique traditional foods that cannot be prepared with other salmon species. While chum salmon harvests have declined in recent decades resulting from changes in customary and traditional use patterns, including fewer dog teams in the region, they are highly sought for preparing traditional delicacies like *eggamarrluk* (half-dried, half-smoked salmon) and for Elders and other family members who cannot consume fattier salmon species.

However, in 2020, 2021, and 2022, Kuskokwim chum salmon returns crashed unexpectedly. The 2022 chum salmon run appears to be the second lowest chum salmon return on record, better only than the 2021 return (Figure 5). Chum salmon used to return to middle and headwaters tributaries in the millions, feeding human subsistence users as well as bears, vegetation, and other life. The lack of chum salmon in tributary valleys has the potential to significantly alter the health of the Kuskokwim ecosystem.

Moreover, because in-season data showed a weak chum salmon return, Kuskokwim subsistence-dependent communities were restricted from harvesting chum salmon through area and gear type closures. For the second year in a row—and the second year in living memory—subsistence gillnet fishing in the lower Kuskokwim River remained closed through the majority of July, preventing families from being able to efficiently harvest sockeye salmon and non-salmon fish species to store food for the winter.

As a result of this crash and harvest restrictions to meet escapement and conservation goals, subsistence harvests of chum salmon in the Kuskokwim River from 2020 through 2022 have been well below the ANS range of 41,200–116,400 fish designated by the Alaska BOF, representing some of the poorest harvests on record.

> “
>
> On June 22, I caught only five chums; most people are catching five to ten. People are calling them 'precious.'
>
> *Mike Williams Sr., Akiak (Akiak Native Community)*

> When I first came to Aniak in the 1960s, there were people who made their money off fur in the winter and fish in the summer; that's how they could buy a new outboard or net. They were able to do that because the chum salmon went up the Aniak valley to die. Elders talk about the stink up there, and the first year we had a sonar on the Aniak, we had a million chums up there; but no longer. We should think of chums as the sponsor of marine-derived nutrients and make sure we don't downplay this.
>
> *LaMont Albertson, Aniak*

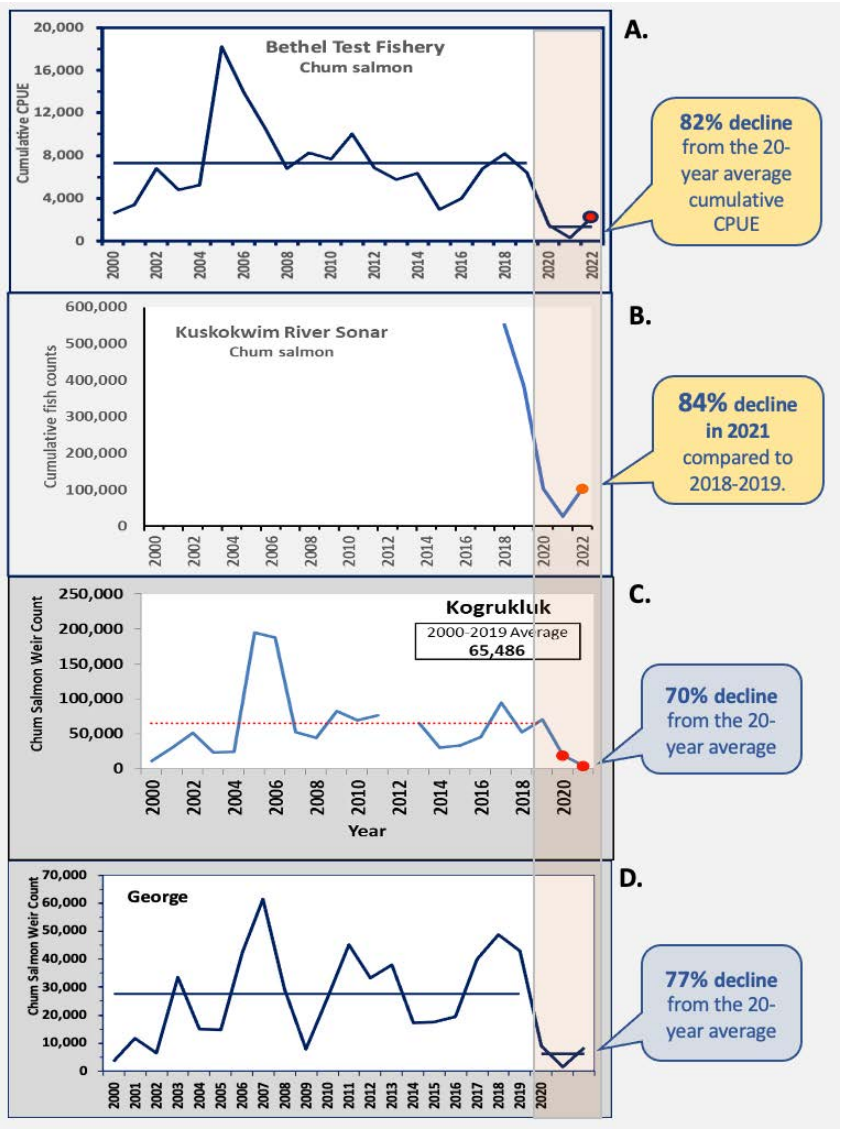

Figure 5: Evidence of low 2020 - 2022 Kuskokwim River chum salmon abundance:

A. Cumulative end-of-season catch per unit effort (CPUE) of chum salmon caught in the Bethel Test Fishery, 2000-2022.
B. Cumulative annual counts of chum salmon from the Kuskokwim River sonar project, 2018-2022.
C. Kogrukluk river weir, 2000-2021.
D. George River weir, 2000-2022.

Source: ADF&G AYK Database Management System.

Unprecedented Coho Salmon Crash (2022)

Coho salmon (silver salmon, *ciayuryaq, caayuryaq, uqurliq, qakiiyaq, nosdlaghe, O. kisutch*) are the last salmon species to return to the Kuskokwim each season. With the run beginning toward the end of July and continuing until ice covers the river, coho salmon provide Kuskokwim fishing communities with their final opportunities to meet their subsistence salmon needs.

