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January 31, 2025

Ms. Angel Drobnica, Chair North Pacific Fishery Management Council 605 W. 4th Avenue, Suite 306 Anchorage, AK 99501-2252 Mr. Jon Kurland, Regional Administrator NOAA Fisheries, Alaska Region 709 West Ninth Street Juneau, AK 99802-1668

#### RE: Agenda item C-2, Chum Salmon Bycatch

Dear Ms. Drobnica, Mr. Kurland, and Council Members:

We appreciate the Council's ongoing efforts to address the challenges facing Western Alaska (WAK) chum salmon populations. To protect Western Alaska's salmon and the communities and Tribes that depend on them, we recommend the Council adopt the following measures, which prioritize reducing bycatch of WAK-origin chum salmon, supporting the cultural and subsistence needs of Western Alaska communities and Tribes, and ensuring sustainable fisheries management practices:

- 1. Implement a modified version of Alternative 3, Option 1, with a consistent chum salmon bycatch hard cap: Establish an overall chum salmon prohibited species catch (PSC) limit that effectively reduces WAK-origin chum salmon bycatch, with provisions for downward adjustments based on the three-area chum salmon abundance index. The Council should consider chum salmon PSC limits lower than those explored in the preliminary Draft Environmental Impact Statement (DEIS) to ensure a reasonable range of alternatives, and to reduce bycatch to the extent practicable.
- 2. Apply Alternative 4 Incentive Plan Agreement Measures Only in Conjunction with Other Alternatives: Incentive Plan Agreements (IPAs) outlined in Alternative 4 should only be used in conjunction with other alternatives and not as a standalone alternative. Require the Bering Sea pollock fleet to minimize WAK-origin chum salmon bycatch by adhering to all provisions in the IPAs and incorporating these measures into existing regulations. Additional elements to incorporate into this alternative include:
  - Corridor closures that are informed by the historic and in-season spatial and temporal migration patterns of WAK-origin chum salmon.
  - Prioritizing improvements to shorten the turnaround time for genetic stock identification (GSI) data, enabling its use in-season to inform fishery operations and management.

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### I. Chum salmon bycatch in the Eastern Bering Sea pollock trawl fishery impacts wild chum salmon runs and Indigenous communities.

The Council's Purpose and Need statement highlights the immediate need to address the crises Western and Interior Alaska salmon populations are facing. These stocks play an important role for many Tribes and communities but have suffered significant declines due to ecosystem changes and climate impacts. These impacts are further exacerbated by bycatch in the Eastern Bering Sea pollock trawl fishery. From 2011 to 2022, an average of 49,953 WAK-origin chum salmon were caught as bycatch annually in the Bering Sea pollock trawl fishery.<sup>1</sup> During this time series, WAK chum salmon bycatch peaked at 93,170 in 2017. In the years following, the Kuskokwim River run strength indicators, and the Yukon River drainage-wide escapement estimates for chum salmon both began to plummet to historic lows.

The five-year average (2018–2022) for all-origin chum salmon bycatch in the pollock fleet was 355,037 fish, an 86.8% increase compared to the 32-year average (1991–2022) of 190,002 fish.<sup>2</sup> Although not included in the long-term averages for many of the analyses in the DEIS, chum salmon bycatch in the pollock fleet was well below average in 2023 and 2024. This sharp fluctuation highlights the significant annual variability in chum bycatch, likely influenced by changes in fleet behavior as well as distribution and abundance of chum salmon and pollock.<sup>3</sup> The proportion of WAK-origin chum salmon in the bycatch is unknown to the pollock fleet in-season, raising concerns over the significant increase in the total number of chum salmon caught as bycatch in more recent years compared to the 10-, 20-, and 32-year averages.

To protect returning salmon during periods of low abundance, chum salmon subsistence harvest in Western Alaska has been subject to significant restrictions and emergency closures. From 2020 to 2022, subsistence harvests in the Norton Sound, Kuskokwim, and Yukon regions have ranged from approximately 72% to 97% below historical averages.<sup>4</sup> The sharp decline of both chum and Chinook salmon populations, and subsequent subsistence fishing closures, has exacerbated food insecurity, cultural loss, and disruptions in community structure for Tribes and communities in Western and Interior Alaska.

