



THE STATE  
*of* **ALASKA**  
GOVERNOR MIKE DUNLEAVY

## Department of Fish and Game

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December 15, 2023

Gretchen Harrington  
Assistant Regional Administrator, Sustainable Fisheries Division  
Alaska Region NMFS  
P.O. Box 21668  
Juneau, AK 99802-1668

Re: Request for comments on proposed rule for Amendment 16 to the Fishery Management Plan for the Salmon Fisheries in the Exclusive Economic Zone (EEZ) Off Alaska- NOAA-NMFS-2023-0065

Dear Ms. Harrington:

The Alaska Department of Fish and Game (ADF&G or Department) submits this letter on behalf of the State of Alaska (State) in response to the request for comments on the proposed rule for Amendment 16 to the Fishery Management Plan for the Salmon Fisheries in the Cook Inlet EEZ.

The State has significant concerns about the salmon management program described in the proposed rule because it conflicts with State conservation and management measures that are intended to protect weak stocks and achieve allocation policies established by the Alaska Board of Fisheries (Board). The proposed program uses a management strategy that sets allowable catch limits based solely on pre-season projections for a first in line fishery that would require the State to take reductions in state water fisheries harvest if the pre-season forecasts are not realized. Also, the approach establishes pre-season allowable catch limits for stock groupings that make weak stocks vulnerable to overharvest. Finally, the plan abandons State regulations regarding conservation corridors established to protect weak stocks and move fish through the Central District to the Northern District and associated spawning locations in the upper Susitna River and Knik Arm and disregards the long standing 1% rule developed to ensure conservation and to provide for allocation objectives established by the Board. In short, the proposed Federal program utilizes tools not developed for salmon management, abandons long-standing management practices of the State for conservation and allocation purposes and places the burden of conservation entirely on the State if pre-season catch limits are over-forecasted.

The following comments detail the State’s concerns with the proposed rule and provide suggested changes to reduce conflicts between the State and Federal salmon management programs in Upper Cook Inlet.

### **Pre-season catch limits**

Decades of experience in Alaska and elsewhere have demonstrated that a mixed-stock salmon fishery such as the Cook Inlet drift gillnet fishery should be managed based on inseason run strength indices that protect weak stocks from over-harvest and allow for optimal utilization of harvestable surplus. Even in cases where pre-season indices are used by the State, management is typically adjusted to protect weak stocks either pre-season or inseason based on collected run strength information. The proposed rule seems to acknowledge this fact yet clearly describes that the National Marine Fisheries Service (NMFS) and the North Pacific Fishery Management Council (Council) will use pre-season indices to establish total allowable catch limits (TACs) at the salmon species level for fisheries in the EEZ. Because preseason salmon run-size forecasts are inherently uncertain and Federal management lacks the agility of the State process, we fear this strategy could jeopardize sustainability, especially for weak stocks, and could result in overfishing of weak stocks if pre-season forecasts are not realized. This could result in failure to meet escapement goals, new Stock of Concern designations, and unfair shifts in burden of conservation restrictions to individuals and businesses that do not participate in the Federal fishery. In addition, these changes could negatively impact Alaska’s sustainability certification for its salmon fisheries, an important tool in maintaining access to competitive international and domestic markets.

The description of the proposed process to establish salmon TACs for the Cook Inlet EEZ illustrates the State’s concern. First off, the establishment of pre-season TACs is dependent upon State post-season data analyses and pre-season forecasts for the following year. There is an expectation that the State will adjust its work schedule and timing of products to accommodate the proposed process. The State cannot commit to these adjustments at this time. The reality is that scales take time to read and age, data takes time to analyze, and models take time to run and fact check. We are concerned that expediting these processes could result in errors that make the proposed faulty process for EEZ fisheries management more vulnerable to error. Even without changes to the State’s data analysis and reporting processes, we anticipate that implementation of the Federal management program will increase ADF&G staff workload from an increase in the volume and complexity of information requests from fishery participants accustomed to contacting ADF&G for timely fishery information.

