



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
NORTHEAST REGION
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JUN - 6 2013

Dr. Christopher Moore, Executive Director
Mid-Atlantic Fishery Management Council
Suite 201
800 State Street
Dover, DE 19901

Dear Chris:

As the Council moves forward with deciding whether additional Federal management is necessary for river herring (alewife and blueback) and shad (American and hickory), we offer the following advice based on our review of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) National Standard Guidelines, and other national determinations regarding the need for Federal management.

Under the MSA, each Fishery Management Council is required to develop fishery management plans (FMPs) "for each fishery under its authority that requires conservation and management." 16 U.S.C. § 1852(h)(1). If a stock in a fishery is determined to be overfished or subject to overfishing, it must be included in an FMP. *See* 16 U.S.C. § 1853(a)(1)(A) (FMPs must provide measures to prevent overfishing and rebuild overfished stocks). The National Standard 1 Guidelines define a stock or stock complex as "overfished" when its biomass has declined below a level that jeopardizes the capacity of the stock or stock complex to produce maximum sustainable yield on a continuing basis. 50 CFR 600.310(e)(2)(i)(E). For all other stocks, the National Standard 7 Guidelines provide the criteria that should be considered in determining whether a fishery is in need of conservation and management through regulations implementing an FMP.

The most recent assessments for river herring¹ and shad² were not able to estimate stock abundance and fishing mortality because of the lack of adequate data. Moreover, because many factors contribute to the declining abundance of river herring and shad, the assessments used the terms "depleted" and "depressed" to describe declines in size for some of the stocks, rather than the terms "overfished" or "overfishing." These factors are not limited to directed and incidental fishing, and include water passage, water quality, predation and climate change. Because the assessments do not indicate that these stocks are overfished according to the National Standard 1 Guidelines definition, Federal management is not required under 16 U.S.C. § 1853(a)(1)(A). To determine whether river herring and shad need additional Federal conservation and management beyond existing authorities, the Council should use the National Standard Guidelines, specifically the guidelines for National Standards 3 and 7.

¹ ASMFC, 2012, Stock Assessment Report No. 12-02, River Herring Benchmark Stock Assessment, Volumes I and II

² ASMFC, 2007, Stock Assessment Report No. 07-01, American Shad Stock Assessment Report, Volume I-II



National Standard 7 requires that “conservation and management measures shall, where practicable, minimize costs, and avoid unnecessary duplication.” 16 U.S.C. § 1851(a)(7). The National Standard 7 Guidelines provide guidance on the criteria for deciding whether a fishery needs management under an FMP. The Guidelines state that not every fishery needs management through regulations implementing an FMP. The National Standard 7 Guidelines recommend the following factors be considered when deciding whether a fishery needs management through regulations implementing an FMP:

- (i) The importance of the fishery to the Nation and to the regional economy.
- (ii) The condition of the stock or stocks of fish and whether an FMP can improve or maintain that condition.
- (iii) The extent to which the fishery could be or is already adequately managed by states, by state/Federal programs, by Federal regulations pursuant to FMPs or international commissions, or by industry self-regulation, consistent with the policies and standards of the MSA.
- (iv) The need to resolve competing interests and conflicts among user groups and whether an FMP can further that resolution.
- (v) The economic condition of a fishery and whether an FMP can produce more efficient utilization.
- (vi) The needs of a developing fishery, and whether an FMP can foster orderly growth.
- (vii) The costs associated with an FMP, balanced against the benefits.

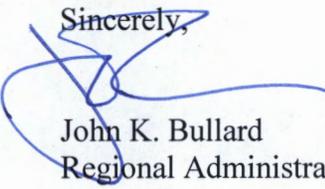
The National Standard 3 Guidelines provide guidance on structuring appropriate management units for stocks and stock complexes. In considering which stocks “can be treated as a unit for purposes of conservation and management,” and therefore constitute a “fishery,” the Council should remain mindful of National Standard 3’s requirement that, “to the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.” 16 U.S.C. § 1851(a)(3). The National Standard 3 Guidelines further instruct that the choice of a management unit “depends on the focus of the FMP’s objectives, and may be organized around biological, geographic, economic, technical, social, or ecological perspectives.” 50 CFR 600.320(d)(1). A management unit that is less than the range of the stock may be justified if complementary management exists; or if it is planned for a separate geographic area or a distinct use of the stocks; or if the unmanaged portion of the resource is immaterial to proper management.

The Council should develop a thorough analysis of each of the criteria in National Standards 3 and 7 to directly address the question of whether to manage river herring and shad stocks in a Federal FMP through the consideration of Amendment 15 to the Atlantic Mackerel, Squid and Butterfish (MSB) FMP. This analysis does not have to be lengthy, but should present a substantive comparison of the current management framework (i.e., authority under the Atlantic Coastal Fisheries Cooperative Management Act, the Atlantic States Marine Fisheries Commission’s Interstate Fisheries Management Plan for River Herring and Shads, and Federal FMPs for Atlantic mackerel and Atlantic herring) to the management of river herring and shad in a Federal FMP. We have provided examples of similar analyses for other fisheries in the attachment. For comparison, the analysis in the Draft Environmental Impact Statement for Amendment 14 to the MSB FMP relative to managing river herring and shad did not address the

criteria in National Standards 3 and 7; therefore, it was not an adequate evaluation of whether river herring and shad need additional Federal management.

Once the analysis is complete, the Council can determine whether additional Federal conservation and management is necessary for river herring and shad. Should the Council determine that additional Federal conservation and management is necessary for the river herring and shad, then the Council can develop a management scheme for these species that would meet the MSA's National Standards, and include all required provisions (i.e. status determination criteria, annual catch limits and accountability measures, essential fish habitat, etc.) and any discretionary MSA provisions the Council believes would be appropriate. As you are aware, the New England Fishery Management Council is also considering the same issue, and we encourage the Councils to work together on this important analysis.

Sincerely,



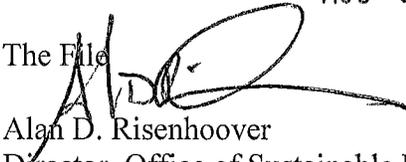
John K. Bullard
Regional Administrator

cc: Tom Nies, Executive Director, NEFMC
Rick Robins, Council Chairman, Mid-Atlantic Fishery Management Council
C.M. "Rip" Cunningham, Jr., Council Chairman, NEFMC

Attachments



AUG 31 2012

MEMORANDUM FOR: The File
FROM: 
Alan D. Risenhoover
Director, Office of Sustainable Fisheries,
performing the functions and duties of the
Deputy Assistant Administrator for Regulatory Programs
SUBJECT: Amendment 4 to the Atlantic Herring Fishery Management Plan

In its August 2, 2012, Memorandum Order, Dkt. No. 41 (Order), the Court ordered the NOAA Fisheries Service (NMFS) to consider whether Amendment 4 to the Atlantic Herring Fishery Management Plan's (FMP's) definition of the stocks in the fishery complies with the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and to set forth its consideration in a Supplemental Explanation to be filed with the Court within one month from the date of the Order. The following is NMFS' consideration of whether Amendment 4's definition of the stocks in the fishery complies with the MSA, based on information available at the time that Amendment 4 was approved by NMFS on November 9, 2010.

Upon consideration of the underlying record and the best available science, I have determined that Amendment 4's definition of the stocks in the fishery complies with the MSA. The best available information at the time Amendment 4 was approved demonstrates that it was impracticable to manage these stocks throughout their range in federal waters as a unit. Additionally, the best information available at the time Amendment 4 was approved was insufficient to support a finding that river herring (alewife or blueback) or shad (American or hickory) was in a need of conservation and management in federal waters. Finally, the best information available at the time Amendment 4 was approved demonstrates that conservation and management of these stocks in federal waters would have been impracticable and unnecessarily duplicative.

I. *Statutory and Regulatory Requirements*

Under the MSA, each Fishery Management Council is required to develop FMPs "for each fishery under its authority that requires conservation and management." 16 U.S.C. § 1852(h)(1). If a stock in a fishery is determined to be overfished or subject to overfishing, it must be included in an FMP. See 16 U.S.C. § 1853(a)(1)(A) (FMPs must provide measures to prevent overfishing and rebuild overfished stocks). A "fishery" is defined as "one or more stocks of fish that can be treated as a unit for purposes of conservation and management and that are identified on the basis of geographic, scientific, technical, recreational, or economic characteristics." Id. § 1802(13).

Section 303(a)(2) of the MSA requires each FMP contain, among other things, a description of the species of fish involved in the fishery. Id. § 1853(a)(2). The National Standard 1 Guidelines



provide further guidance that in setting forth this description, Councils should determine “which specific target stocks and/or non-target stocks to include in the fishery,” as well as whether it would be appropriate to designate any “ecosystem component species.” 50 C.F.R. § 600.310(d)(1). FMPs must include reference points (including, inter alia, status determination criteria, maximum sustainable yield, acceptable biological catch, and annual catch limits) and management measures (including accountability measures) for every stock “in the fishery.” *Id.* § 600.310(d)(2); see also § 600.310(b)(2) (describing reference points and management measures required by the MSA).

In considering which stocks “can be treated as a unit for purposes of conservation and management,” and therefore constitute a “fishery,” councils should remain mindful of National Standard 3’s requirement that, “[t]o the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.” 16 U.S.C. § 1851(a)(3). The National Standard 3 Guidelines further instruct that the choice of a management unit “depends on the focus of the FMP’s objectives, and may be organized around biological, geographic, economic, technical, social, or ecological perspectives.” 50 C.F.R. § 600.320(d)(1).

II. *Existing Management in State Waters of River Herring and Shad*

In considering whether Amendment 4’s definition of the stocks in the fishery complies with the MSA, NMFS has considered the management regime for river herring and shad in state waters as of the time Amendment 4 was approved. Because all directed fisheries for river herring and shad occur exclusively in state waters, and because the MSA precludes federal regulation of a fishery in state waters unless the fishery occurs predominately in federal waters, 16 U.S.C. § 1856(3)(b), NMFS may not regulate fisheries for river herring and shad in state waters. Instead, the states have historically managed shad and river herring in state waters, including the rivers in which they spawn, under the Atlantic States Marine Fisheries Commission’s (ASMFC’s) Interstate Fishery Management Plan (ISFMP) for Shad and River Herring.

Under the ASMFC’s ISFMP for Shad and River Herring, river herring and shad have separate stock assessments and different management measures. In 1998, Amendment 1 to the ASMFC’s ISFMP for Shad and River Herring prohibited a commercial ocean fishery for American shad, established fishing mortality targets for specific American shad river fisheries, and established a daily fish limit in recreational fisheries for American shad and hickory shad. In 2009, Amendment 2 to the ISFMP for Shad and River Herring required each state to close its rivers to river herring fishing unless that state could develop a plan that ensured that such fishing could be maintained at sustainable levels. Any such plans had to first be submitted to the ASMFC’s Shad and River Herring Board for approval before a state could open the river to fishing. State river herring fisheries without such plans were required to close by January 1, 2012. In 2010, Amendment 3 to the ISFMP for Shad and River Herring established requirements for states to develop sustainable fishery plans in order to maintain a commercial American shad fishery. American shad fisheries without such plans will be required to close by January 1, 2013. NMFS has a voting member on the ASMFC’s shad and river herring management board who participates and votes on recommended river herring and shad management measures. At no time during the development of Amendment 4 did the shad and river herring management board recommend to NMFS that it create an FMP for river herring and shad in federal waters or

designate river herring and/or shad as a stock in any federal fishery. In the past, when the ASMFC believed that management in federal waters was warranted, it requested the development of a federal FMP, as in the case of lobster, striped bass, weakfish, and horseshoe crab.