In the past, Kuskokwim River coho salmon returns appeared to be highly productive, supporting both commercial and subsistence fisheries. During the 1990s, commercial harvests of coho salmon averaged around 460,000 fish per year, with a peak harvest of nearly 1 million coho salmon in 1996. However, this large commercial fishery was managed without a reliable in-season estimate of abundance or post-season run reconstruction, meaning there was no method for ADF&G managers to assess the long-term sustainability of this commercial fishery.

Unlike the commercial fishery, long-term coho salmon subsistence harvests until 2018 averaged and remained relatively stable around 35,000 fish. With ongoing Chinook and chum salmon declines, river-wide dependence on

coho salmon to meet subsistence needs is especially strong. Many families rely on coho salmon to fill their freezers, jar smoked strips, and taste the last fresh salmon of the season before winter sets in.

Available long-term run assessment data from the Bethel Test Fishery (BTF) show that the Kuskokwim River coho salmon run has declined significantly since 2018 (Figure 6), which corresponds with coho conservation concerns voiced by Kuskokwim residents in recent years at the State of Alaska's advisory body, the Kuskokwim River Salmon Management Working Group. BTF cumulative coho salmon catch-per-unit-effort (CPUE) has dropped 54% in the past four years. As a result of these declines, the coho salmon ANS of 27,400–57,600 fish was not met in 2018, 2020, 2021, or 2022.

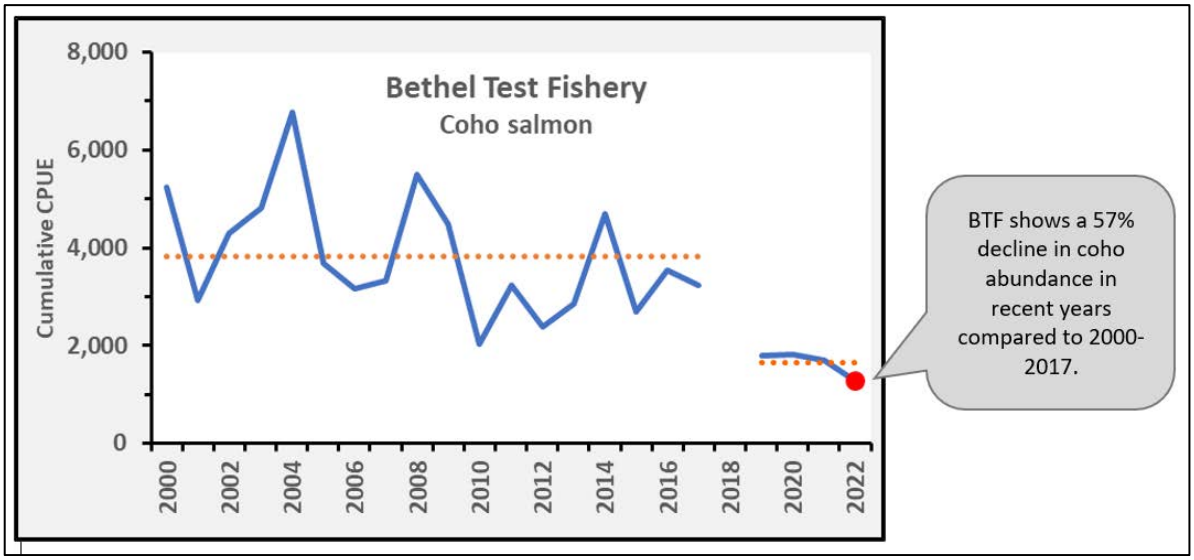

Figure 6: Cumulative end of season CPUE of coho salmon caught in the Bethel Test Fishery, 2000-2022, showing a steep decline in coho salmon runs for the past four years. The 2019–2022 average CPUE was 57% below the 2000–2017 average. 2018 data is not shown because the sampling season was incomplete. Source: ADF&G AYK Database Management System.

Despite recent years of steep coho salmon declines, ADF&G managers did not act until 2022, when they implemented a drainage-wide closure of the Kuskokwim from mid-August to mid-September to protect a record-low coho salmon return. This drainage wide closure effectively shut down all subsistence fishing, including the use of smaller-sized mesh nets targeting whitefish and the use of selective non-gillnet gear types, that resulted in severely harming subsistence communities by the lack of reasonable opportunity to harvest non-salmon species.

"

I'm really saddened and devastated for our Tribal families upriver who haven't had a chance to catch Chinook or chum salmon, and we don't get reds up here. Now there's no silver fishing. The people that live a subsistence lifestyle up here are going to be hit really hard. It was open downriver, but the fish take two or more weeks to get upriver. By the time the silvers were up here this year, we were closed and couldn't fish. It's devastation up here.
Betty Magnuson, McGrath (McGrath Native Community)

Everybody is caught off-guard by the silvers. A lot of people upriver who were waiting for the silvers to arrive do not have any chance for that. With the closures, we also effectively have no access to the fall whitefish and any other fish that people need to put away for the winter.
Jonathan Samuelson, Georgetown (Native Village of Georgetown)

Commercial Intercept & Bycatch Impacts on Critically Declined Western Alaska Salmon Stocks

Many potential factors have cumulatively caused declines in Coastal Western Alaska (CWAK) salmon populations. Salmon bycatch and interception in marine fisheries, while not the sole driver of current poor salmon returns to the Kuskokwim, undeniably impact salmon stocks in this region and are directly under human control—a particularly crucial power of ours considering present-day collapses in subsistence salmon fisheries. Moreover, the 33 Tribes of the Kuskokwim River share Indigenous values associated with deep respect and gratitude for subsistence foods, and the excessive waste of bycaught salmon is deeply offensive to the Tribal stewardship principles practiced by the subsistence cultures in the watershed.