Minimizing bycatch to the extent practicable under the Magnuson Fishery Conservation and Management Act (MSA) National Standard 9, while ensuring the Bering Sea pollock fleet operates at optimum yield (MSA National Standard 1) is the primary objective outlined in the Council's purpose and need statement. In stark contrast to subsistence harvest declines across Western and Interior Alaska, the total allowable catch (TAC) for pollock, set within the optimum yield for BSAI groundfish, has not reflected the Council and National Marine Fisheries Service's legal obligation to minimize WAK-origin chum bycatch. Most recently, the 2025-2026 pollock TAC increased by 5.8% from the previous season with no PSC limit implemented for chum salmon of any origin.<sup>5</sup>

<sup>&</sup>lt;sup>1</sup> NPFMC and NMFS. Preliminary Draft Environmental Impact Statement: Bering Sea Chum Salmon Bycatch Management. (December 20, 2024) Available: <u>Chum Salmon Bycatch PDEIS Management Analysis</u>, p. 15.

<sup>&</sup>lt;sup>2</sup> NOAA. Overview of Salmon Bycatch Management and Recent Bycatch Performance. Alaska Subsistence Regional Advisory Council. (Fall 2023). Available: <u>NOAA Powerpoint Presentation</u>.

<sup>&</sup>lt;sup>3</sup> NPFMC and NMFS. *Supra* note 1, at 8.

<sup>&</sup>lt;sup>4</sup> NPFMC and NMFS. *Supra* note 1, at 21.

<sup>&</sup>lt;sup>5</sup> NOAA. Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Proposed 2025 and 2026 Harvest Specifications for Groundfish. Federal Register 89 FR 70942 (December 4, 2024). Available: <u>Proposed 2025-2026</u> <u>BSAI Groundfish Harvest Specifications</u>

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Establishing an equitable balance between conservation and economic gain means adopting alternatives that conserve WAK-origin chum salmon and improve the subsistence opportunities of Western and Interior Alaskan communities, while then considering the economic interests of the Bering Sea pollock trawl fleet. In fact, the MSA's definition of Optimum Yield requires catch limits be "*reduced by any relevant economic, social or ecological factor*" (50 CFR § 600.310).<sup>6</sup> Optimum yield for the pollock fishery must include consideration of the impacts chum salmon bycatch has on salmon populations as well as the economic, social, and ecological impacts on local communities. And with subsistence fisheries in Western and Interior Alaska already experiencing significant restrictions, effective conservation requires new management measures and fishing practices that limit chum salmon bycatch in the Bering Sea pollock fleet.

## II. Implement a modified version of Alternative 3, Option 1, with a consistent chum salmon bycatch hard cap

Oceana supports the abundance-based approach outlined in Alternative 3, Option 1, with modifications. We recommend the Council incorporate an overall PSC limit that remains in effect every year in conjunction with Alternative 3, Option 1. A consistent hard cap should apply even when abundance thresholds are met in the Yukon, Kuskokwim, and Norton Sound regions.

As outlined in the DEIS, lower PSC limits provide the greatest potential for maximizing adult equivalent (AEQ) WAK chum savings and increasing the number of fish returning to rivers to spawn.<sup>7</sup> Conversely, as the PSC limit increases, the projected AEQ chum savings are expected to decline. The long-term impacts of removing mature chum salmon from the fishery can take years to fully materialize, particularly due to their life history, the overlapping brood years affected, and the subsequent propagation effect on future runs. Bycatch in the Bering Sea pollock fishery predominately consists of age-3 to 5 chum salmon, which creates a cascading effect on future runs as these fish would have matured and returned to spawn across multiple years. As highlighted in the DEIS, chum salmon caught as bycatch in 2020 could have returned as age-3 fish that same year, age-4 fish in 2021, age-5 fish in 2022, age-6 fish in 2023, or even in 2024 as age-7 fish.<sup>8</sup> In addition to bycatch-induced marine mortality of chum salmon, various other factors, such as environmental conditions, can also play a role. As a result, an average-abundance year does not guarantee strong returns the following year.