III. *Amendment 4's Definition of Stocks in the Fishery complies with the MSA*

In light of the existing management of directed fisheries for river herring and shad in state waters through the AFMSC's ISFMP, and the information available at the time of Amendment 4's approval, NMFS concludes that the Amendment 4's definition of stocks in the fishery complies with the MSA because: (i) it was impracticable to treat river herring and shad throughout their range in federal waters as a unit, (ii) there was insufficient information to support a finding that they were in need of conservation and management under the MSA, and (iii) it would have been impracticable and unnecessarily duplicative to undertake management and conservation of them in federal waters.

First, the information available at the time Amendment 4 was approved demonstrates that it was impracticable to treat shad and river herring as a "unit" on a regional or coast-wide scale as contemplated by National Standard 3. At the time Amendment 4 was approved, ASMFC stock assessments evaluated individual rivers. The best available information suggested that river herring and shad from different natal rivers co-occur in the ocean, but the extent and rate of mixing were unknown. Catch data did not always differentiate between river herring and shad species (AR 738, 1222) and did not provide sufficient information to link fish caught in the ocean with individual source rivers or stocks.

Second, at the time Amendment 4 was approved, the best available science was insufficient to support a finding that conservation and management of these stocks in federal waters was necessary. At that time, the best available science for river herring was a stock assessment of 15 rivers completed in 1990. The assessment concluded that stock status in 6 of those rivers was unknown. The river herring assessment provided only river-by-river information, and did not include information about stocks regionally or coast-wide. Likewise, the 2007 shad stock assessment addressed stocks in 32 rivers. Of the 32 rivers, over half (19) were either stable or could not be determined. The assessments are available at: <http://www.asmfc.org>. Given this lack of adequate data, the ASMFC could not develop estimates of abundance and fishing mortality in either assessment. Even with additional data from these assessments, it would have been difficult to do so, as there are many factors (e.g., water quality, fish passage, habitat restoration) contributing to changes in stock size for these species

The New England Fishery Management Council's (NEFMC's) Atlantic Herring Plan Development Team (PDT) also reviewed the best available scientific information on river herring and shad and noted that encounters between the Atlantic herring fishery in federal waters and river herring were relatively rare (75 percent of sampled trips had no encounters), and that estimates about river herring catch in the Atlantic herring fishery in federal waters were highly variable and based on gear, area, and season. Additionally, the data suggested that vessels using small-mesh bottom trawl, and targeting species other than Atlantic herring, were also encountering river herring. Because of the variability in encounters with river herring, there was

a need for adequate sampling of the Atlantic herring fishery by observers before any conclusions could be made based on the available information. AR 662-663, 680, 801.

In light of these significant data limitations, there was insufficient information to support a finding that river herring and shad were overfished or subject to overfishing at the time Amendment 4 was approved. Further, given the scale and uncertainty associated with this information, including interactions between the Atlantic herring fishery and river herring, there was insufficient information to support a finding that the river herring or shad stocks coast-wide otherwise required conservation and management.

The other materials in the record cited by the Plaintiffs (see Summ. Jdmt. Opinion at 25) do not warrant a different conclusion. These materials include public comment letters from individuals and organizations and a report on river herring produced by an environmental advocacy group requesting federal management of river herring. While these letters and the report reflect public interest in river herring, they are not objective, science-based information that would satisfy NMFS's obligation to rely on the best available science. Typically, when new science is considered by the Councils, it takes the form of a peer-reviewed journal article or a peer-reviewed stock assessment. At the time NMFS approved Amendment 4, the best available science on river herring and shad was the ASMFC's stock assessments.

Third, the information available at the time NMFS approved Amendment 4 demonstrates that conservation and management of river herring and/or shad in federal waters would have been impracticable and unnecessarily duplicative. See 16 U.S.C. § 1851(a)(7) ("Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication."). Given that the limited available stock status information was primarily related to state waters, and data on the incidental catch of river herring and shad in federal waters were uncertain, NMFS's reliance on the ASMFC's management of river herring and shad was reasonable. AR 801. As more information is gathered about the incidental catch of river herring and shad in federal waters, and as stock status information is generated on a regional and/or coast-wide scale, the potential benefits of federal management to these stocks, the regional economy, and competing stakeholder groups may outweigh the costs and duplication with ASMFC management. AR 801-802. However, based on the information available at the time NMFS approved Amendment 4, Amendment 4's designation of Atlantic herring as the only stock in the fishery is reasonable and complies with the MSA.

* * *

In summary, the best available scientific information at the time Amendment 4 was approved demonstrates that it was impracticable to manage these stocks throughout their range in federal waters as a unit, was insufficient to support a finding that river herring or shad is in a need of conservation and management in federal waters, and demonstrates that conservation and management of these stocks in federal waters would have been impracticable and unnecessarily duplicative.

Final Environmental Assessment/ Regulatory Impact Review

For

Amendment 12: Revisions to the Fishery Management Plan for the Salmon Fisheries in the EEZ Off the Coast of Alaska

June 2012

Lead Agency: National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Alaska Region
Juneau, Alaska

Responsible Official: James W. Balsiger, Ph.D.
Administrator, Alaska Region

For further information contact: Gretchen Harrington
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Abstract: *The Fishery Management Plan for the Salmon Fisheries in the EEZ off the Coast of Alaska* (FMP) manages the salmon fisheries in the United States Exclusive Economic Zone (EEZ; 3 nautical miles to 200 nautical miles offshore) off Alaska. The North Pacific Fishery Management Council developed this FMP under the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The FMP is being comprehensively revised to comply with the recent MSA requirements, such as annual catch limits and accountability measures, and to more clearly reflect the Council's policy with regard to State of Alaska management authority for commercial and sport salmon fisheries in the EEZ. This document provides decision-makers and the public with an evaluation of the environmental, social, and economic effects of alternative fishery management plans for the salmon fisheries in the EEZ and addresses the requirements of the National Environmental Policy Act and Executive Order 12866.

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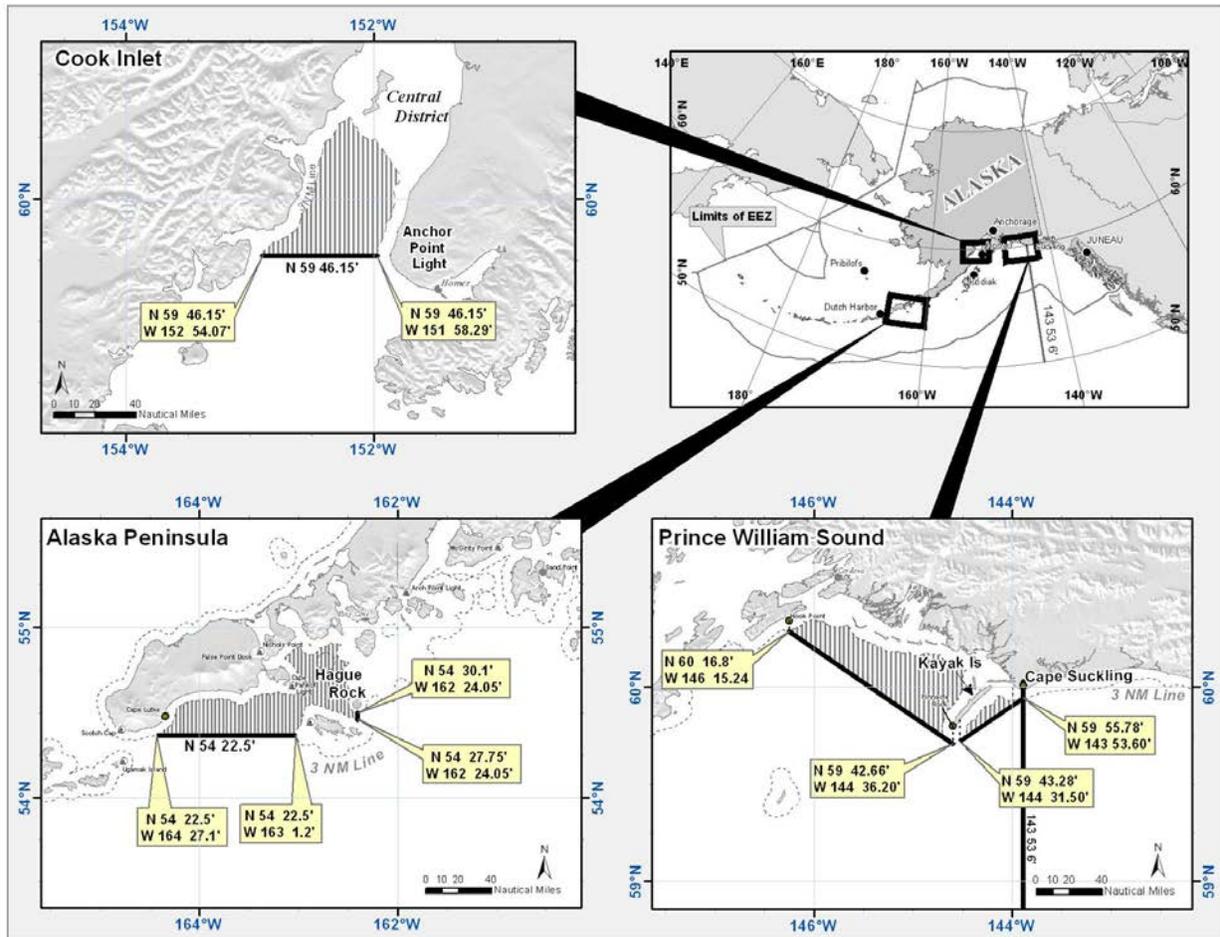
Executive Summary

The North Pacific Fishery Management Council (Council) is considering comprehensively revising and updating the *Fishery Management Plan for the Salmon Fisheries in the EEZ off the Coast of Alaska* (FMP). The Magnuson-Stevens Fishery Conservation and Management Act (MSA) directs each Regional Council to prepare a fishery management plan for each fishery under its authority that requires conservation and management. The fisheries under the authority of the Council are those fisheries that occur in the United States Exclusive Economic Zone (EEZ; 3 nautical miles to 200 nautical miles offshore). The MSA requires that each fishery management plan be consistent with the ten national standards and contain specific conservation and management measures.

The FMP was approved in 1979 and last comprehensively revised in 1990 (NPFMC 1990a). The FMP conserves and manages the Pacific salmon commercial and sport fisheries that occur in the EEZ off Alaska. The FMP establishes two management areas, the East Area and the West Area, with a border at Cape Suckling (Figure ES-1) and addresses commercial salmon fisheries differently in each area. In the East Area, the FMP delegates management of the commercial troll salmon fishery to the State of Alaska (State) and prohibits commercial salmon fishing with net gear. The FMP prohibits commercial salmon fishing in the West Area, except in three defined traditional net areas – Cook Inlet, the Alaska Peninsula, and Prince William Sound. The FMP delegates management of the sport fishery to the State in both areas.

The FMP's unique functions – closing the vast majority of the EEZ to salmon fishing and facilitating State management of the few salmon fisheries in the EEZ – reflect the salmon life cycle. Salmon have a complex life cycle that involves a freshwater rearing period, followed by a period of ocean feeding prior to their spawning migration back to freshwater. Salmon from individual brood years can return as adults to spawn over a 2 to 6 year period. As a result, a single year class can be vulnerable to fisheries for several years. Salmon migrate and feed over great distances during their marine life stage. While there is great diversity in the range and migratory habits among different species of salmon, there also is a remarkable consistency in the migratory habit within stock groups, which greatly facilitates stock-specific fishery planning. Most salmon stocks are vulnerable to harvest by numerous commercial and sport fisheries in marine areas. Many are also taken in rivers and streams during their spawning migration by subsistence, sport, commercial, and personal use fishermen.

Figure ES-1 The FMP’s management area, showing the East and West Areas and the three traditional net fishing areas.



