October 4, 2024

KAWERAK, INC.

YUKON RIVER
INTER-TRIBAL FISH COMMISSION

NATIVE PEOPLES ACTION

Yukon River Drainage
Fisheries Association

To: Kate Haapala
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Doug Shaftel
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Sent via email to: doug.shaftel@noaa.gov

Re: Chum Bycatch EIS Analyses

Dear Dr. Haapala and Mr. Shaftel,

We are writing to provide input on several key matters of concern regarding the Council and Agency's work on the revised analysis for the chum salmon bycatch preliminary Draft Environmental Impact Statement (DEIS).

Four Tribal organizations and two supporting organizations are signatories to this letter. Kawerak is the non-profit Tribal Consortium formed by and representing the 20 federally-recognized Tribes of the Bering Strait region. The Yukon River Inter-Tribal Fish Commission is a non-profit Tribal Consortium formed and representing, through resolution, 42 federally recognized Tribes on the Yukon River. The Association of Village Council Presidents is a regional non-profit and Tribal Consortium formed by and representing our 56 member federally-recognized Tribes across the Yukon-Kuskokwim Delta. The Tanana Chiefs

Conference is the regional non-profit Tribal Consortium formed by and representing the 37 federally-recognized Tribes of Interior Alaska. Native Peoples Action is a statewide non-partisan organization dedicated to protecting and restoring our people's inherent rights to hunt, fish, harvest, trap, and have ceremony as well as manage and steward our homelands for abundance. The Yukon River Drainage Fisheries Association works for the people and fish of the Yukon River, which is home to more than 50 sovereign Tribal Nations with a mission to protect and promote all healthy wild fisheries and cultures along the Yukon drainage.

Our letter is focused on three areas:

1. Considerations regarding the next analysis pertaining to bycatch impacts
2. Discussion of Alternatives and their analysis
3. Discussion of Tribal inputs into the process

1. Considerations for the next analysis pertaining to bycatch impacts

We would like to highlight an important issue for the work being prepared for the February 2025 meeting. Specifically, we want to note our concern about the request from the SSC for the production of an impact rate from bycatch on western Alaska chum. As analysts have made clear,[1] this cannot be defensibly produced at the current time. We hope that this line of inquiry is not advanced if it is not scientifically defensible. We also note that we are of the view that there are limitations to impact rate analyses in general, and that such considerations do not adequately take into account Traditional Knowledge (for example, about the impacts of waste on salmon, and about the value of a single salmon returning to an ecosystem or fish camp). We also question the effectiveness of impact rate analyses to fully consider the cumulative impacts of salmon bycatch. We hope that those and other considerations are taken into account in any analysis pertaining to bycatch impacts. For example, some of these considerations can be outlined as follows:

- Other perspectives than those which are baked into the assumptions are not considered. For example, what is the impact of the waste of a sentient species in reciprocal relationships with Indigenous communities on its long-term abundance and viability? This is known and accounted for in Traditional Knowledge but by and large not in the western science used in fishery management. To avoid collapse of resource availability in the future, humans must take only what is needed without resulting in waste; wasteful practices disrespect sentient salmon relatives such that their populations decline, and human-salmon relations are disrupted.
- An AEQ estimate approach (that informs an impact rate) is inconsistent with the concept of gravel-to-gravel management. The estimation of AEQ to a given salmon stock only covers the marine juvenile phase to returning spawning adults. The fittest returning chum salmon can release 2,400-3,100 eggs on average.[2] These returning adults could have generated thousands of eggs,

[1] E.g. see pages 139-141 in NPFMC (2024) Draft for Initial Review: Preliminary Draft Environmental Impact Statement, Bering Sea Chum Salmon Bycatch Management. March 11, 2024. Available at: https://meetings.npfmc.org/CommentReview/DownloadFile?p=7c6ea9b3-af3f-4ba9-b857-5f1434d22b12.pdf&fileName=C2%20Chum%20Salmon%20Bycatch%20Draft%20Environmental%20Impact%20Statement.pdf

[2] Alaska Department of Fish and Game (2024) "Chum Salmon: Wildlife Notebook Series." Available at https://www.adfg.alaska.gov/static/education/wns/chum_salmon.pdf.

fry and smolt that would contribute to a stock's long-term sustainability. Terminating an AEQ or impact rate estimate at returning adults limits the analysis scope and does not consider the entire salmon life history. Every egg is important when every salmon counts.