At A Glance: Impacts of Commercial Salmon Interception & Bycatch

- **Both the South Alaska Peninsula (Area M) salmon fishery and the Bering Sea pollock fishery** are documented contributors to the severe chum salmon crash impacting communities throughout the Coastal Western Alaska region.
- The most recent and rigorous genetic analyses of samples from these fisheries found an average of **18–57% of the documented Area M chum salmon catch in June** were of Coastal Western Alaska origin**.**
- **Huge numbers of chum salmon** bound for Western Alaska rivers were harvested in the Area M fishery in recent years. Genetics data suggests a combined total of **210,000–788,000 Coastal Western Alaska chum salmon were intercepted in the two-year period of 2021 to 2022**.
- Chum salmon bycatch of Western Alaska stocks in the Bering Sea pollock fishery in 2021 was significant but smaller compared to the harvest in the Area M fishery. For comparison, in recent years the **Area M harvest of Coastal Western Alaska stocks has been 10 times larger than the Bering Sea bycatch of those same stocks.**
- **The South Alaska Peninsula fishery has profited** for more than 100 years off the sustained productivity of distant salmon stocks—especially the Yukon and Kuskokwim River chum salmon stocks, which were the most abundant stocks in the Coastal Western Alaska region prior to the current crash.
- There is **currently no limitation or cap on the number of Western Alaska chum salmon** that can be caught and sold in Area M or caught and discarded in Bering Sea pollock fishery, regardless of the impacts to spawner escapement or food security threats in the salmons' regions of origin.
- Fundamentally, both **state Area M harvest management and federal bycatch management are disconnected from** in-river stock assessments, escapement monitoring, and other best management practices to ensure sustainability of our Western Alaska salmon stocks that are harvested in these marine fisheries.
- Both state and federal policy declare that meeting salmon escapement goals and providing for subsistence uses are to be prioritized over commercial harvests. However, in practice, the current management regimes under **both North Pacific Fisheries Management Council and Alaska Board of Fisheries effectively prioritize commercial uses** over Western Alaska escapement needs or subsistence uses.

South Alaska Peninsula (Area M) Interception of Western Alaska Chum Salmon

The South Alaska Peninsula Management Area, a portion of the region more commonly known as "Area M," neighbors the Chignik and Bristol Bay areas along the Alaska Peninsula and eastern Aleutian Islands (Figure 7). Managed by ADF&G, Area M is an intercept fishery that has operated since at least the early 1900's targeting all salmon species as they pass through the fishery.

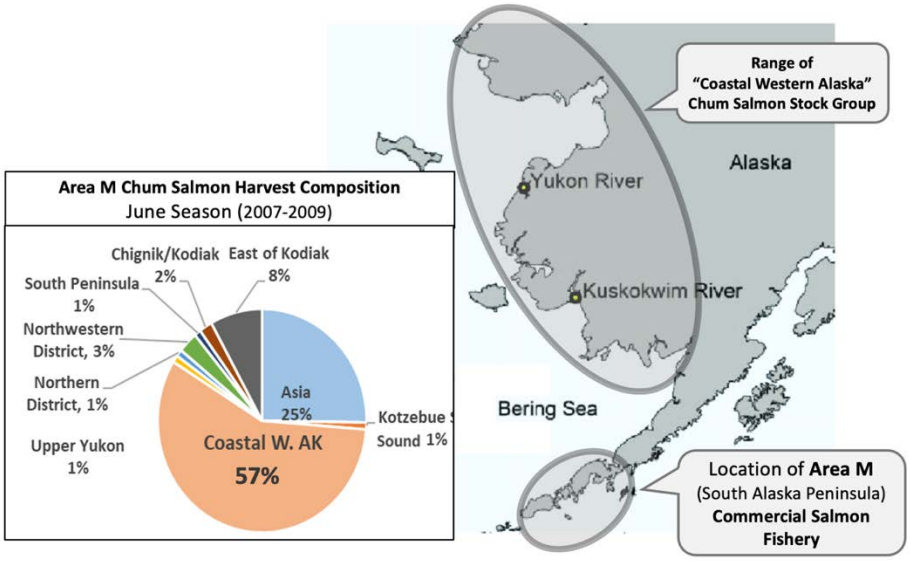

Figure 7: Map of South Alaska Peninsula intercept fishery with inset showing the average genetic composition of chum salmon caught in commercial fisheries there during June 2007–2009 as reported by WASSIP.
Source: Munro et al. 2012.

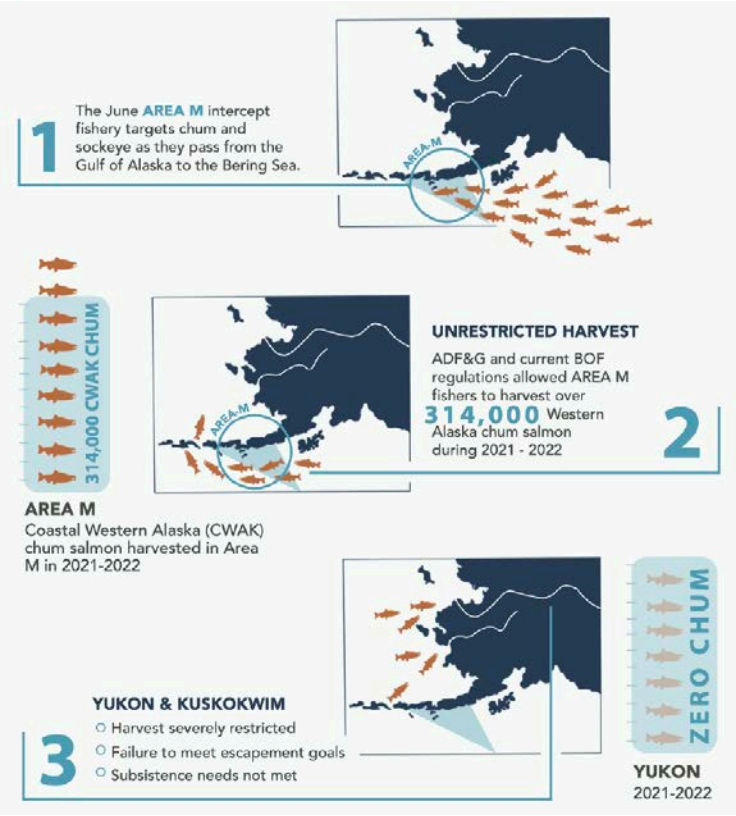

Figure 8: Impact of Area M chum interception on Western Alaska subsistence communities.
Source: Dann et al. 2023.