The FMP’s unique functions also recognize that the State is the appropriate authority for managing Alaska salmon fisheries given the State’s existing infrastructure and expertise. The State manages Alaska salmon stocks throughout their range using a management approach that is designed to specifically address the life cycle of salmon, the nonselective nature of fishing in a mixed stock fishery, and the fact that a given salmon stock is subject to multiple fisheries through its migration from marine to fresh waters. Additionally, Chinook salmon harvested in the East Area are managed under provisions of the Pacific Salmon Treaty, an international agreement with Canada that provides for an abundance-based management regime that takes into account the highly mixed stock nature of the harvest. Therefore, the FMP does not contain specific measures to manage the salmon fisheries in the EEZ.

The State's first priority for management is to meet spawning escapement goals in order to sustain salmon resources for future generations. The highest priority use is for subsistence, under both state and federal law. Salmon, surplus to escapement needs and subsistence uses, are made available for other uses. Salmon throughout the entire State are a fully allocated resource; multi-use salmon fisheries (commercial, sport, subsistence, and personal use) compete for a finite resource. To this end, management plans adopted by the State work to minimize and maximize allocations of specific salmon stocks, depending upon the conservation need identified. As such, management plans incorporate conservation burden and allocation of harvest opportunity that affects all users of the resource in Alaska. State management plan provisions such as net mesh size restrictions, weekly fishing periods, and size limits work to reduce the incidental catch of non-target salmon species in the salmon fishery so that stocks are able to achieve their established escapement goals.

The State uses an adaptive management process to achieve these priorities that starts with development of management strategies based on pre-season forecasts, then transitions into evaluation of run strength in season and adjusting management strategy implementation based on in-season performance of annual salmon runs. Pre-season forecasts and management strategies are developed based on guidelines and directives as outlined in state and federal management plans and regulations and in cooperation with federal subsistence managers, fishermen, tribal council representatives, and other stakeholders. Managers use test fisheries, sonar projects, genetic stock identification and age-sex-length composition, and in-season harvest reports to assess and project salmon run timing and run strength in-season to inform management decisions.

Although the FMP has been amended nine times in the last two decades, no comprehensive consideration of management strategy or scope of coverage has occurred since 1990. State fisheries regulations and federal and international laws affecting Alaska salmon have changed since 1990 and the reauthorized Magnuson-Stevens Act expanded the requirements for federal fishery management plans. Additionally, the 1990 FMP is vague with respect to management authority for the three traditional net areas that occur in the West Area. The Council determined that the FMP must be updated in order to comply with the current MSA requirements and that the FMP should be amended to more clearly reflect the Council's policy with regard to the State of Alaska continued management authority over commercial fisheries in the West Area, the Southeast Alaska commercial troll fishery, and the sport fishery.

With this proposed action, the Council is revising the FMP to reflect both its policy for managing salmon fisheries and to comply with MSA. The proposed action has two parts: (1) alternatives for defining the scope of the FMP and determining where federal conservation and management is required, and (2) options for the specific management provisions in the FMP that apply to the fisheries managed under the FMP. The alternatives and options under consideration address the MSA requirements.

Alternatives

The Council identified the following alternatives for the FMP's fishery management unit. Chapter 2 discusses these alternatives, generally explains how the alternatives would function, and identifies and compares important aspects of each alternative.

Alternative 1: No action, no changes to the FMP.

Alternative 2: Maintain the existing geographic scope of the FMP and update the FMP.

Alternative 3: Preferred Alternative: Maintain the FMP in the East Area and, in the West Area, modify the FMP to specifically exclude three traditional net commercial salmon fishing areas and the sport fishery from the FMP and update the FMP.

Alternative 4: Maintain the FMP in the East Area only and update the FMP.

Applicable to Alternatives 2 through 4: In areas where the FMP applies, management under any alternative would be delegated to the State of Alaska.¹

The primary factor in deciding between the alternatives is defining where and for which fisheries federal conservation and management is required. Not every fishery in the EEZ needs management through regulations implementing a fishery management plan. The NS7 guidelines state that the MSA requires Regional Councils to prepare fishery management plans only for overfished fisheries and for other fisheries where regulation would serve some useful purpose and where the present or future benefits of regulation would justify the costs.

Options for FMP Provisions

Chapter 3 discusses the options developed to update the FMP to meet the MSA required provisions for a fishery management plan, using existing state salmon management to the extent possible. Options were developed to address the MSA requirements that are not addressed in the current FMP – annual catch limits and accountability measures, methods to report bycatch and measures to minimize bycatch and the mortality of unavoidable bycatch, and a Fishery Impact Statement. Additionally, options were developed to revise existing FMP provisions – management policy and objectives, status determination criteria, the salmon plan team, federal salmon limited entry permits, and the process for review and appeal of State management measures applicable under the FMP.

¹Delegation of management authority occurs in areas where the FMP applies and fishing is authorized. If fishing is not authorized in an area where the FMP applies, the Council and NMFS retain management authority and it is not delegated to the State.

Fishery Impact Statement

The MSA requires that a fishery impact statement assess and analyze the likely effects, including the cumulative conservation, economic, and social impacts, of the conservation and management measures on fishery participants and fishing communities and the safety of human life at sea. Chapter 4 contains a fishery impact statement that provides fishery information for the salmon fisheries that occur in the current FMP's fishery management unit. In the East Area, the commercial troll fishery is the only commercial fishery that operates in the EEZ. In the West Area, the only commercial fisheries in the EEZ are the Cook Inlet drift gillnet, the Prince William Sound drift gillnet, and the South Alaska Peninsula drift gillnet and purse seine fisheries. Limited sport fisheries occur in the EEZ in the East and West Areas. The fishery impact statement details the conservation and management measures that apply to the FMP salmon fisheries and economic and community impacts of the FMP salmon fisheries.

Environmental Assessment

Chapter 5 analyzes the direct, indirect, and cumulative impacts of the proposed action and the alternative management approaches on marine resources – Alaska salmon stocks, Pacific salmon stocks listed under the Endangered Species Act, marine mammals, seabirds, and essential fish habitat. Chapter 5 provides recent information on the interactions of the FMP salmon fisheries with these marine resources and analyzes whether the proposed action or its alternatives would have significant impacts on these marine resources.

The proposed action concerns the application of federal management in addition to the existing State management for the salmon fisheries that occur in the EEZ. None of the alternatives or options under consideration would change the State's management of the salmon fisheries. The proposed action does not substantially change salmon management under the FMP in a way that would change the prosecution of the fisheries. Therefore, the analysis concludes that Alternatives 1, 2, and 3 would have an insignificant impact on Alaska salmon stocks, Pacific salmon stocks listed under the Endangered Species Act, marine mammals, seabirds, and essential fish habitat. Alternative 4, which would remove the majority of EEZ waters from the FMP, could impact salmon abundance and other resources, such as marine mammals, if unregulated fishing occurred in EEZ waters. However, since it is not possible to estimate the potential for or extent of unregulated fishing, or the nature of the impacts of that fishing, the impacts of Alternative 4 are unknown.

Regulatory Impact Review

Chapter 6 evaluates the costs and benefits of potential changes to the federal regulations implementing the FMP. Regulations implementing the FMP are at § 679.1 Purpose and Scope, § 679.2 Definitions, § 679.3 Relation to other laws, § 679.4 Permits, and § 679.7 Prohibitions. To implement the Council's revised FMP, NMFS will need to revise the federal regulations. Regulatory changes necessary to implement a revised FMP under Alternatives 2, 3, or 4 would include (1) updating the regulations on relation to other

laws to reflect the FMP and current laws, (2) removing the salmon permit regulations at § 679.4(h) salmon permits, and (3) revising the prohibition in § 679.7(h) to reflect the removal of § 679.4(h). Alternatives 3 and 4 would also require changing the definition of the Salmon Management Area in § 679.2 Definitions to reflect the FMP's revised management area. In general, the modification of these regulations will have no substantive impact on industry or the public, and will not create any costs. These changes would provide benefits from streamlining and removing obsolete federal regulations. Alternative 2 may require new regulations to facilitate dual federal and state management of the salmon fisheries in the West Area. The requirement for dual federal and state management under Alternative 2 may create additional administrative costs for federal and state agencies, and compliance costs for the public.

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List of Acronyms and Abbreviations

AAC	Alaska Administrative Code	MTA	Mark, Tag and Age Laboratory
ABC	acceptable biological catch	NEPA	National Environmental Policy Act
ACL	annual catch limit	NIOSH	National Institute for Occupational Safety and Health
ADF&G	Alaska Department of Fish and Game	NMFS	National Marine Fishery Service
ADOL	Alaska Department of Labor	NOAA	National Oceanographic and Atmospheric Administration
ADOR	Alaska Department of Revenue	NPAFC	North Pacific Anadromous Fish Commission
AFSC	Alaska Fisheries Science Center	NPFMC	North Pacific Fishery Management Council
AM	accountability measure	NS	National Standard
ANILCA	Alaska National Interest Lands Conservation Act	OEG	optimal escapement goal
AS	Alaska Statute	OY	optimum yield
BEG	biological escapement goal	PBR	potential biological removal
BiOp	biological opinion	PSC	prohibited species catch
Board	Alaska Board of Fisheries	PSEIS	Programmatic Supplemental Environmental Impact Statement
BSAI	Bering Sea and Aleutian Islands	PWS	Prince William Sound
CEQ	Council on Environmental Quality	RFA	Regulatory Flexibility Act
CFEC	Commercial Fisheries Entry Commission	RFFA	reasonably foreseeable future action
CFR	Code of Federal Regulations	RIR	Regulatory Impact Review
Council	North Pacific Fishery Management Council	RPA	reasonable and prudent alternative
CPBD	catch per boat day	SAFE	Stock Assessment and Fishery Evaluation
CTC	Chinook Technical Committee	SAR	stock assessment report
CWT	coded-wire tag	SBA	Small Business Act
DPS	distinct population segment	Secretary	Secretary of Commerce
DSR	demersal shelf rockfish	SEIS	Supplemental Environmental Impact Statement
EDPS	Eastern Distinct Population Segment	SEG	sustainable escapement goal
E.O.	Executive Order	SET	sustainable escapement threshold
EA	Environmental Assessment	SPLASH	Structure of Populations, Levels of Abundance, and Status of Humpbacks
EEZ	Exclusive Economic Zone	SSFP	Sustainable Salmon Fisheries Policy
EFH	essential fish habitat	State	State of Alaska
EIS	Environmental Impact Statement	SWHS	Statewide Harvest Survey
ESA	Endangered Species Act	TAC	total allowable catch
ESU	endangered species unit	UCI	Upper Cook Inlet
FMP	fishery management plan	U.S.	United States
FMU	fishery management unit	USCG	United States Coast Guard
FONSI	Finding of No Significant Impact	USFWS	United States Fish and Wildlife Service
FPEIS	Final Programmatic Environmental Impact Statement	VMS	vessel monitoring system
FR	<i>Federal Register</i>	WDPS	Western Distinct Population Segment
ft	foot or feet	WASSIP	Western Alaska Salmon Stock Identification Project
GHL	guideline harvest level		
GOA	Gulf of Alaska		
IFQ	individual fishing quota		
IRFA	Initial Regulatory Flexibility Analysis		
ITS	incidental take statement		
m	meters		
MFMT	maximum fishing mortality threshold		
MSA	Magnuson-Stevens Fishery Conservation and Management Act		
MMPA	Marine Mammal Protection Act		
MSST	minimum stock size threshold		
MSY	maximum sustainable yield		

1 Introduction

The North Pacific Fishery Management Council (Council) is in the process of comprehensively revising and updating the *Fishery Management Plan for the Salmon Fisheries in the EEZ off the Coast of Alaska* (FMP). The FMP manages the Pacific salmon fisheries in the United States Exclusive Economic Zone (EEZ; 3 nautical miles to 200 nautical miles offshore) off Alaska. The Council developed this FMP under the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Upon approval by the Secretary of Commerce (Secretary), the FMP became effective in 1979 and was last comprehensively revised in 1990 (NPFMC 1990a).²

In December 2010, Council staff presented a discussion paper on the FMP that described the scope of the FMP and identified options for, and discussed the issues with, modifying the scope of the FMP (NPFMC 2010). The discussion paper also presented options for updating the FMP to comply with the MSA and the National Standard 1 (NS1) Guidelines requirements for annual catch limits and accountability measures for stocks managed under an FMP.³ In December 2010, the Council unanimously passed a motion that directed staff to initiate analysis of updates to the FMP based on the Council's draft problem statement, alternatives, and options.