Under the proposed rule, TACs would be set at the species level because estimates of stock contribution to EEZ fishery harvests cannot currently be made until after the fishing season. However, TACs for the following year would be set before these data are analyzed and available from ADF&G. To set the TAC for each species, the Council would consider the estimated proportional contribution of each stock to total harvest of a species such that Annual Catch Limits, or Acceptable Biological Catches (ABC), are not expected to be exceeded for any component stock if the TAC is fully achieved. How is the Council supposed to do this when data on stock-level run strength is highly variable from year to year and not available until after the fishing season is completed? Although the proposed rule repeatedly suggests that the Council and its Scientific and Statistical Committee (SSC) could reduce overfishing limits, ABCs and TACs to account for uncertainty, this does not address the underlying problem with managing the EEZ fishery to a pre-season TAC that does not incorporate inseason information on run strength, weak stocks, harvests, and other important factors. Therefore, the proposed approach is insufficient to protect weak Cook Inlet sockeye and coho salmon stocks bound for the Northern District and prioritized for conservation in the State plan. In addition, the proposed approach for managing the EEZ undermines the State’s management approach to achieve allocation objectives for all groups using Cook Inlet salmon

resources and instead expects the State to adjust allocations and take conservation actions after the first in line EEZ fishery is fully prosecuted. We also note that these stocks are important to Cook Inlet beluga whales and that additional fishing pressure made possible by impacts to the State conservation corridor and 1% rule could impact these whales.

### **Proposed season closure date for drift gillnet fishery**

These concerns are exacerbated by the proposed EEZ regulatory season closure date of August 15, which would provide for two weekly drift gillnet openings in the EEZ unless a species TAC has been reached. The State strongly recommends that NMFS change the regulatory season to allow only one EEZ opening per week between July 15 and the season closure date of August 15 or alternatively, to establish a season closure date of July 15 in the final rule for consistency with existing State conservation and allocation objectives. The proposed August 15 closure date was clearly not based on known salmon conservation objectives or intended to coordinate with the complex allocation processes currently established for salmon fisheries in Cook Inlet. This is very concerning. The proposed rule would add on average one additional 12-hour opening in the EEZ per week after July 15, which we cannot support because it clearly violates Board intent.

The State management plan for the Upper Cook Inlet drift gillnet salmon fishery is codified at 5 AAC 21.353. The Board developed the plan to ensure adequate escapement and a harvestable surplus of salmon into the Northern District drainages and to provide management guidelines to ADF&G. The plan specifies that the State shall manage the commercial drift gillnet fishery to minimize the harvest of Northern District salmon and Kenai River coho salmon to provide all users with a reasonable opportunity to harvest these salmon stocks over the entire run, as measured by the frequency of inriver restrictions. The State management plan establishes a framework for ADF&G to evaluate inseason fishery catch and run strength information prior to each potential drift gillnet opening to determine the appropriate management action. This is a key component of the State's plan, in which ADF&G continually evaluates inseason information and makes decisions about each drift gillnet fishery opening based on consideration of current fishery and run strength conditions and the management plan framework. This dynamic inseason process is critical for ADF&G to effectively balance multiple management objectives for a mixed-stock salmon fishery occurring during a relatively brief time period. Under the State management plan, if ADF&G determines that a drift gillnet fishery opening can occur based on available fishery and run strength information, managers must determine whether the fleet can fish in the area including the EEZ or be restricted to fishing in other areas to minimize drift gillnet harvest of Northern District salmon and Kenai River coho salmon. The proposal to provide for two scripted, pre-determined drift gillnet fishery openings per week in the EEZ throughout the season ignores the impact of additional EEZ openings on State management and other salmon fisheries in Cook Inlet.