Arctic-Yukon-Kuskokwim (AYK) region immature chum salmon stocks travel to the Gulf of Alaska and North Pacific to rear and mature. As the salmon begin to mature in late winter and spring and migrate to their natal rivers to spawn, they must travel through the island passes at the end of the Alaska Peninsula (Figures 7 & 8). The Area M fishery is located in these island passes, which create natural bottlenecks, concentrating chum salmon stocks and making them more vulnerable to commercial fishing interception. Unlike salmon bycatch in pollock fisheries of the Bering Sea, where salmon are designated as a prohibited species that cannot be sold, harvesters in Area M can catch and sell as many salmon as possible during the ADF&G managed openings, regardless of where these salmon originate.

Districts in the South Alaska Peninsula – specifically the commercial fisheries in the South Unimak and Shumagin Islands – are a primary concern to Yukon and Kuskokwim subsistence harvesters. During the month of June, commercial fishing vessels in these Area M districts intercept and sell large numbers of chum salmon bound for the AYK region at a rate nearly 10 times more impactful than chum salmon bycatch in the Bering-Sea Aleutian Islands pollock trawl fishery (Figures 9 & 10).

> “
>
> Again, it’s subsistence users as the ones trying to save them. Without my dog team, I don’t take many fish. Some people want to put restrictions on commercial fishing for a bit so the fish come back, but they’ll never stop commercial fishing in the ocean because it’s called ‘progress.’ They say they feed the world. I always say, look what happened to the East Coast, West Coast, and now it’s up here: There’s no more fish. History repeats itself.
>
> *Robert Lekander, Bethel*
> *(Orutsararmiut Native Council)*

For decades, fishermen from the Kuskokwim and other AYK rivers have urged the Alaska BOF and ADF&G to manage the South Unimak and Shumagin Islands June fishery to avoid intercepting AYK-bound salmon. A previous study (Seeb and Crane 1999) to explore genetic composition of South Alaska Peninsula resulted in a seasonal harvest cap which expired long ago. Continued public outcry led to the creation of the Western Alaska Salmon Stock Identification Program (WASSIP) to further identify the origin of stocks that the Area M fishery depends on.

The Coastal Western Alaska (CWAK) chum salmon genetic stock grouping includes the Kuskokwim, Yukon, Norton Sound, Kotzebue, and Bristol Bay regions, which, at this time, cannot be genetically differentiated. Based on genetic analysis of samples from the commercial salmon fishery in the South Alaska Peninsula during 2007–2009, WASSIP showed that CWAK stocks comprised an average of 57% (range 52%–60%) of the chum salmon harvested (Munro et al. 2012; Foster and Dann 2022; Figure 7). This agreed well with the average of 57% observed in June 1993–1994 by Seeb and Crane (1999; range 15%–72% over periods and years).

These independent studies suggested that the proportion of CWAK chum salmon in the Area M fishery remained stable during the 14-year period from 1993-2007. This large proportion of harvested CWAK chum salmon is more pronounced with current declines in AYK rivers. The rationale for assuming CWAK chum salmon have continued to comprise the majority of the Area M June chum salmon harvest is based on the evidence that Kuskokwim salmon stocks, which rear in the Gulf of Alaska, must pass through the Area M region, making them highly vulnerable to harvest regardless of their total abundance.

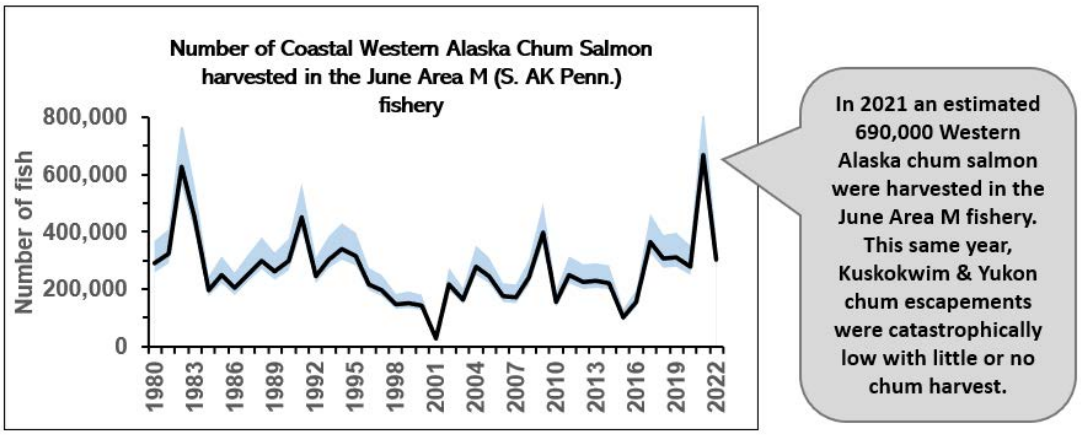

Figure 9: Estimates of the number of Coastal Western Alaska and Yukon River chum salmon harvested in the during the month of June, 1980–2021. Data are derived from genetic analysis of chum salmon in the South Alaska Peninsula salmon fisheries sampled in 1993–1994 and in 2007–2009. The solid line shows the mean estimate of (57% of all harvest), and the shaded area shows the plausible range (51%–72%). Source: Seeb and Crane 1999; Munro et al. 2012; Fox et al. 2022.