In April 2011, the Council reviewed a preliminary document that, along with a draft of the FMP that combines the 1990 FMP with all of the subsequent amendments, provides a thorough review of the FMP and a basic discussion of how and to what degree federal requirements are addressed in the FMP. That document also provided some preliminary options for modifying FMP provisions and highlighted areas where the Council may want to recommend changes to the FMP's management measures. With this background and suite of possible options, the Council gave further direction on how to move forward with revising and analyzing the FMP and identified a preliminary preferred alternative.

In September 2011, the Council reviewed an initial review draft analysis and a working draft FMP and received public comments on both documents. The Council moved to release the analysis for public review after staff addressed the Scientific and Statistical Committee's comments and comments from the public, to the extent possible.

In December 2011, the Council took final action to recommend Alternative 3 and associated FMP provisions as Amendment 12.

² The 1990 Salmon FMP, with all of the subsequent amendments incorporated, is available at <http://www.alaskafisheries.noaa.gov/npfmc/fmp/salmon/SalmonFMP311.pdf>.

³ MSA § 303(a)(15).

Updating the FMP has required extensive exchanges of information and continued coordination among Alaska Department of Fish and Game (ADF&G), NMFS, and Council staff, as well as coordination with the Alaska Board of Fisheries.

1.1 Proposed Action

The proposed action is to revise and update the FMP to reflect the Council's policy for managing salmon fisheries and to comply with the MSA. The proposed action has two parts: (1) identifying the scope of the FMP and determining where federal conservation and management is required, and (2) identifying the specific management provisions in the FMP that apply to the salmon fisheries managed under the FMP. Chapter 2 describes the alternatives that address the scope of the FMP and each alternative represents a different FMP scope. Chapter 3 describes the options for management provisions under each alternative FMP scope.

1.2 Purpose and Need for Action

The purpose of the proposed action is to implement an FMP that achieves the Council's policy for managing salmon fisheries in the EEZ off Alaska. In achieving this policy, the FMP must also comply with the MSA national standards and required provisions for all fishery management plans, as detailed in section 1.4. This proposed action is necessary to meet MSA requirements and to update the FMP.

The following is the Council's problem statement.

Problem Statement:

Although the North Pacific Fishery Management Council's *Fishery Management Plan for the Salmon Fisheries in the EEZ off the Coast of Alaska* (FMP) has been amended nine times in the last two decades, no comprehensive consideration of management strategy or scope of coverage has occurred since 1990. State fisheries regulations and federal and international laws affecting Alaska salmon have changed since 1990⁴ and the reauthorized Magnuson-Stevens Fishery Conservation and Management Act (MSA) expanded the requirements for FMPs. The Council recognizes that the FMP is vague with respect to management authority for the three directed commercial salmon fisheries that occur in the EEZ west of Cape Suckling. The FMP must be updated in order to comply with the current MSA requirements, and it should be amended to more clearly reflect the Council's desires with regard to the

⁴ Specific examples include: the repeal of the International Convention for the High Seas Fisheries of the North Pacific Ocean/North Pacific Fisheries Act of 1954 (1992), the Sustainable Fisheries Act (1996), the Sustainable Salmon Fisheries Policy for the State of Alaska (2001), and the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (2007).

State of Alaska continued management authority over commercial fisheries in the West Area EEZ, the Southeast Alaska commercial troll fishery, and the sport fishery.

1.3 History of the Salmon FMP

The 1979 *Fishery Management Plan for the High Seas Salmon Fishery off the Coast of Alaska East of 175 Degrees East Longitude* established the Council's authority over the salmon fisheries in the EEZ, then known as the U.S. Fishery Conservation Zone. The Council excluded from FMP coverage the federal waters west of 175° east longitude (near Attu Island) because the salmon fisheries in that area were under the jurisdiction of the *International Convention for the High Seas Fisheries of the North Pacific Ocean*.

The Council divided the U.S. Fishery Conservation Zone covered by the plan into a West Area and an East Area with the boundary at Cape Suckling. It authorized sport salmon fishing in both areas, prohibited commercial salmon fishing in the West Area (except in three traditional net fishing areas managed by the State of Alaska (State)), and authorized commercial troll fishing in the East Area. The prohibition on commercial fishing in the West Area maintained the 1952 prohibition on commercial net salmon fishing and the 1973 prohibition on commercial troll salmon fishing in the West Area. The FMP's primary management measure was to limit entry in the commercial troll fishery in the East Area. Most of the other management measures for the salmon fisheries in the U.S. Fishery Conservation Zone were equivalent to State regulations in the adjacent State waters.

The FMP did not extend the general fishing prohibition to the three traditional net fishing areas because, as the FMP notes, fishing was authorized by other federal law, specifically the *International Convention for the High Seas Fisheries of the North Pacific Ocean*, as implemented by the *North Pacific Fisheries Act of 1954* (1954 Act).⁵ Under the authority of the 1954 Act, NMFS issued regulations that set the outside fishing boundaries for salmon net fishing in Alaska as those set forth under State regulations and provided that the federal regulations for any fishing conducted in legal waters outside of State jurisdiction shall be conducted under fishing regulations promulgated by the State.⁶

With time, the 1979 FMP became outdated and some of Alaska's management measures changed. Thus, in 1990, the Council amended the FMP to update it, correct minor errors, and remove itself from routine management of the salmon fisheries in the East Area. Also, a provision of the MSA required that any plan amendment submitted after January 1, 1987, consider fish habitat and accommodate vessel safety. Finally, the FMP needed to incorporate the Pacific Salmon Treaty's restrictions on Alaskan salmon fisheries. The 1990 FMP included these changes in a reorganized and shortened document with a more appropriate title.

⁵ Salmon FMP, Section 2.2.2.

⁶ 35 FR 7070, May 5, 1970. 50 CFR 210.1.

In the 1990 FMP, the Council reaffirmed its decision that existing and future salmon fisheries occurring in the EEZ require varying degrees of federal management and oversight. The FMP (1) continued to authorize commercial hand-troll and power-troll salmon fishing in the East Area, (2) allowed sport fishing in both areas, (3) delegated regulation of the sport and commercial fisheries in the East Area to the State, (4) retained the general prohibition on salmon fishing with nets in the EEZ, with the exception of commercial net salmon fisheries that occur in three delineated areas of the EEZ, (5) retained the prohibition on commercial salmon fishing in the West Area, with the exception of commercial net salmon fisheries that occur in three delineated areas of the EEZ, and (6) expanded the scope of the FMP to include the EEZ waters west of 175° east longitude. Since 1990, the Council has adopted eleven FMP amendments to address specific MSA requirements (Table 2-1). Section 2.1 describes the 1990 FMP, as amended.

On October 29, 1992, Congress repealed the 1954 Act and implemented the *North Pacific Anadromous Stocks Act of 1992* (1992 Stocks Act).⁷ The 1992 Stocks Act implements the *Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean*, which replaced the *International Convention for the High Seas Fisheries of the North Pacific Ocean*. However, the 1992 Stocks Act and the *Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean* differ from the 1954 Act and *International Convention for the High Seas Fisheries of the North Pacific Ocean* in that they do not extend into the U.S. EEZ. In 1995, as a result of this change in federal law, NMFS repealed the regulations at 50 CFR 210.1 because they were without statutory basis.⁸ At that time, the FMP was not amended to reflect these changes in international law.

In 2010, the Council began a comprehensive review of the FMP and consideration of its management strategy and scope of coverage. Since 1990, state fishery regulations and federal and international laws affecting Alaska salmon have changed and the reauthorized Magnuson-Stevens Act expanded the requirements for fishery management plans. The Council also recognized that the FMP was vague with respect to management authority for the three directed commercial salmon fisheries that occur in the West Area. The Council decided to update the FMP to comply with the current Magnuson-Stevens Act requirements and to more clearly reflect the Council's policy with regard to the State of Alaska's management authority over commercial fisheries in the West Area, the commercial troll fishery in the East Area, and the sport fishery. This document reflects the Council's proposed action to revise and update the FMP.

1.4 Magnuson-Stevens Fishery Conservation and Management Act

The MSA contains two primary sections that govern fishery management plans; the ten national standards in section 301 and required contents of fishery management plans in section 303. These sections are

⁷ The *North Pacific Anadromous Stocks Act of 1992*, Public Law 102-567, is codified at 16 USC. §§ 5001-5012.

⁸ 60 FR 39272, August 2, 1995.

excerpted below.⁹ Additionally, NMFS published National Standard Guidelines (NS Guidelines; 50 CFR 600.310-600.355) to provide comprehensive guidance for the development of FMPs and FMP amendments that comply with the MSA national standards.

SEC. 301. NATIONAL STANDARDS FOR FISHERY CONSERVATION AND MANAGEMENT

(a) IN GENERAL.—Any fishery management plan prepared, and any regulation promulgated to implement any such plan, pursuant to this title shall be consistent with the following national standards for fishery conservation and management:

(1) Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.

(2) Conservation and management measures shall be based upon the best scientific information available.

(3) To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

(4) Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

(5) Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

(6) Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

(7) Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

(8) Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities by utilizing economic and social data that meet the requirements of paragraph (2), in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.

(9) 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.

(10) Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.

SEC. 303. CONTENTS OF FISHERY MANAGEMENT PLANS

⁹ The complete Magnuson-Stevens Fishery Conservation and Management Act is available at http://www.nmfs.noaa.gov/sfa/magact/MSA_Amended_2007%20.pdf.