- An impact rate is a model, and as such cannot speak to definite effects on salmon populations. The impacts to discrete spawning populations (such as those in low abundance) cannot be precisely known.
- Cumulative impacts of bycatch on the marine ecosystem, including salmon populations, are not adequately understood, nor are impacts in the context of climate change. For example, what are the cumulative impacts on the stock of decades of millions of salmon wasted as bycatch? What are the impacts of bycatch on a species facing numerous and sometimes new stressors (e.g. in addition to other withdrawals, climate stressors, and changing stock characteristics)? These questions need to be better understood. Precautionary management requires action to further minimize salmon bycatch while such questions are further investigated.
- Impact rates are often mistakenly mapped onto notions of significance, which is not accurate or scientifically defensible. Tribes are in a crisis situation in western and interior Alaska, and even relatively low stock withdrawals from salmon bycatch are highly significant in terms of the state of the salmon stock and the communities who depend on it. For example, the 1990-2023 average number of summer chum salmon used for subsistence among Koyukuk River tribal communities was 8,040 fish, which provided for the highest rates of household and per capita uses of Yukon River summer chum salmon throughout the Yukon watershed in most years. Small numbers of fish can be substantial to Tribal food sovereignty and security.

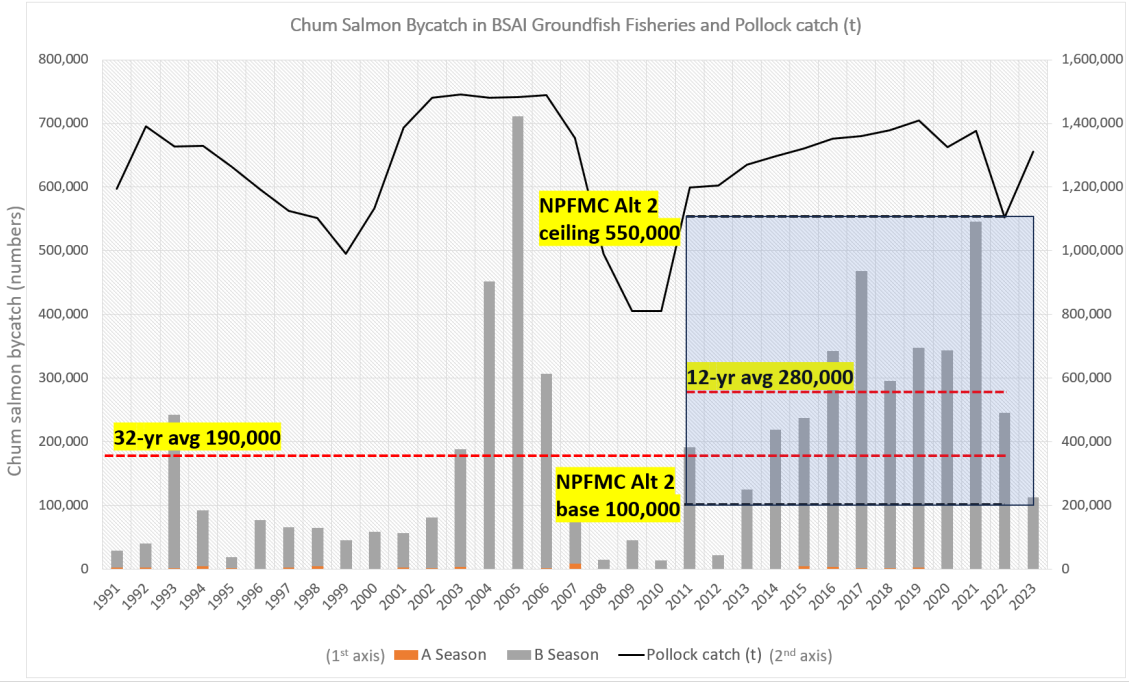
As such, we encourage both caution and awareness of complexity as regards the issue of bycatch impacts.

2. Discussion of Alternatives and their analysis

Here we would like to make a number of comments which we hope are addressed in upcoming analyses and discussions at the Council and Agency.

First, we would like to provide summary concerns about the limitations of some of the existing Alternatives under consideration for meeting the purpose and need for this action.