WASSIP findings at the time showed that despite the large proportion of chum in the Area M fishery 2007–2009, the harvest rate on CWAK chum salmon was fairly small compared to total returns in their rivers of origin (Munro et al. 2012). With current declines in AYK rivers, the impact is clearly more pronounced. Based on our estimate of the likely number of CWAK chum salmon harvested in the commercial salmon fisheries during the month of June from 1980–2021, the harvest of Kuskokwim and other AYK region chum salmon stocks in this intercept fishery in recent years has been massive (Figure 9). In 2021, the South Alaska Peninsula June chum salmon harvest exceeded 1.168 million fish, and WASSIP genetics information guiding managers at the time would suggest 690,000 of those were CWAK chum salmon.

Updated genetic information published by ADF&G in January 2023 suggests that the CWAK chum salmon stock proportion of South Alaska Peninsula June fishery harvests has dropped from a 57% to 18% average (Dann et al. 2023). This would estimate that, of the 544,000 chum salmon harvested in the 2022 South Alaska Peninsula June fishery, roughly 98,000 were of CWAK origin.

The pronounced decline in CWAK stock composition signals two key messages. First, since the Alaska Peninsula is the only migratory passage to the spawning grounds for CWAK chum salmon rearing in the Gulf of Alaska, there is a severe decline in abundance of CWAK chum salmon stocks throughout their migratory range. Second, this severe decline is likely linked to the cumulative effects of the mismanagement of ADF&G and the Alaska BOF, who ignored the best available genetic information (from WASSIP) and permitted two decades of extended Area M fishery openers and high chum salmon harvest rates despite the assumed high CWAK chum salmon presence in South Alaska Peninsula harvests and unattained ANS and escapement throughout the AYK region.

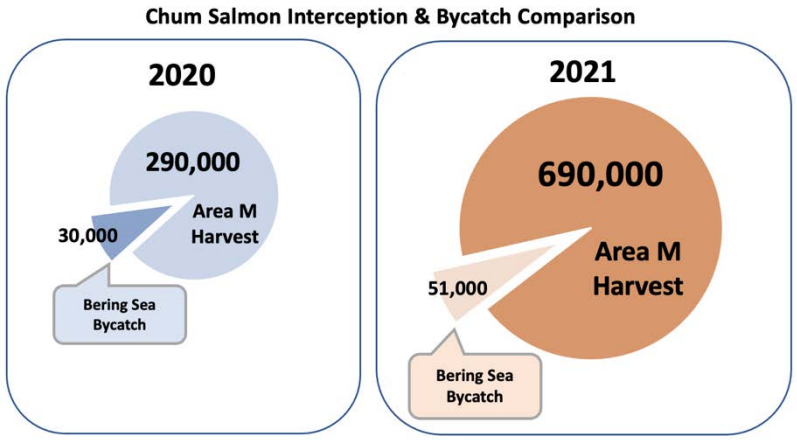

Figure 10: Catch of chum salmon from Coastal Western Alaska and the Middle- and Upper-Yukon in the BSAI pollock fishery (small pie slice) and the Area M South Alaska Peninsula salmon fisheries (remaining portion of pie) in 2020–2021. Stock composition source: Seeb and Crane (1999) and Foster and Dann (2022).

It is important to note that these genetic studies are based on sampling of chum salmon after they have been caught at sea and then delivered to the processor. There is significant uncertainty in the number of chum salmon that are landed, discarded or released, and not reported in the Area M fishery. Chum salmon caught and released, rather than harvested, by these commercial vessels are highly unlikely to survive and thus will not return to their natal streams to spawn. Impact rates based on documented harvest and genetic studies are therefore conservative estimates at best.

The available genetic data suggests that anywhere from 210,000 to 788,000 CWAK chum salmon were harvested in this Area M commercial fishery between 2021 and 2022—immensely and inequitably larger than the total combined estimated harvests by subsistence fishing families in both the Yukon *and* Kuskokwim Rivers during these years.

Bycatch of Western Alaska Chinook and Chum Salmon in the Bering Sea Pollock Fishery

Bycatch, or the unintended catch of one species while targeting another, also accelerates AYK region salmon declines, including on the Kuskokwim. In the Bering Sea–Aleutian Islands (BSAI) management area, the commercial pollock trawl fishery accounted for 99% and 87% of all 2021 chum and Chinook salmon bycatch, respectively (NOAA 2022). These salmon, many of which are bound for the Yukon and Kuskokwim drainages, are not the target of the pollock fleet. Because of this, Chinook and chum salmon caught by the pollock fishery cannot be sold but must be discarded or donated.

The North Pacific Fishery Management Council (NPFMC) manages chum and Chinook salmon as prohibited species catch in Alaska, meaning they cannot be targeted or sold by federally managed commercial fisheries. In response to record-high chum and Chinook bycatch levels from 2003–2007, the NPFMC implemented Chinook salmon bycatch caps, based on prior year salmon returns to the Kuskokwim, Upper Yukon, and Unalakleet rivers, as well as salmon avoidance incentives for the commercial fleet.