While PSC limits tied to the previous year's three-area abundance index could offer a precautionary, conservation-based approach, relying on them exclusively without a hard cap in place each year fails to fully address many uncertainties — especially given the lack of reliable run reconstructions available for many of Western Alaska's largest chum salmon systems. Implementing a fixed PSC limit is necessary to address the annual variability in both the proportion and age classes of WAK-origin chum salmon incidentally caught by the pollock fleet. Without this safeguard, there is a risk of years with no PSC limit in place, leaving WAK-origin chum salmon vulnerable to unregulated bycatch.

PSC limits well below the values explored in the DEIS should be considered to meaningfully reduce bycatch and ensure a reasonable range of alternatives that address the disproportionate impacts

<sup>7</sup> NPFMC and NMFS. *Supra* note 1, at 305.

<sup>&</sup>lt;sup>6</sup> CFR. Title 50, Chapter VI, Part 600 – Magnuson-Stevens Act Provisions: National Standard Guidelines, Section 600.310(d)(1). Available: <u>CFR Title-50, chapter-VI, part-600, 600.310(d)(1)</u>

<sup>&</sup>lt;sup>8</sup> NPFMC and NMFS. *Supra* note 1, at 96.

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on communities, maximize environmental benefits, and enhance natural resources, as required by the National Environmental Policy Act, 40 CFR §1502.14(f). NEPA requires the Council and NMFS to develop and consider a reasonable range of alternatives. The Council and NMFS must carefully evaluate the environmental consequences of its decisions and accurately inform the public of that decision-making process.<sup>9</sup> To that end, NEPA requires agencies to take a "hard look" at the environmental impacts of agency actions to include "a reasonable range of alternatives to the proposed agency action ... [that] meet the purpose and need of the proposal" and to "study, develop, and describe technically and economically feasible alternatives."<sup>10</sup> This obligation requires "full and meaningful consideration [of] all reasonable alternatives,"<sup>11</sup> as "dictated by the nature and scope of the proposed action."<sup>12</sup>

A meaningful PSC limit creates potential to improve opportunities in directed fisheries by increasing the likelihood of more WAK chum salmon returning to spawn, ultimately supporting escapement goals. Additionally, an overall PSC limit is expected to incentivize changes in the fishing behavior of most sectors within the pollock fleet before the cap is reached, further reducing the risk to WAK-origin chum salmon. Every fish plays a crucial role in maintaining genetic diversity and stock resilience, particularly during periods of low abundance.

#### III. Apply Alternative 4 Incentive Plan Agreement Measures

We recommend the Council to implement Alternative 4, but only if applied alongside other alternatives and not as a standalone alternative. IPA measures aimed at reducing chum salmon bycatch have been in place since 2016 and have served as the primary management tool under status quo, yet bycatch levels of chum salmon in the Bering Sea continue to rise. Because of this, IPA measures should not be implemented as the only management tool for reducing WAK-origin chum bycatch, but rather as a precautionary measure in conjunction with other conservation efforts.

Further, the current IPA provisions are not established in regulation and act merely as selfregulatory measures, leaving them vulnerable to less stringent modifications in the future.<sup>13</sup> Our primary objective in supporting Alternative 4 is to incorporate all IPA provisions into formal regulations. This will create enforceable measures to incentivize compliance and impose penalties for non-compliance. Additionally, transparency and equitable participation should be prioritized through collaboration with Tribes and government-to-government consultation before codifying measures that incorporate Indigenous and Traditional Knowledge (IKTK) into regulations.

## IV. Implement targeted corridor closures and improve genetic stock identification data turnaround time to benefit WAK chum salmon management

While we do not support Alternative 5 as currently drafted due to the risk of increasing WAK chum bycatch, we strongly encourage the Council to explore corridor closures informed by the historic and in-season spatial and temporal migration patterns of WAK chum salmon. High-bycatch areas,

<sup>&</sup>lt;sup>9</sup> Kern v. U.S. Bureau of Land Mgmt., 284 F.3d 1062, 1066 (9th Cir. 2002).