(a) REQUIRED PROVISIONS.—Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall—

(1) contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States, which are—

(A) necessary and appropriate for the conservation and management of the fishery to prevent overfishing and rebuild overfished stocks, and to protect, restore, and promote the long-term health and stability of the fishery;

(B) described in this subsection or subsection (b), or both; and

(C) consistent with the national standards, the other provisions of this Act, regulations implementing recommendations by international organizations in which the United States participates (including but not limited to closed areas, quotas, and size limits), and any other applicable law;

(2) contain a description of the fishery, including, but not limited to, the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the cost likely to be incurred in management, actual and potential revenues from the fishery, any recreational interest in the fishery, and the nature and extent of foreign fishing and Indian treaty fishing rights, if any;

(3) assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and include a summary of the information utilized in making such specification;

(4) assess and specify—

(A) the capacity and the extent to which fishing vessels of the United States, on an annual basis, will harvest the optimum yield specified under paragraph (3),

(B) the portion of such optimum yield which, on an annual basis, will not be harvested by fishing vessels of the United States and can be made available for foreign fishing, and

(C) the capacity and extent to which United States fish processors, on an annual basis, will process that portion of such optimum yield that will be harvested by fishing vessels of the United States;

(5) specify the pertinent data which shall be submitted to the Secretary with respect to commercial, recreational, charter fishing, and fish processing in the fishery, including, but not limited to, information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing was engaged in, time of fishing, number of hauls, economic information necessary to meet the requirements of this Act, and the estimated processing capacity of, and the actual processing capacity utilized by, United States fish processors;

(6) consider and provide for temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safe conduct of the fishery; except that the adjustment shall not adversely affect conservation efforts in other fisheries or discriminate among participants in the affected fishery;

(7) describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 305(b)(1)(A), minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat;

(8) in the case of a fishery management plan that, after January 1, 1991, is submitted to the Secretary for review under section 304(a) (including any plan for which an amendment is submitted to the Secretary for such review) or is prepared by the Secretary, assess and specify the nature and extent of scientific data which is needed for effective implementation of the plan;

(9) include a fishery impact statement for the plan or amendment (in the case of a plan or amendment thereto submitted to or prepared by the Secretary after October 1, 1990) which shall assess, specify, and analyze the likely effects, if any, including the cumulative conservation, economic, and social impacts, of the conservation and management measures on, and possible mitigation measures for—

(A) participants in the fisheries and fishing communities affected by the plan or amendment;

(B) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants; and

(C) the safety of human life at sea, including whether and to what extent such measures may affect the safety of participants in the fishery;

(10) specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished (with an analysis of how the criteria were determined and the relationship of the criteria to the reproductive potential of stocks of fish in that fishery) and, in the case of a fishery which the Council or the Secretary has determined is approaching an overfished condition or is overfished, contain conservation and management measures to prevent overfishing or end overfishing and rebuild the fishery;

(11) establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority—

(A) minimize bycatch; and

(B) minimize the mortality of bycatch which cannot be avoided;

(12) assess the type and amount of fish caught and released alive during recreational fishing under catch and release fishery management programs and the mortality of such fish, and include conservation and management measures that, to the extent practicable, minimize mortality and ensure the extended survival of such fish;

(13) include a description of the commercial, recreational, and charter fishing sectors which participate in the fishery, including its economic impact, and, to the extent practicable, quantify trends in landings of the managed fishery resource by the commercial, recreational, and charter fishing sectors;

(14) to the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, allocate, taking into consideration the economic impact of the harvest restrictions or recovery benefits on the fishery participants in each sector, any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery and;

(15) establish a mechanism for specifying annual catch limits in the plan (including a multiyear plan), implementing regulations, or annual specifications, at a level such that overfishing does not occur in the fishery, including measures to ensure accountability.

MSA § 303 note

EFFECTIVE DATES; APPLICATION TO CERTAIN SPECIES.—The amendment made by subsection (a)(10)¹⁶—

(1) shall, unless otherwise provided for under an international agreement in which the United States participates, take effect—

(A) in fishing year 2010 for fisheries determined by the Secretary to be subject to overfishing; and

(B) in fishing year 2011 for all other fisheries; and

(2) shall not apply to a fishery for species that have a life cycle of approximately 1 year unless the Secretary has determined the fishery is subject to overfishing of that species; and

(3) shall not limit or otherwise affect the requirements of section 301(a)(1) or 304(e) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1851(a)(1) or 1854(e), respectively).

¹⁶ Section 104(a)(10) of P.L. 109-479 added section 303(a)(15).

2 Alternatives for the Scope of the Salmon FMP

The first step in revising the *Fishery Management Plan for the Salmon Fisheries in the EEZ off the Coast of Alaska* (FMP) is defining the FMP's scope, or fishery management unit (FMU). The National Standard (NS) 3 Guidelines state that the choice of a management unit depends on the focus of the fishery management plan's objectives and may be organized around biological, geographic, economic, technical, social, or ecological perspectives.¹⁰ The NS3 Guidelines define the term "management unit" as a fishery or that portion of a fishery identified in an FMP as relevant to the FMP's management objectives.

The scope of the FMP directs how the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and NS Guidelines could be addressed; necessary updates to the FMP to meet these requirements, such as annual catch limits and accountability measures, would be based on the FMP's scope. The North Pacific Fishery Management Council's (Council's) December 2010 motion identified the following four alternatives for the FMP's FMU. In December 2011, the Council took final action to recommend Alternative 3 as the preferred alternative.

Alternatives: Fishery Management Unit

Alternative 1: No action, no changes to the FMP.

Alternative 2: Maintain the existing geographic scope of the FMP and update the FMP.

Alternative 3: Preferred Alternative: Maintain the FMP in the East Area and, in the West Area, modify the FMP to specifically exclude three traditional net commercial salmon fishing areas and the sport fishery from the FMP and update the FMP.

Alternative 4: Maintain the FMP in the East Area only and update the FMP.

Applicable to Alternatives 2-4: In areas where the FMP applies, management under any alternative would be delegated to the State of Alaska.¹¹

This section discusses these alternatives, generally explains how the alternatives would function, and identifies and compares important aspects of each alternative.

¹⁰ 50 CFR 600.320(d).

¹¹ Delegation of management authority occurs in areas where the FMP applies and fishing is authorized. If fishing is not authorized in an area where the FMP applies, the Council and NMFS retain management authority and it is not delegated to the State.

Once the scope of the FMP is determined, the Council would then determine the appropriate FMP provisions applicable in that FMU. Chapter 3 provides an assessment of each FMP provision and a discussion of the options identified. Chapter 3 also provides a discussion of the MSA requirements that are not addressed by the 1990 FMP or subsequent amendments.

2.1 Alternative 1: No changes to the FMP

Under this “no action” alternative, the Council would make no changes to the FMP—no updates for the requirements of the MSA or NS Guidelines, and no modifications to the management approach. Importantly, the FMP’s function in the three traditional net areas in the West would remain vague and would not reflect the Council’s policy with respect to these areas. As a result, the FMP would remain in its current state, which is not a viable option. Chapter 3 identifies the MSA requirements that are not addressed in the FMP: annual catch limits and accountability measures, methods to report bycatch and measures to minimize bycatch and the mortality of unavoidable bycatch, and a Fishery Impact Statement. Chapter 3 also highlights the FMP provisions that should be extensively revised to reflect current management and the FMP provisions that could be removed.

2.1.1 Scope of the Salmon FMP

The fishery management unit of the FMP is composed of all waters of the EEZ off Alaska and the salmon fisheries that occur there (Figure 2-1).¹² The original FMP (1979) established federal authority over salmon fisheries in the EEZ but excluded that portion of the EEZ west of 175° E. longitude. Amendment 3 (1990) to the FMP extended jurisdiction to the area of the EEZ west of 175° E. longitude and expressly deferred regulation of the sport fishery and the Southeast Alaska commercial troll salmon fishery to the State. Commercial and sport salmon fisheries occurring in the EEZ are governed by State regulations.¹³ Although the Council and NMFS are removed from routine management of salmon fisheries in the EEZ, the FMP asserts and reserves federal authority and general NMFS and Council participation in and oversight of salmon management in the EEZ.

The FMP includes all five species of Pacific salmon in the EEZ:

Chinook salmon (king), *Oncorhynchus tshawytscha*;

Coho salmon (silver), *Oncorhynchus kisutch*;

Pink salmon (humpy), *Oncorhynchus gorbuscha*;

Sockeye salmon (red), *Oncorhynchus nerka*; and

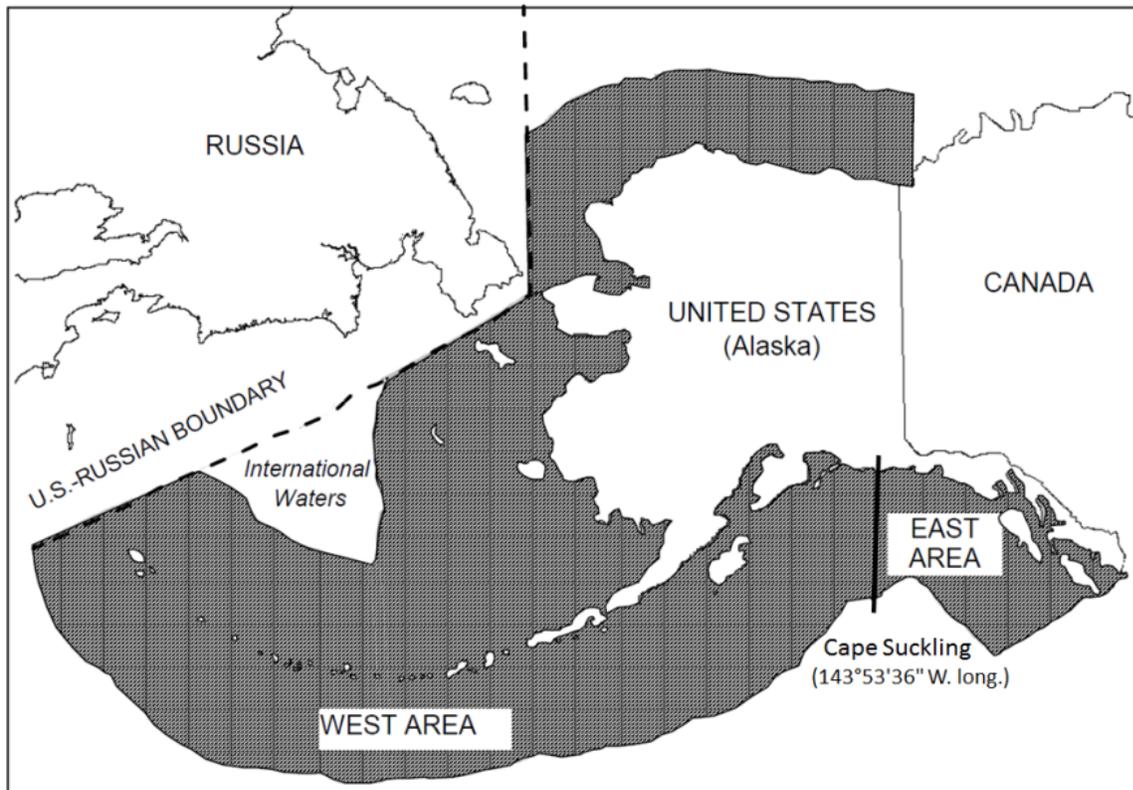
Chum salmon (dog), *Oncorhynchus keta*.

¹² Salmon FMP, Section 2.1.

¹³ Salmon FMP, Section 2.2.

The FMP establishes two management areas within its fishery management unit, the East Area and the West Area. The border between the two areas is at the longitude of Cape Suckling, at 143°53'36" W. longitude. The FMP addresses commercial salmon fisheries differently in the East and the West Areas, as described below.

Figure 2-1 The FMP's management area, showing the East and West Areas.



East Area

The East Area is that portion of the EEZ off Alaska east of Cape Suckling.¹⁴ The Southeast Alaska commercial salmon troll fishery is the only commercial fishery authorized in the East Area. The Southeast Alaska commercial troll fishery in the EEZ is a mixed-stock, mixed-species fishery that primarily targets Chinook and coho salmon; pink, chum, and sockeye salmon are also taken. The FMP sets forth the Council's management goals and objectives for the salmon fisheries in the East Area, which accordingly focus on the Southeast Alaska commercial troll fishery.¹⁵ The FMP defers management of

¹⁴ Note that the East Area is outside of Alexander Archipelago and does not include the waters between the islands and the mainland, per MSA § 306(a)(2)(C).

¹⁵ Salmon FMP, Section 4.2, including subsections.

the Southeast Alaska troll fishery to the State. Commercial salmon fishing with net gear is prohibited in the East Area.

The troll fishery operates in both State and federal waters, although the majority of the catch and effort occurs in State waters. The State collects fisheries information from the troll fishery as a whole and does not separate the fishery in the EEZ from the state-waters fishery. The troll fishery harvests less than one percent of the total harvest of pink, chum, and sockeye salmon occurring in southeast waters. The troll fishery has two seasons, the winter season, October 11 through April 30, and the summer season, May 1 through September 30. The winter troll fishery is limited to within State waters; the summer troll fishery occurs in federal and State waters. More information on this fishery is provided in the Fishery Impact Statement in Chapter 4.