The conflict between the State's management approach and the proposed Federal approach for the EEZ is particularly problematic after July 15. From July 16 through July 31, the State management plan is based on providing one drift gillnet fishery opening per week that may include area restrictions, depending on run strength of sockeye salmon to the Kenai River. Any additional openings from July 16 through July 31 are authorized only under certain conditions and may maintain or increase area restrictions for the drift gillnet fleet to fishing in the Expanded Kenai, Expanded Kasilof, and Anchor Point Sections (conservation corridors) to maintain the State's conservation and allocation policies.

From August 1 through August 15, the State management plan implements additional fishing area restrictions for all drift gillnet fishery openings to protect Northern District salmon stocks and for State allocation considerations. From August 1 to August 15, if less than 1% of the season's total drift gillnet

sockeye salmon harvest has been taken per fishing period for two consecutive fishing periods in the drift gillnet fishery, any additional drift gillnet fishery openings restrict fishing to areas on the west side of Upper Cook Inlet where the fleet is less likely to catch salmon from weak stocks or those needed to meet State allocation objectives. These area restrictions are also implemented if the Upper Subdistrict set gillnet fishery is closed.

The ADF&G season summary for the management of the 2022 Upper Cook Inlet drift gillnet fishery shows that from July 16 to July 31, the Department preserved the conservation corridors to move fish through the Central District. This also occurred in 2023. However, the proposed rule ignores the State's long-standing management approach to protect weak stocks and achieve allocation objectives because fishing in the EEZ would continue through August 15, pre-scripted, unless an established TAC had been reached. This approach likely would provide additional EEZ fishing days in mid-July and greater harvest of one or more salmon stocks in the EEZ relative to status quo management. The proposed rule acknowledges that in developing this action, NMFS received comments about the potential negative impacts of an extended EEZ drift gillnet fishery on salmon stocks and later occurring, terminal and inriver fisheries in Cook Inlet in the absence of mid-July EEZ fishery restrictions that have occurred under State management. Specific comments included the potential for reduced harvestable surplus for fisheries outside of the EEZ and concerns about achieving spawning escapement goals. Despite receiving these comments about negative potential impacts from increased drift gillnet fishing periods and harvest opportunity relative to the status quo, NMFS indicated that it intends for the SSC and Council to address these concerns through the annual harvest specification process by accounting for total removals of each stock and scientific uncertainty. As referenced in the comments above, the State strongly believes that reliance on pre-season management targets and salmon species groupings will not adequately protect weak stocks and will directly interfere with the State's ability to meet allocation objectives for all Cook Inlet salmon fisheries. These impacts are not acknowledged in the proposed rule and must be addressed in the record for this action if NMFS maintains the August 15 season closure date in the final rule.

### **Other Proposed Requirements for the EEZ Commercial Salmon Fishery**

The State supports all other proposed requirements for the EEZ commercial salmon fishery presented in the proposed rule. These requirements are necessary to minimize conflicts between fisheries in State and Federal waters, ensure accurate catch accounting, and facilitate enforcement of Federal regulations. The proposed prohibitions on fishing in both State and EEZ waters on the same day and having on board or delivering fish harvested in both State and EEZ waters are particularly important to meeting these objectives and the State supports including them in the final rule. In addition, we support the proposed monitoring requirements to enforce these prohibitions, including requirements for commercial salmon fishing vessels in the EEZ to operate a Vessel Monitoring System (VMS) and complete a Federal logbook. NMFS may wish to consider onboard monitoring requirements such as electronic monitoring or observers to ensure adequate total catch accounting.

The State supports maintaining the requirement for drift gillnet vessels in the EEZ to have the appropriate Commercial Fisheries Entry Commission (CFEC) permit(s) to land salmon or other species caught in the EEZ within the State or enter State waters. We also support the proposed prohibitions on landing or otherwise transferring salmon that is caught within the Cook Inlet EEZ Area in the EEZ to ensure that harvesting vessels delivering to tenders do so within State waters.