With regard to **Alternative 2,** we do not see how consideration of an overall bycatch cap which is anywhere near the average levels of bycatch (e.g. ~280,000 since 2011) is responsive to the need for this action to reduce bycatch. Accepting the 'average' is another way of maintaining the 'status quo.' Yet for some reason, the history of alternatives in this vein have been construed with a heavy slant away from minimization of bycatch, with the values in the proposed range extending far above the historical average yet not down to levels that have actually been achieved by the industry. The range of cap levels should be reduced so the higher end is closer to the average of the time series and thus more effective to reduce overall chum bycatch. Acknowledging NEPA requires the range to be meaningful; the Alternatives must meet the purpose of the action, which is reducing bycatch.



With regard to the options presented in **Alternative 3,** we also see significant deficiencies which hamstring the analysis. The overall numbers used for abundance are far too low (25th and 50th percentiles), defeating the purpose of achieving a conservation benefit in an action which would be responsive to both the short and long-term nature of this crisis. Using the 25th and 50th percentiles would situate triggers at and below an already-unacceptable level, effectively doing nothing for the stock, and failing to recognize the longer-term nature of the problem. The caps are also far too high, even extending to no cap, which does not meet a goal of minimizing bycatch at all levels of abundance. We also believe that a Yukon River-only index is not sufficient for this action.

The problems associated with the values selected for Alternatives 2 and 3 strongly suggest that for the NPFMC and NMFS, this issue has already been pre-decided, and that preserving the salmon stock is considered of secondary importance to the pollock fleet prosecuting its TAC.

We are concerned with the ways in which **Alternative 5** was constructed as well. First, we feel the existing bycatch allowances are too high in what is proposed. Second, we do not see how a suite of mutually exclusive spatial options regarding areas of concern related to chum bycatch presents a defensible and well-designed approach to best realizing a conservation corridor (the idea of which is worth analyzing). Third, there is a need for an overall chum bycatch backstop which is below the historical average. Without these considerations—lower bycatch allowances in whatever spatially-defined corridor area is created, a corridor that does not exclude highly-relevant areas from its spatial scope, and an overall backstop well below the historical average in the entire fishery—this Alternative could actually result in little more than a very high cap (which is not constraining and doesn't provide a conservation benefit) where fishing behavior with high bycatch is able to occur outside of areas that are not constrained.

Secondly, while we are not proposing a preliminary preferred alternative at this juncture, we want to note that we see promise in a combined approach to the ideas encapsulated in the Alternatives, and hope that this can be analyzed. These elements seem potentially promising when taken in conjunction, and we hope they can be analyzed together as a unified approach:

- **The development of a conservation corridor set in regulation (i.e. not existing solely in the IPAs) based on areas of highest western Alaska chum bycatch, as noted in Alternative 5.** However, such a cap can not be exclusive to only one of the relevant spatial areas, as it is currently stated (as all of these areas are of concern with regard to levels of chum bycatch), and must have a low cap number such that it effectuates a true conservation benefit. It also must be backstopped by an overall, fishery-wide bycatch limit which is well below the historical average such that appropriate conservation behavior also occurs outside the corridor area.
- The above could be implemented in conjunction with steps taken with regard to the IPAs outlined in Alternative 4 (some of this is already noted in Alternative 5 with regard to the language indicating that "Additional windows for salmon passage and other avoidance measures should be implemented in-season through the contracted Incentive Plan Agreements using in-season fishery data and best available genetic data."). **Additional work in the IPAs and scientific research and development aimed towards the implementation of real-time genetics is something which should be stressed.**
- **Mandatory review and revisiting of success.** Review could be mandated for the program after every certain number of years, as well as if particular metrics are not achieved (e.g. certain levels of WAK chum bycatch reductions). This could lead to reconsideration of the overall approach.
- **Investigation of the concept of frameworking** such that implementing real-time genetic analysis in the fleet could result in a more precise and effective implementation of these bycatch avoidance measures without necessitating a lengthy EIS process.

Such an approach could potentially effectuate a true conservation benefit that is responsive to the purpose and need and align with a needed broader ecosystem-based approach to the long-term sustainability of the salmon resource and communities dependent on it.