West Area

The West Area is that portion of the EEZ off Alaska west of Cape Suckling. It includes the EEZ in the Bering, Chukchi, and Beaufort Seas, the Arctic Ocean, and North Pacific Ocean west of Cape Suckling. The FMP prohibits commercial salmon fishing in most of the West Area, but permits commercial fishing for salmon with nets in three small areas of the EEZ adjacent to State net fisheries. The FMP describes these areas in Section 2.2.2 and Appendix C of the FMP as the Alaska Peninsula area (Figure 2-2), the Prince William Sound area (Figure 2-3), and the Cook Inlet area (Figure 2-4). More information on these fisheries is provided in the Fishery Impact Statement in Chapter 4.

The FMP is vague on the function of the FMP in these areas. Although the FMP broadly includes these three areas and the salmon and fisheries that occur there within the fishery management unit and states that management of these areas is left to the State under other federal law, the FMP does not explicitly delegate management of these salmon fisheries to the State.¹⁶ The FMP does not contain any management goals or objectives for these three areas or any provisions with which to manage salmon fishing. The FMP only refrains from extending the general fishing prohibition to those areas, where, as the FMP notes, fishing was authorized by other federal law, specifically the *International Convention for the High Seas Fisheries of the North Pacific Ocean* as implemented by the *North Pacific Fisheries Act of 1954* (1954 Act).¹⁷ However, in 1992, Congress repealed the 1954 Act and implemented the *North Pacific Anadromous Stocks Act of 1992* (1992 Stocks Act).¹⁸ The 1992 Stocks Act implements the *Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean*, which replaced the *International Convention for the High Seas Fisheries of the North Pacific Ocean*. The 1992 Stocks Act and the *Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean* differ from the 1954 Act and *International Convention for the High Seas Fisheries of the North Pacific Ocean* and do

¹⁶ Salmon FMP, Section 2.2.2.

¹⁷ Salmon FMP, Section 2.2.2.

¹⁸ The *North Pacific Anadromous Stocks Act of 1992*, Public Law 102-567, is codified at 16 USC. §§ 5001-5012.

not extend into the U.S. EEZ as did the 1954 Act. Therefore, the other federal law that authorized state management of the net fisheries, in lieu of the FMP, no longer exists.

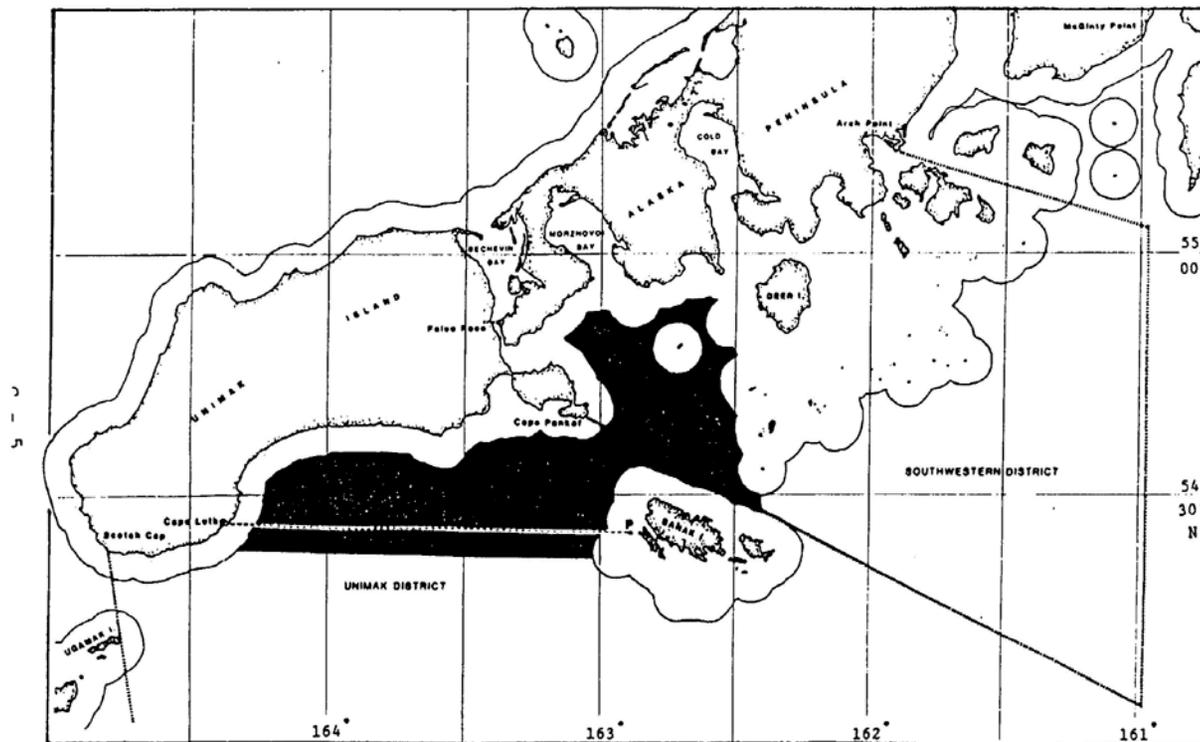


Figure C.2. Location of the historical net-fishing area in the False Pass area (shaded area). The hatched lines separate the Unimak and Southwestern Districts of the Alaska Peninsula Area. The seaward boundary of the traditional net-fishing area is a line 3 miles seaward of the dashed line running between Cape Lutke and point P on the west side of Sanak Island at 54° 26' 45" N. lat., 162° 53' W. long. (5 AAC 09.301).

Figure 2-2 1990 FMP map of the South Alaska Peninsula traditional net fishing area.

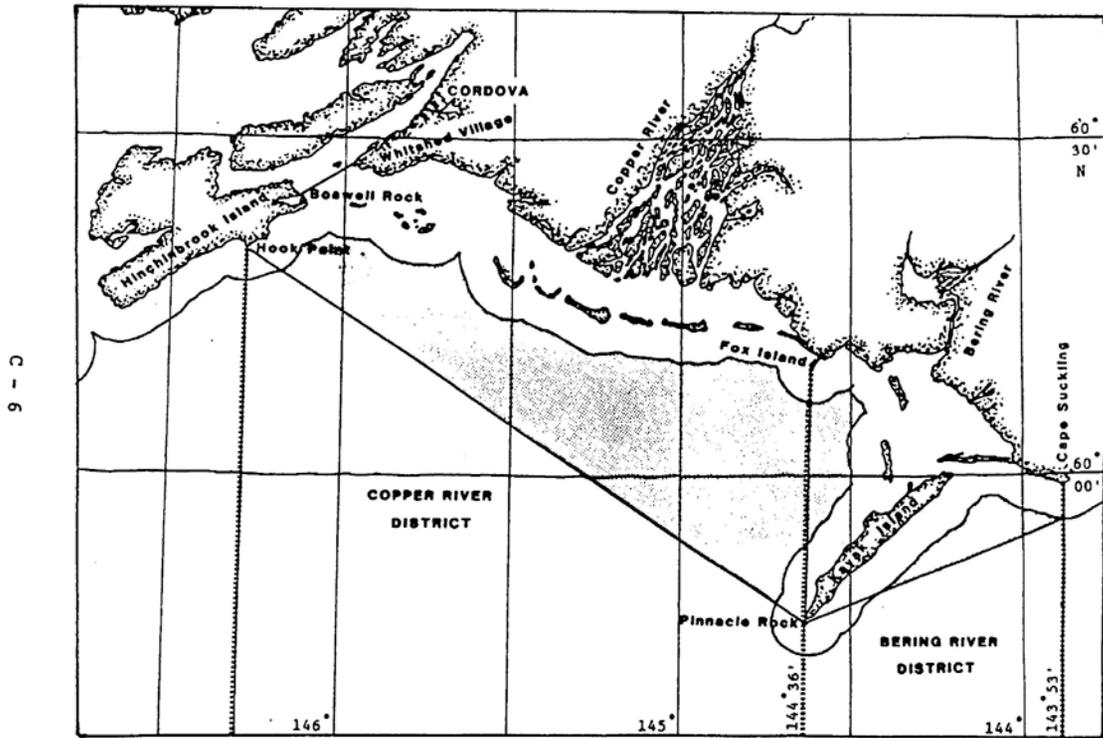


Figure C.3. Location of the historical net-fishing area in the Copper River area (shaded area). The hatched lines separate the Copper River and Bering River districts of the Prince William Sound Area. The seaward boundary of the traditional net-fishing area is a line 3 miles seaward from a line from Cape Suckling to the southernmost tip of Pinnacle Rock to the tip of Hook Point on Hinchinbrook Island.

Figure 2-3

1990 FMP map of the Prince William Sound traditional net fishing area.

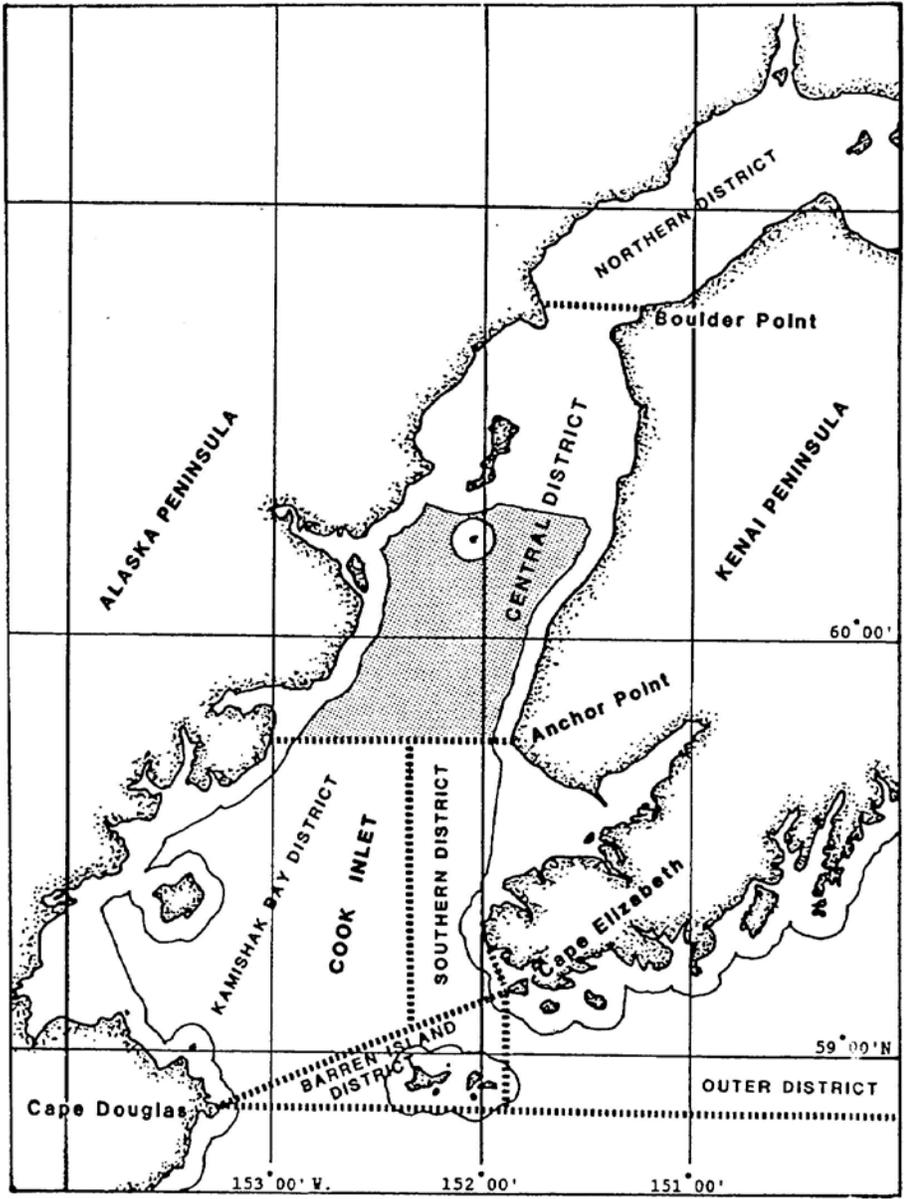


Figure C.1. Location of the historical net-fishing area in the Cook Inlet area (shaded). The hatched lines separate ADF&G fishing districts.