<sup>&</sup>lt;sup>10</sup> 42 U.S.C. § 4332(C), (H); 40 C.F.R. § 1501.3(b); Nat. Res. Def. Council v. U.S. Forest Serv., 421 F.3d 797, 813 (9th Cir. 2005). <sup>11</sup> Te-Moak Tribe of Western Shoshone of Nev. v. United States, 608 F.3d 592, 601-02 (9th Cir. 2010); Citizens for Better

Henderson v. Hodel, 768 F.2d 1051, 1057 (9th Cir. 1985) (stating that the "existence of a viable but unexamined alternative renders an environmental impact statement inadequate").

<sup>&</sup>lt;sup>12</sup> Friends of Yosemite Valley v. Kempthorne, 520 F.3d 1024, 1038 (9th Cir. 2008).

<sup>&</sup>lt;sup>13</sup> NPFMC and NMFS. *Supra* note 1, at 60.

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such as the Alaska Department of Fish and Game statistical area 655430 (Northwest of Unimak Island), should be closely monitored for key migration intervals and assessed for periodic closures to help reduce WAK-origin chum salmon bycatch.

Improving these protections depends on faster genetic stock identification data, as the current 8 to 10-month reporting time post-season does little to provide timely protections for stocks of concern. We recommend that the Council prioritize shortening the turnaround time for genetic analyses, as having this information in-season is critical for effectively minimizing WAK chum bycatch.

The Bering Sea chum salmon bycatch genetics research conducted by the Bristol Bay Science and Research Institute (BBSRI) in 2024 demonstrated that producing weekly GSI reports for bycatch in this fishery is achievable, although results are still preliminary. BBSRI confirmed that providing weekly stock compositions offers a buffer against the annual variability of WAK proportions in bycatch while also providing insight into whether it is shaping up to be a high- or low-WAK chum bycatch year.<sup>14</sup> Having this information available in-season allows the fleet to recognize when they are incidentally catching too many WAK chum salmon and informs managers of the spatial and temporal patterns of WAK-origin chum for emergency rules and future management.

The Magnuson-Stevens Fishery Conservation and Management Act provides a legal requirement for the Council and NMFS to minimize bycatch to the extent practicable, consider the importance of fishery resources to fishing communities and provide for the sustained participation of such communities, and reduce social and economic impacts where possible (16.U.S.C. § 1851).<sup>15</sup> With bycatch in the Bering Sea pollock fleet averaging nearly 50,000 WAK-origin chum annually and subsistence harvests in Western and Interior Alaska declining as much as 97% below historical averages due to poor salmon runs, we encourage the council to adopt new federal rules and regulations that will result in meaningful reductions of WAK-origin chum bycatch and equitable participation in directed fisheries.

Thank you for consideration of our comments. We look forward to working with the Council and other interested and affected parties to reduce bycatch while allowing all Alaska fisheries to thrive.

Sincerely,

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 <sup>&</sup>lt;sup>14</sup> Bristol Bay Science and Research Institute (BBSRI). Bering Sea Chum Salmon Genetics Presentation. Alaska Bycatch Advisory Council Meeting (November 2024). Available: <u>ADF&G Bycatch Taskforce: BBSRI Chum Genetics Presentation</u>.
<sup>15</sup> United States Code. Title 16, Chapter 38, Subchapter IV – Fishery Conservation and Management, Section 1851(a). Available: <u>Title16, chap 38, sub-chap IV, sec 1851(a)</u>.

# **Bering Sea Chum Salmon Bycatch**

## **OCEANA**

In the last decade, nearly 3 million chum salmon, including nearly half a million from Western Alaskan rivers, have been caught as bycatch in the Bering Sea pollock trawl fishery. Chum salmon are vitally important for subsistence in the region and in recent years returns have been so low many communities haven't been able to harvest a single fish. There is currently no limit to how many chum salmon can be caught as bycatch in the trawl fishery.



\*Genetic Stock Identification results for 2024 not yet released. Data sources: ADF&G, NMFS, NPFMC, USFWS