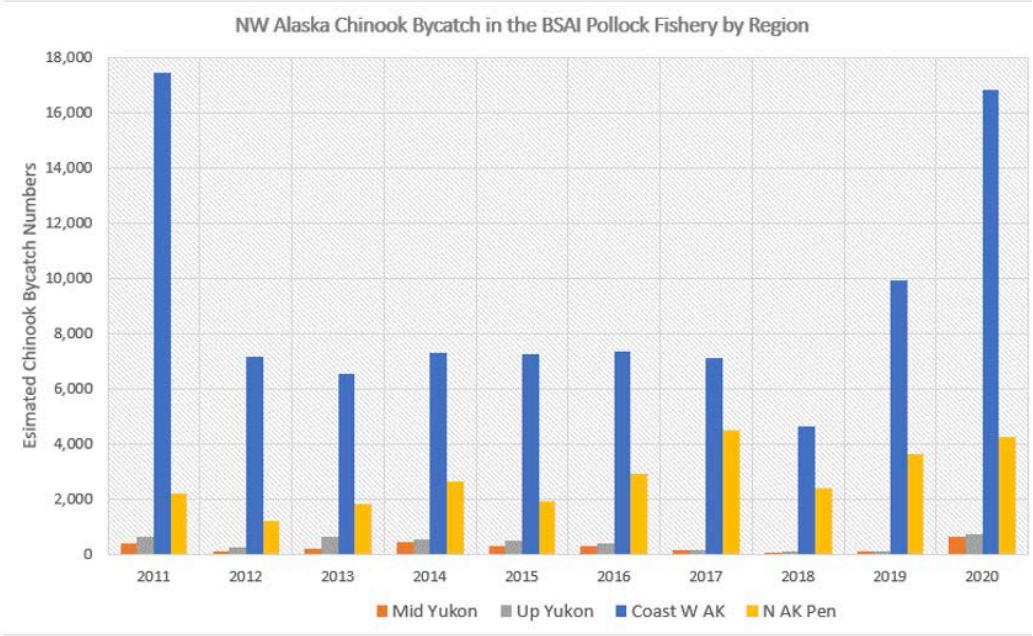

Figure 11: Estimated Chinook salmon bycatch numbers in the BSAI pollock fishery 2011–2020 by northwest Alaska region, with bars showing the origins of different regional stock groupings. This graph shows only up to 2020, when the latest genetic analysis and reporting took place. Source: Guthrie et al. 2022.

The establishment and strict enforcement of bycatch caps and full observer coverage onboard vessels appear to be effective in significantly reducing Chinook bycatch in recent years. An estimated total of 126,104 Chinook salmon from CWAK rivers were caught as bycatch in the BSAI pollock trawl fishery 2011–2020 (annual average: 12,610 salmon). While there are no new genetic analyses of bycatch since 2020, over 8,300 total Chinook salmon have been caught as bycatch in 2022 directed BSAI commercial fisheries, and over 6,000 of those were caught and discarded by non-community development quota program (CDQ) commercial pollock vessels (NOAA 2022).

CWAK Chinook stocks comprise the largest portion of Chinook salmon bycatch in the BSAI pollock fishery most years, especially during the A-season (January 20 to April). From 2011 to 2020, CWAK stocks averaged over 44% of the estimated Chinook salmon bycatch, and over 60% of bycatch in some years (Guthrie et al. 2022). From 2017 to 2020, the relative proportion of CWAK stocks caught in the pollock fishery increased from 24% to 52% of Chinook salmon bycatch (Figure 11).

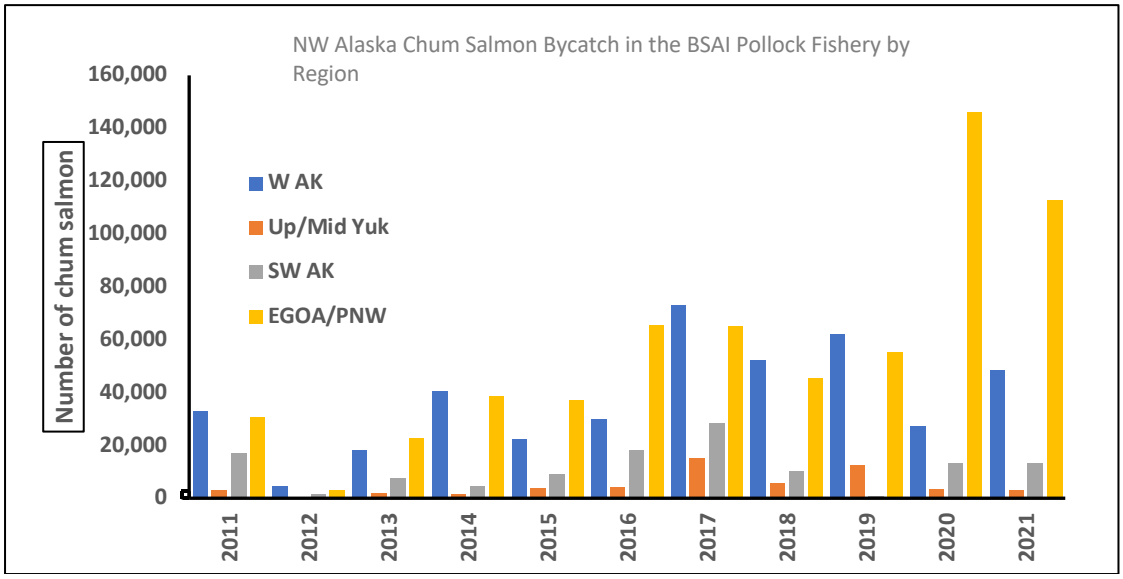

Figure 12: Estimated chum salmon bycatch in the BSAI pollock fishery, 2011–2021 showing bycatch composition by Eastern Pacific reporting group. Source: Barry et al. 2022; P. Barry, NMFS, pers. comm.

Chum salmon bycatch in the Bering Sea, primarily occurring in the B-season (June 10 to November), increased dramatically after 2011 (Figure 12). The CWAK rivers accounted for approximately 9% of chum incidentally caught in the 2021 BSAI B-season pollock fishery, and an annual average of 37,423 CWAK chum salmon were caught as bycatch during 2011-2021 (Barry et al. 2022; P. Barry, NMFS, pers. comm.).

Genetic analyses from recent years confirm that Western Alaska, Upper/Middle Yukon, and Southwest Alaska chum salmon stocks are impacted by pollock trawl bycatch annually. A very low proportion of Upper/Middle Yukon chum salmon were caught in BSAI B-season pollock fishery in 2020 and 2021, which may have been an early indicator that the Upper/Middle Yukon chum salmon are experiencing a decline in stock status. Over 245,000 chum salmon across all genetic reporting regions were taken as bycatch in 2022, with over 236,000 fish taken as bycatch by non-CDQ commercial pollock vessels (NOAA 2022).