C - 4

Figure 2-4 1990 FMP map of the Cook Inlet traditional net fishing area.

2.1.2 FMP Delegates Salmon Management to the State of Alaska

The intended effect of the FMP is to conserve and manage the salmon resources in the North Pacific Ocean and to allow the fisheries that occur in State and EEZ waters to be managed as one fishery. The FMP explicitly delegates management of the commercial troll and sport fisheries to the State, to manage consistent with State and federal laws, including the Pacific Salmon Treaty¹⁹ between the United States and Canada. The Fishery Impact Statement, in Chapter 4, provides detailed information on the salmon fisheries managed under the FMP.

State management of the salmon fishery is based, by direction from the State constitution, on the sustained yield principle (Alaska Constitution Article VIII, section 4). Regulations for the Alaska salmon fishery are made by the Alaska Board of Fisheries (Board, AS 16.05.251). The Board has the authority to allocate salmon available for harvest among different user groups (AS 16.05.251(e)). The Alaska Department of Fish and Game (ADF&G) manages the fishery in-season and issues emergency regulations to achieve conservation objectives and to implement allocation policies established by the Board (AS 16.05.060). ADF&G reviews salmon escapement goals and stock status for each salmon management area on a three-year cycle, consistent with the Board's regulatory review cycle (5 AAC 39.223(b)(6)). Escapement goal and stock status reviews are prepared prior to Board review.

The State has many decades of sustainable salmon management, utilizing escapement goals and in-season management decisions by local managers. Alaska salmon fisheries are conservatively managed by allowing fishing with specific gears, in specific areas, at specific times. Alaska salmon fisheries generally occur in areas terminal or near-terminal to natal spawning systems, where the fish are highly concentrated and stock of origin is discernible. Generally, run times are consistent and predictable from one year to the next; salmon run sizes, however, are highly variable.

Under State management, salmon fishery openings are set pre-season through regulations adopted by the Board or in-season through management authority that has been delegated to ADF&G. Salmon fishery openings are managed and adjusted in-season through emergency orders in response to escapement goal level and run size. State escapement enumeration programs are in place, with direct or indicator stock escapement monitoring for most salmon stocks. Fishing is allowed to continue only if in-season assessment of run strength indicates a harvestable surplus; the level of fishing depends on the strength of the in-season run. Local area managers, under authority delegated by the ADF&G Commissioner, open and close the fisheries in response to in-season assessments of the strength and timing of runs. In-season, emergency order management strives to avoid the principle overfishing threat: intense fishing activity during weak runs.

¹⁹ <http://www.psc.org/pubs/Treaty.pdf>

State of Alaska Policy for the Management of Sustainable Salmon Fisheries

The Board's Policy for the Management of Sustainable Salmon Fisheries is an integral part of its tri-yearly review of State salmon fisheries.²⁰ The policy contains five fundamental principles for sustainable salmon management, each with criteria used to evaluate salmon fisheries and to address conservation issues. The five fundamental principles of the policy are as follows:

- Wild salmon stocks and their habitats should be maintained at levels of resource productivity that assure sustained yields.
- Fisheries shall be managed to allow escapements within ranges necessary to conserve and sustain potential salmon production and maintain normal ecosystem functioning.
- Effective salmon management systems should be established and applied to regulate human activities that affect salmon.
- Public support and involvement for sustained use and protection of salmon resources should be sought and encouraged.
- In the face of uncertainty, salmon stocks, fisheries, artificial propagation, and essential habitats shall be managed conservatively.

The Sustainable Salmon Fisheries Policy requires that ADF&G describe the extent to which salmon fisheries and habitats conform to the policy's explicit principles and criteria. In response, the Board must review fishery management plans or draft new plans. If a concern with a particular salmon stock is identified in the course of this review, an action plan with measures that include needed research, habitat improvements, or new regulations, must be developed to address the concern. The Sustainable Salmon Fisheries Policy is implemented by the Board and ADF&G in the course of the Board's normal regulatory cycle.

2.1.3 Sport Salmon Fisheries

The FMP allows sport (also referred to interchangeably as recreational) fishing for salmon in the EEZ off Alaska. The FMP delegates management of the sport salmon fishery in the EEZ to the State to manage along with the sport fishery inside State waters. The sport salmon fishery, and management measures for the sport fishery, were included in the 1979 FMP, but no information exists explaining why the Council decided to impose federal management on salmon sport fishing in the EEZ. When the FMP was revised in 1990, the Council decided to delegate routine management of the sport fishing in the EEZ to the State, with federal oversight, and removed all sport fishery management measures from the FMP.

The majority of sport fishing for salmon takes place in State waters. ADF&G Division of Sport Fish is responsible for the State's recreational fishery resource, which includes the conservation of self-

²⁰ 5 AAC 39.222.

perpetuating populations of fish; management of sport fisheries in both salt and fresh water; and hatchery production and release of enhanced fish for sport fishing. The goals of the division are to conserve naturally reproducing populations of sport fish species, provide a diverse mix of sport fishing opportunities, and optimize the social and economic benefits of Alaska's recreational fisheries. The Fishery Impact Statement, in Chapter 4, provides detailed information on the sport salmon fisheries managed under the FMP.

2.1.4 Amendments to the Salmon FMP

The FMP has been amended nine times since 1979 and two amendments are pending Secretarial approval. Each amendment to the FMP is detailed in Table 2-1.

Table 2-1. Amendments to the Salmon FMP.

Amendment	Year Approved	Pertinent Function(s)	Federal Register document
<i>FMP for the High Seas Salmon Fisheries off the Coast of Alaska East of 175 Degrees East Longitude</i>	1979 - 1981	<ul style="list-style-type: none"> Establishes Council and NMFS authority over the salmon fisheries in federal waters from 3 to 200 miles seaward. Excluded waters west of 175°E. long. from FMP. 	
<i>Amendment 3 FMP for the Salmon Fisheries in the EEZ off the Coast of Alaska</i>	1990	<ul style="list-style-type: none"> Extends jurisdiction of FMP to EEZ west of 175°E. long. Defers regulation of sport and commercial fisheries to State. Effectively removes Council and NMFS from routine management but expressly maintained federal participation, oversight, and final authority. 	55 FR 47773
<i>Amendment 4 (modified by Amend 6)</i>		<ul style="list-style-type: none"> Provides a definition of overfishing, as required by NOAA regulations at 50 CFR 602. 	56 FR 12385
<i>Amendment 5 (superseded by Amend 7)</i>	1998	<ul style="list-style-type: none"> Implements Essential Fish Habitat (EFH) provisions contained in the MSA and 50 CFR 600.815. Describes and identifies EFH fish habitat for anadromous fish. Describes and identifies fishing and non-fishing threats to salmon EFH, research needs, habitat areas of particular concern, and EFH conservation and enhancement recommendations. 	65 FR 20216
<i>Amendment 6 Revise Definitions of Overfishing, MSY, and OY</i>	2002	<ul style="list-style-type: none"> Updates the FMP with new definitions of overfishing in compliance with the MSA, consistent with the NS Guidelines and State and federal cooperative management, and based on the State's salmon management and the Pacific Salmon Treaty. Implements an maximum sustainable yield control rule, maximum fishing mortality rate, and minimum stock size threshold for the Southeast Alaska troll fishery 	67 FR 1163
<i>Amendments 7 and 8 Essential Fish Habitat and Habitat Areas of Particular Concern</i>	2006	<ul style="list-style-type: none"> Amendment 7 supersedes Amendment 5 Updates descriptions of EFH and Habitat Areas of Particular Concern (HAPC) within the FMP Makes conservation and enhancement recommendations for EFH and HAPCs Identifies and authorizes protection measures for EFH and HAPCs 	71 FR 36694
<i>Amendment 9 Aleutian Islands Habitat Conservation Area</i>	2008	<ul style="list-style-type: none"> Revises the boundaries of the Aleutian Islands Habitat Conservation Area described in the FMP 	73 FR 9035
<i>Amendment 10 Permit Fees</i>	Under Review	<ul style="list-style-type: none"> Establish a system to collect fees for permits 	Under Development
<i>Amendment 11 Essential Fish Habitat</i>	Under Review	<ul style="list-style-type: none"> Updates description of EFH impacts from non-fishing activities, and EFH conservation recommendations for non-fishing activities. Revises the timeline associated with the HAPC process to a five-year timeline. Updates EFH research priority objectives. 	Under Development

2.2 Alternative 2: Maintain the existing geographic scope of the FMP

Under Alternative 2, the FMP would maintain the current “status quo” scope of the FMP, as described in Section 2.1.1. The FMP would be updated and revised to meet MSA requirements and NS Guidelines. These specific management measures are discussed in Chapter 3.

East Area

Under Alternative 2, the FMP would continue to impose federal management over the Southeast Alaska troll and sport fisheries, but delegate management of these fisheries to the State. Under MSA § 306(a)(3)(B), this gives the State authority to regulate fishing vessels outside the boundaries of the State.²¹

Maintaining the FMP in the East Area would leave existing management structures in place, recognizing that the FMP is the nexus for the application of the Pacific Salmon Treaty and Endangered Species Act and that NMFS’s primary role in salmon management is through the Pacific Salmon Commission. Delegation of salmon fishery management authority to the State requires the Council and NMFS to stay apprised of State management measures governing the commercial and sport salmon fisheries in the East Area and to review these measures for consistency with the FMP, as necessary. Review of State management measures is facilitated through reports received from the State at regularly scheduled Council meetings. In addition, the Council and NMFS have the opportunity to participate in the State’s regulatory process during scheduled Board meetings.

NMFS issued an *Endangered Species Act Section 7(a)(2) Consultation Biological Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation on the Approval of Revised Regimes under the Pacific Salmon Treaty and the Deferral of Management to Alaska of Certain Fisheries Included in those Regimes* (2008 BiOp, NMFS 2008a). The 2008 BiOp concluded no jeopardy and included an Incidental Take Statement (ITS) that covers the Pacific Salmon Treaty, and the deferral of management to the State for the duration of this management program, subject to the conditions that require re-initiation of consultation (NMFS 2008a). Additionally, NMFS prepared the *Final Programmatic Environmental Impact Statement for the Pacific Salmon Fisheries Management off the Coasts of Southeast Alaska, Washington, Oregon, and California, and in the Columbia River Basin* (FPEIS, NMFS 2003). The primary federal action considered in the FPEIS for the Southeast Alaska salmon fishery was the annual decision regarding continued delegation of management to the State and the issuance of an ITS through the Endangered Species Act Section 7 consultation process.

²¹ MSA § 306(a)(3)(B) A State may regulate a fishing vessel outside the boundaries of the State in the following circumstances:...(B) The fishery management plan for the fishery in which the fishing vessel is operating delegates management of the fishery to a State and the State’s law and regulations are consistent with such fishery management plan. ...

West Area

Under Alternative 2, the Council would need to clarify the FMP's management policy and objectives for the commercial salmon fisheries in the West Area. New management measures would need to be developed to address MSA provisions that are not currently developed for the fisheries in the West Area, including status determination criteria, a mechanism for specifying annual catch limits, a mechanism for standardized bycatch reporting, and measures to minimize bycatch to the extent practicable. These management measures are discussed in Chapter 3. Additionally, the Council or NMFS may decide that it is necessary to apply additional federal requirements to salmon vessels fishing in the EEZ, such as on-board observers, recordkeeping and reporting requirements, or vessel monitoring systems.