The State supports the proposed legal drift gillnet gear definition of a net no longer than 200 fathoms (365.76 m) in length, 45 meshes deep, and maximum mesh size of no greater than 6 inches (15.24 cm). The proposed definition is consistent with State regulations and would help maintain consistency with

recent fishery operations in terms of effort and selectivity and enable managers to estimate projected catches in the fishery more effectively.

### **Cook Inlet EEZ Recreational Salmon Fishery Management Measures**

The State acknowledges that NMFS proposes to implement relatively limited management measures for recreational salmon fishing in the Cook Inlet EEZ in recognition of very limited estimated harvests in the fishery in recent years. The State supports the proposed management measures for recreational anglers in the EEZ, including requirements for allowable gear, processing harvested salmon and reporting harvest. The proposed rule would establish bag and possession limits in Federal regulations consistent with current State regulations, however, we note that State regulations could change in the future and result in different regulations for anglers harvesting salmon in State waters and the EEZ.

Under the proposed rule, recreational anglers would be allowed to harvest salmon in State waters and the EEZ on the same day. The State agrees that this proposed management approach is appropriate given small amount of estimated salmon harvest in the EEZ, and we support the provision specifying that recreational anglers fishing in the EEZ could not exceed State bag and possession limits if landing salmon in Alaska. As described in the proposed rule, this provision has the effect of prohibiting recreational anglers landing fish in Alaska from having both a State limit and an EEZ limit on board at the same time when fishing in State waters or the EEZ. This provision is necessary to enforce State and Federal regulations and clarify regulations for recreational anglers.

### **Consistency with National Standard 1**

The State disagrees that the proposed rule is consistent with National Standard 1 of the Magnuson-Stevens Fishery Conservation and Management Act. National Standard 1 requires conservation and management measures to prevent overfishing while achieving, on a continuing basis, the Optimum Yield (OY) from each fishery for the United States fishing industry. For the proposed action, OY is the amount of fish harvested in the Cook Inlet EEZ salmon fishery that will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities and taking into account the protection of marine ecosystems. As discussed in the comments above, the proposed management system for the EEZ commercial salmon fishery establishes pre-season allowable catch limits for stock groupings that make weak stocks vulnerable to overharvest and does not provide the flexibility to harvest surplus salmon when returns are larger than expected. Furthermore, the plan is likely to provide additional fishing time and harvest opportunity for the EEZ commercial fishery compared to the status quo, which would reduce harvestable surplus available for individuals and businesses that do not participate in the Federal fishery and require the State to implement more restrictive conservation and management actions for non-Federal fishery participants in response. The proposed management plan does not acknowledge or mitigate these impacts and therefore does not provide the greatest overall benefit to the Nation as required by National Standard 1.

### **State response to Federal program**

If NMFS moves forward with the proposed process to establish pre-season TACs for the Cook Inlet EEZ commercial salmon fishery and maintains the proposed August 15 closure date for the drift gillnet fishery, the State intends to work, to the extent practicable, through the proposed Council process to ensure the established catch limits protect weak stocks and recognize State allocation constructs.

In addition, the State cannot commit to altering its data analysis and reporting timelines to accommodate a new Federal management program for the EEZ fisheries for reasons specified above. Further, the state can only cooperate with NMFS inseason management of the EEZ salmon fishery until there is a

divergence with State management. The Department must comply with State constitutional, statutory, and regulatory requirements and cannot work contrary to those requirements.

Thank you for considering our comments.

Respectfully,



Doug Vincent-Lang  
Commissioner

Cc: Honorable Lisa Murkowski–U.S. Senator for Alaska  
Honorable Dan Sullivan–U.S. Senator for Alaska  
Honorable Mary Sattler Peltola–House Representative for Alaska  
Tyson Gallagher–Chief of Staff, Office of the Governor, State of Alaska  
Jerry Moses–Director, Office of the Governor-DC, State of Alaska