Salmon Intercept and Bycatch Management Concerns

Given the combined impacts of the Area M intercept fishery and BSAI salmon bycatch on AYK chum salmon stocks, it is of grave concern that neither the Alaska BOF nor NPFMC have demonstrated any willingness in recent years to take action to limit the take of Western Alaska chum salmon in the fisheries they manage. Moreover, both state and federal agencies have fragmented systems and prioritize commercial fishery profit over meeting spawner escapement and subsistence harvest needs.

A root problem with NPFMC management of BSAI salmon bycatch and ADF&G management of the South Alaska Peninsula June chum salmon intercept fishery is their disconnection from Kuskokwim and Yukon rivers

> “
>
> We need to look at both ends, from the beginning of the routes of the salmon to the headwaters spawning grounds. Are we conserving salmon for the people in the high seas fisheries and Alaska Peninsula fisheries that are intercepting our fish?
>
> *James Nicori, Kwethluk (Organized Village of Kwethluk)*

in-river stock assessments, escapement monitoring, and other best management practices to ensure sustainability of distant stocks that are harvested in this intercept fishery.

For example, the BOF and ADF&G managers in the AYK region repeatedly claim that they have no authority nor obligation to coordinate with Area M managers to ensure that the Area M fishery is not overharvesting chum salmon stocks essential for escapement and subsistence uses within AYK rivers. ADF&G has also been reluctant to fund updated genetic data collection following the end of the WASSIP program in 2009. In 2022, Governor Dunleavy tasked ADF&G with initiating an Area M genetics update only after the public pressure prompted the State legislature to allocate funding for updated genetic stock identification analysis for the years 2022 to 2026. The State's lack of prioritization to protect AYK-bound chum salmon is not the fault of Western Alaska subsistence fishing communities, yet we are the ones suffering because of it.

In the BSAI pollock fishery, there is currently no cap or limit on the amount of chum salmon that the pollock fleet can take as bycatch, despite sustained pressure from AYK region Tribes and subsistence users on NPFMC and NOAA Fisheries decisionmakers.

Regulations written in the Alaska BOF policy and federal Alaska National Interest Lands Conservation Act (ANILCA) declare that meeting escapement needs and providing for subsistence uses are to be prioritized over commercial harvests in both state and federal fisheries. However, in practice, the current management regimes under both the Alaska BOF and NPFMC effectively prioritize commercial uses over Western Alaska salmon escapement needs or subsistence uses. For example, in 2021—when Kuskokwim chum salmon harvests were severely restricted and Yukon River communities were allowed no harvest opportunities for the entire season—we estimate over 740,000 Western Alaska chum salmon were legally caught between both the Area M fishery and the Bering Sea pollock fishery (Figures 8 & 10).

> "
>
> I'm worried about the farther-up people, those upriver, who wait around to catch their fish. They don't meet their needs, and sometimes I think, How can we help the upper river people get fish?
> *Ralph Nelson, Napakiak*
> *(Native Village of Napakiak)*
>
> Some people still get fish and hang them, but it seems like the subsistence way of life is dying. There used to be a lot of fish camps, but now they're run-down, hardly anybody there. Some families sold their property. It's sad. These people gave up their fish camps. The new generations fish less.
> *Paul Cleveland, Quinhagak*
> *(Native Village of Kwinhagak)*
>
> We can't give up. We've got to work together, remember where we came from, help each other, and help our people to work together.
> *James Nicori, Kwethluk*
> *(Organized Village of Kwethluk)*

Thus, while subsistence communities on the Kuskokwim and throughout the AYK region are forced to sacrifice their local harvests to help meet escapement goals essential for sustainable salmon management and stock rebuilding, state and federal managers are prioritizing commercial yield and profit. ADF&G and the Alaska BOF solely focus on allocating and managing the commercial harvest among different subdistricts in Area M; meanwhile, escapement and subsistence needs in AYK rivers that have produced the majority of the salmon intercepted in this lucrative fishery for over 100 years are disregarded by Area M managers. BSAI pollock fishing vessels have no mandates to avoid chum salmon bycatch and the NPFMC continues to manage their fishery with a single-species, profit-driven lens.

Inequitably, the entire burden of conservation is being carried by subsistence fishing communities as downstream harvesters in Area M and marine vessels in the BSAI are focused on maximizing harvest and profits while in-river subsistence harvesters face restrictions to meet escapement goals.

Moving Forward: The Necessity of Collective Conservation & Restoration Efforts

The Kuskokwim River watershed is facing a food security, cultural, and ecological crisis because of the river-wide declines in Chinook, chum, and coho salmon. This crisis, brought on by the cumulative effects of cross-regional overharvest, unsustainable management, climate change, and other factors, threatens a total collapse of our ecosystem and Indigenous way of life.

Local subsistence users are currently the only users bearing the brunt of conservation and supporting salmon stock rebuilding efforts. Unfortunately, conservation in a mixed-stock fishery means that Alaska Native subsistence users —who rely on salmon for our physical, spiritual, cultural, and economic wellbeing—are unable to fish for healthy runs of sockeye salmon or non-salmon species like whitefish while protecting species of concern.

In-river harvest restrictions imposed upon traditional and customary harvesters of these fish should be a last resort for managers, yet they are currently the only real conservation efforts in place. Salmon originating in the Kuskokwim drainage migrate through many other jurisdictional boundaries during their lifetimes, but instead of approaching salmon conservation from a cross-boundary, ecosystem-centered perspective, agencies maintain management divisions and restrict the fishing communities who depend on salmon to thrive—and who continue to steward the spawning grounds as we have since time immemorial.