3. Discussion of Tribal inputs

We are concerned about issues related to the incorporation of Tribal inputs into this process. During the creation of the preliminary DEIS for its first initial review, capacity constraints at the Council level limited the opportunity for engagement with Tribal entities in a vein which would allow for achieving the engagement and informational goals developed through the work of the Community Engagement Committee and the LKTKS Taskforce.

Unfortunately, this situation has continued to date. We recognize that the Council is under significant capacity constraints, and appreciate the work of its analysts and the real limitations they are currently faced with. The impact of these constraints on the process need to be appreciated by whatever institutions have the ability to assist the Council in addressing this challenge such that it can fulfill its various goals and mandates.

We are also concerned about the issue of engagement and integration of Tribal information at the Agency level. The NMFS letter of July 11, 2024 sent to Tribal entities regarding inputs into the chum EIS process is particularly concerning in this regard. While at the most general level, we are appreciative of the

Agency reaching out to obtain information of this type, this is outweighed by significant concerns, perhaps the most important of which is this assertion in the letter: "We want to be clear about how any information and knowledge we receive would be used and careful not to misrepresent or misuse information that we receive from Tribes; thus, we will incorporate all written information and knowledge, as received in response to this request, into an appendix to the preliminary DEIS." This appears to send a signal to Tribal members and entities that their information will not be fully analyzed and incorporated into the analysis. That would not be in line with wise practices related to engagement with Tribal knowledge-holders and Tribal knowledge systems.[3] The mandate for incorporating Traditional Knowledge into federal fishery management - as exists in National Standard 2, and in other federal guidelines - cannot be achieved by not using it. It is also not a practice conducive to true engagement; why would Tribal entities engage a process when they are signaled at the outset that their information may be given lesser weight and inadequate treatment? We expect Traditional Knowledge provided to the Agency to be given equal weight to western scientific data in the chum DEIS, and not solely included in the appendix. NMFS Alaska Region may benefit from better-following the national NOAA Guidance and Best Practices for Engaging and Incorporating Indigenous Knowledge in Decision-Making. We also support expanding capacity of Council and Agency staff regarding, and addition of specialized trainings on, working with Tribal knowledge holders and Tribal knowledge systems, all of which may enhance Council- and Agency-Tribal relations.

Additionally, we note that the timeframe given to Tribes to provide contributions—between July 11 and October 4—is a key subsistence fishing, hunting, and gathering period for Tribal citizens in this region. While subsistence activities occur all year, this is a difficult season to request Tribal input with regard to this action, as many Tribal leaders have been away during large portions of this period engaging in salmon fishing and other subsistence activities (e.g. gathering berries and greens, moose hunting, and whitefish harvesting). True, effective engagement with Tribes occurs on and through a mutually-decided timeline and structure; does not interfere with traditional ways of life; and happens meaningfully in advance of document creation so that Tribal citizens' knowledge can be included in analyses informing decision-making.

There needs to be a stark recognition that this chum EIS process has not lived up to expectations to-date as regards engagement and incorporation of Tribal inputs. This is unfortunate not only in general, but also in context of the strides the Council and Agency have made at the level of guidance and policy in recent years, and in the context of the crisis which this action is supposed to address, given the severe impacts on Tribes and their resources. It is also unfortunately dovetailed with the development of Alternatives at the Council-level which to-date have not been responsive to the purpose and need for this action. There are clearly various issues underlying these issues, but the Council and Agency need to grapple with that and work to address it substantively moving forward.

Please reach out to the organizational contacts identified in the signature blocks below if you have questions regarding this letter.

Thank you for your consideration of these comments.

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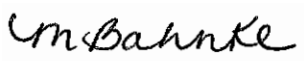
[3] See, e.g., North Pacific Fishery Management Council (2023) Protocol for Identifying, Analyzing, and Incorporating Local Knowledge, Traditional Knowledge, and Subsistence Information into the North Pacific Fishery Management Council's Decision-making Process. Available at: https://www.npfmc.org/wp-content/PDFdocuments/Publications/Misc/LKTKSprotocol.pdf

Sincerely,



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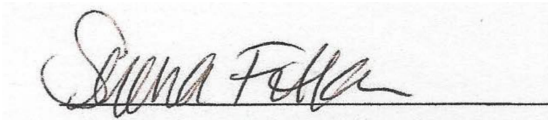

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