Rebuilding and carefully stewarding our salmon runs throughout their lifecycle via co-management, conservation, and community-based monitoring remains our goal. This is critical as the effects of this crisis are not isolated to the Kuskokwim Region. The sustainability, health, and productivity of Alaska's fisheries, like Area M and the Bering Sea, depend on the careful management of populations elsewhere. It is imperative for all harvesters, managers, executives, and agencies, whether in or out of the Kuskokwim region, to contribute to Western Alaska salmon restoration efforts. Only our collective efforts can halt the decline of our subsistence fisheries that are critical to the wellbeing of this ecosystem and our way of life.

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November 14, 2023

To: Jon Kurland, Regional Administrator
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Re: Deficiencies in NPFMC October 2023 action regarding chum salmon bycatch

Dear Mr. Kurland,

We are writing to collectively express our great disappointment with, and concern regarding, the North Pacific Fishery Management Council's (NPFMC's) October 2023 action regarding chum salmon bycatch. Signatories to this letter include Kawerak, Inc., Kuskokwim River Inter-Tribal Fish Commission, and the Bering Sea Elders Group.

We feel the NPFMC's action is tantamount to inaction on this issue, hems in future analyses rendering such work disconnected from the need for addressing this matter, will result in wasted time and effort, and is an insufficient basis for future Agency work on this topic. The National Marine Fisheries Service (NMFS) and the NPFMC have an ongoing obligation under the Magnuson-Stevens Act (MSA) to minimize bycatch to the extent practicable.[1] Further, the Secretary of Commerce has an independent duty to ensure that every proposed amendment or regulation put forth by the NPFMC is consistent with the MSA National Standards, National Environmental Policy Act (NEPA), and other applicable laws.[2] It is incumbent upon NMFS to ensure that the chum bycatch Environmental Impact Statement (EIS) includes a range of reasonable alternatives, as required by NEPA; complies with the MSA's requirement that fishery management be based on the best scientific information available which includes consideration of Traditional Knowledge (TK); complies with the MSA's requirement to reduce bycatch to the extent practicable by considering limits that would significantly reduce chum bycatch below recent levels; and reflects the input of Alaska Native Tribes whose ways of life are dramatically affected by bycatch. The current range of alternatives does not comply with these legal obligations.

In brief summary, some of our major concerns include that:

[1] 16 U.S.C. § 1851(a)(9)
[2] See 16 U.S.C. § 1854(a)(1)(A)

1. The lower and upper bounds of chum bycatch under the alternatives forwarded by the NPFMC are egregiously high and do not constitute a reasonable range for analysis. For example, the lower bound of 200,000 chum salmon bycatch in Alternative 2 Option 1 is barely below the 2011-2022 historical average, and better performance than this was achieved by the pollock fleet numerous times over the past two decades. This illustrates that the proposed range for analysis is an insufficient management threshold and does not meet National Standard 9's practicability criterion.[3] Practicability includes a number of factors, and NMFS and the Council must analyze a full range of alternatives to be able to assess practicability. This range of alternatives is skewed in favor of the status quo and does not give decision-makers, Tribes, or the interested public an adequate basis for assessing the impacts of different approaches to reducing bycatch.

   NEPA requires that NMFS and the NPFMC "[r]igorously explore and objectively evaluate all reasonable alternatives."[4] Further, "[t]he existence of a viable but unexamined alternative renders an environmental impact statement inadequate."[5] The NPFMC's proposed alternatives fail to consider caps that would considerably reduce bycatch to levels below those achieved under current practices. A reasonable range of alternatives must include prohibited species catch limits that are sufficiently below the proposed levels to meet the mandate of National Standard 9 to reduce bycatch to the extent practicable.

2. The NPFMC's proposed alternatives stand in contradiction to the mandates of MSA's National Standard 2, which require fishery management to be based on the best scientific information available, including the consideration of TK. It is well-documented and has been regularly brought to the NPFMC's attention that, from the perspective of TK, the salmon crisis is multi-factor and multi-decadal in nature, and one of the causes includes bycatch. This knowledge, and Tribal requests related to it (such as the desire to consider very low bycatch numbers in the alternatives), were effectively ignored in the main regulatory substance of the Council's action.

3. The design of the alternatives is of insufficient quality. For example, there is not sufficient attention to an attempt to reduce bycatch at all levels of abundance, and the option proposing a Yukon River-only index is exceptionally coarse.

We are concerned that the NPFMC's action - which is poorly designed, incongruent with NEPA and MSA requirements, and disconnected from the conservation and social impact concerns facing western and interior Alaska salmon stocks and Tribal communities dependent on them - prejudges the issues which should be up for future analysis and decision-making, and dooms this endeavor from the outset.

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[3] The average chum bycatch between 2011 and 2022 is approximately 280,000 fish, while the low end of the Council's Alternative 2 Option 1 is only 200,000 fish (https://meetings.npfmc.org/CommentReview/DownloadFile?p=5b15695d-d544-4385-87cb-b5cdfee54909.pdf&fileName=C4%20Chum%20Salmon%20Bycatch%20Analysis.pdf). The fleet achieved bycatch numbers below 250,000 in 7 of the last 13 years, and below 200,000 in 4 of the last 13 and 8 of the past 17 years - including approximately 110,000 in 2023 and approximately 22,000 in 2012 (https://www.fisheries.noaa.gov/sites/default/files/akro/chum_salmon_mortality2023.html).

[4] 43 C.F.R. § 46.420; *see also* 40 C.F.R. § 1502.14(a)

[5] *Citizens for a Better Henderson v. Hodel,* 768 F.2d 1051, 1057 (9th Cir. 1985); *Nat. Res. Def. Council, Inc. v. Evans*, 168 F. Supp. 2d 1149, 1160 (N.D. Cal. 2001), *order aff'd in part, vacated in part*, 316 F.3d 904 (9th Cir. 2003).

We believe the Department of Commerce should find the proposed alternatives as developed by the NPFMC in October to be unacceptable, and should act accordingly. We additionally request the Agency meet with our organizations to discuss and address these issues. Further, we request the Agency immediately, widely and formally outreach to Tribes to collaboratively initiate ongoing and meaningful Tribal Consultations with regard to chum bycatch.

Sincerely,

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