Key to this alternative is defining the FMP's role in the three traditional net fishing areas. Some public comments have expressed interest for the FMP's role to be limited to oversight of State management measures that apply to all of the salmon fisheries in the region, including measures that only apply to salmon fisheries in State waters. Specifically, these public comments request oversight of escapement goals and decisions to allocate salmon among user groups (subsistence, personal use, sport, and the different commercial gear types). However, it is not possible to have an FMP that only serves an oversight function and does not contain management measures for FMP fisheries that address the MSA requirements. Additionally, under the MSA, an FMP only has authority to manage the fisheries that occur in the EEZ. The MSA is clear that nothing in the MSA shall be construed as extending or diminishing the jurisdiction or authority of any state within its boundaries.²² Absent formal preemption in accordance with MSA § 306(b), the MSA does not provide authority for the Council to manage fisheries in state waters, which would be required for the Council to change escapement goals or to allocate more salmon to a specific gear group, or to direct the Board to make these types of changes.

In other instances where a fishery occurs in both state and federal waters, federal management of the federal portion of the fishery is responsive to state management of the portion in state waters. An example of this occurs in the Pacific cod fisheries in the Gulf of Alaska and Aleutian Islands. The federal Pacific cod total allowable catch is set taking into account the State guideline harvest level so that total catch does not exceed the Pacific cod annual catch limit.

The Council does have two other FMPs that delegate much of the management of those fisheries to the State, with federal oversight – the *Fishery Management Plan for the Bering Sea/Aleutian Islands King and Tanner Crabs* (crab FMP) and the *Fishery Management Plan for the Scallop Fisheries off Alaska* (scallop FMP). These fishery management plans implement federal management measures and delegate specific categories of management measures to the State. These fishery management plans have provisions, either implemented by NMFS or the State, that address each requirement in MSA § 303(a),

²² MSA § 306(a) IN GENERAL. – (1) Except as provided in subsection (b), nothing in this Act shall be construed as extending or diminishing the jurisdiction or authority of any State within its boundaries.

and many other federal requirements, such as a federal limited access program, up to 100% observer coverage, and mandatory vessel monitoring system.

As noted above, the MSA does provide the Secretary the ability to preempt state management and assume responsibility for the regulation of a fishery in state waters under two conditions.²³ First, the fishery must occur predominantly within the EEZ. Second, the results of the state's action or inaction must substantially and adversely affect the carrying out of the fishery management plan. Both of these criteria must be met for preemption of state management. If both these criteria were met, NMFS would need to determine how it would regulate the salmon fisheries in state waters and the information it would use to make management decisions. Federal fisheries regulations require data, analysis, and an extensive process. NMFS does not have the information, expertise, or infrastructure necessary to manage Alaska salmon fisheries in federal or State waters, at present. If preemption were required, and in the absence of these key components to management, NMFS may have no other choice but to close the salmon fisheries off Alaska until it could develop the necessary expertise and infrastructure to manage Alaska salmon fisheries in accordance with applicable federal law.

2.3 Alternative 3 (Preferred Alternative): Modify the FMP to exclude the three traditional fishing areas and the sport fishery in the West Area

Alternative 3 would maintain the primary functions of the FMP – closing the vast majority of the EEZ to salmon fishing and facilitating State management of the few salmon fisheries that occur in the EEZ. Alternative 3 is similar to Alternative 2, except in the way it would achieve the policy goal of facilitating State management of the traditional salmon fisheries in the West Area. Instead of imposing federal management of the salmon fisheries in the West Area and delegating management to the State, these fisheries would no longer be included in the FMP, thereby allowing the State to manage these fisheries independently and not through a federal delegation of management authority.

East Area

Alternative 3 is the same as Alternative 2 in the East Area. The FMP would continue to impose federal management authority over commercial and sport salmon fisheries in the EEZ and continue to delegate management of the Southeast Alaska troll fishery and sport fisheries to the State. The sport fishery would remain in the FMP to enable management of all Chinook harvests under the Pacific Salmon Treaty. The

²³ MSA § 306(b) EXCEPTION. – (1) If the Secretary finds, after notice and an opportunity for a public hearing ... that (A) the fishing in a fishery, which is covered by a fishery management plan implemented under this Act, in engaged in predominately within the exclusive economic zone and beyond such zone; and (B) and State has taken action, or omitted to take any action, the results of which will substantially and adversely affect the carrying out of such fishery management plan; the Secretary shall promptly notify such State and the appropriate Council of such finding and of his intention to regulate the applicable fishery within the boundaries of such State (other than internal waters), pursuant to such fishery management plan and the regulations promulgated to implement such plan.

FMP would also need to be updated and revised to meet MSA requirements and NS Guidelines. This would include developing management measures to address MSA provisions, such as a mechanism for specifying annual catch limits and accountability measures. Options for these management measures are discussed in Chapter 3, along with the preferred options identified by the Council.

As with Alternative 2, Alternative 3 would maintaining the FMP in the East Area and leave existing management structures in place, recognizing that the FMP is the nexus for the application of the Pacific Salmon Treaty and Endangered Species Act and that NMFS's primary role in salmon management is through the Pacific Salmon Commission. Delegation of salmon fishery management authority to the State requires the Council and NMFS to stay apprised of State management measures governing the commercial and sport salmon fisheries in the East Area and to review these measures for consistency with the FMP, as necessary. Review of State management measures is facilitated through reports received from the State at regularly scheduled Council meetings. In addition, the Council and NMFS have the opportunity to participate in the State's regulatory process during scheduled Board meetings.

NMFS issued the 2008 BiOp (NMFS 2008a) that concluded no jeopardy and included an ITS that covers the Pacific Salmon Treaty, and the deferral of management to the State for the duration of this management program, subject to the conditions that require re-initiation of consultation (NMFS 2008a). Additionally, NMFS prepared the FPEIS (NMFS 2003) that considered as the primary federal action the annual decision regarding continued delegation of management to the State and the issuance of an ITS through the Endangered Species Act Section 7 consultation process.

West Area

Alternative 3 would modify the FMP's management area to remove the three traditional net areas (Figure 2-5, Figure 2-6, and Figure 2-7) from the West Area. Removing these three areas from the FMP's management area would exclude the salmon fisheries that occur in those areas from federal fisheries management. Any commercial fishing for salmon by State registered vessels in the EEZ in these three areas would be managed by the State. Under Alternative 3, the FMP would continue to prohibit commercial salmon fishing in the redefine West Area. Alternative 3 would also remove the sport fishery in the West Area from federal management. Any sport fishing for salmon by State registered vessels in the EEZ west of Cape Suckling would be managed by the State.

Removing the three traditional net fishing areas and the sport fishery in the West Area from the FMP would result in EEZ waters, where salmon fisheries occur, that are not under the FMP. The State would continue to manage these salmon fisheries in the EEZ waters and sport fishing in the EEZ. The MSA § 306(a)(3)(A) provides that a state may regulate a fishing vessel outside the boundaries of the state if the fishing vessel is registered under the law of that state and there is no fishery management plan or other

applicable federal fishing regulations for the fishery in which the vessel is operating.²⁴ Under this alternative, management of these fisheries would not be delegated to the State under the FMP as there would be no assertion of federal authority over the commercial fisheries in these areas or the sport fishery that could be delegated. The State has the authority to regulate state registered vessels and there would be no federal management scheme for these areas or the sport fishery in the West Area. Note that this change to the Salmon FMP would not impact groundfish fisheries management or salmon taken as prohibited species catch in the groundfish fisheries.

²⁴ MSA § 306(a)(3) A State may regulate a fishing vessel outside the boundaries of the State in the following circumstances: (A) The fishing vessel is registered under the law of that State, and (i) there is no fishery management plan or other applicable Federal fishing regulations for the fishery in which the vessel is operating;...

Figure 2-5 Cook Inlet Area – The EEZ waters that are excluded from the management area are those waters north of the line from Anchor Point.

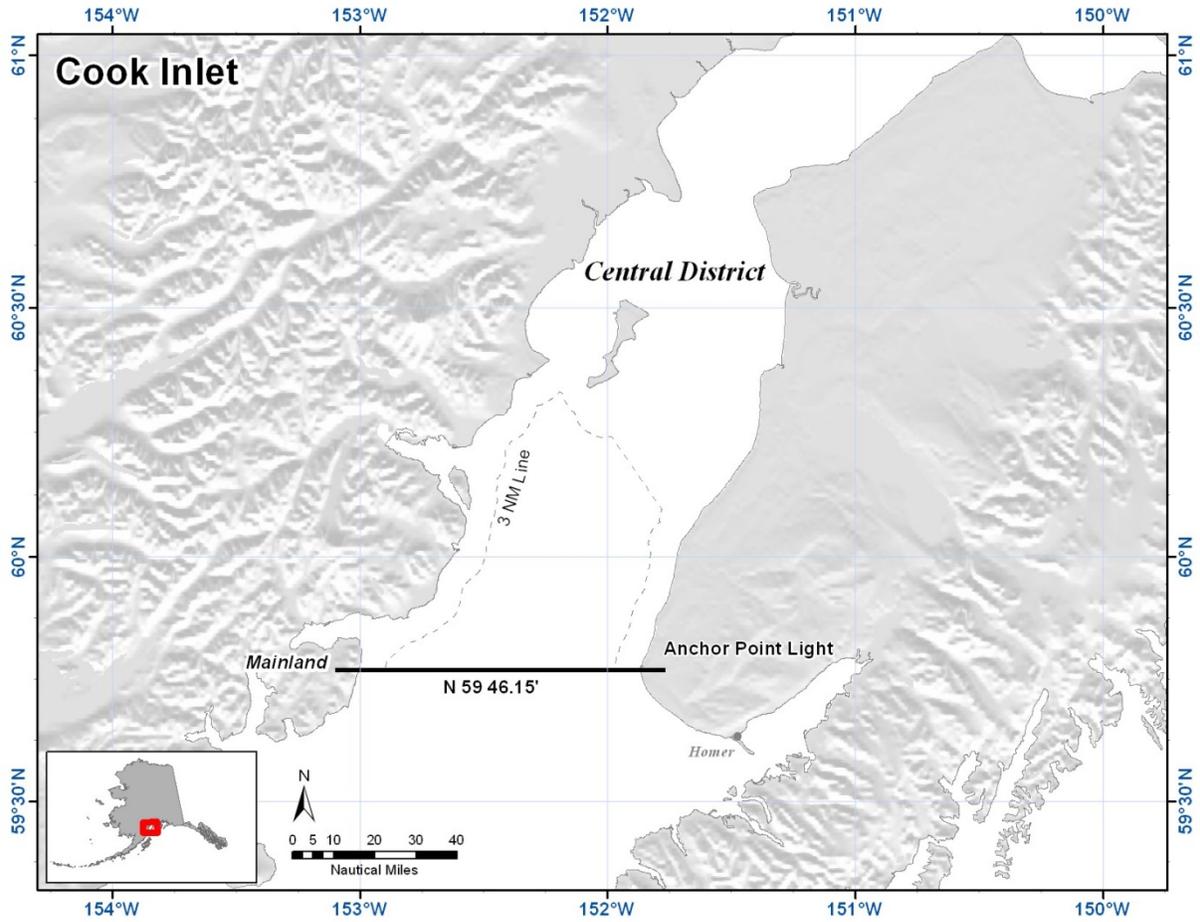


Figure 2-6 Prince William Sound Area– The EEZ waters that are excluded from the management area are shoreward of the line from 3 miles south of Hook Point to 3 miles south of Pinnacle Rock and from a line at state waters at Pinnacle Rock to 3 miles south of Cape Suckling.

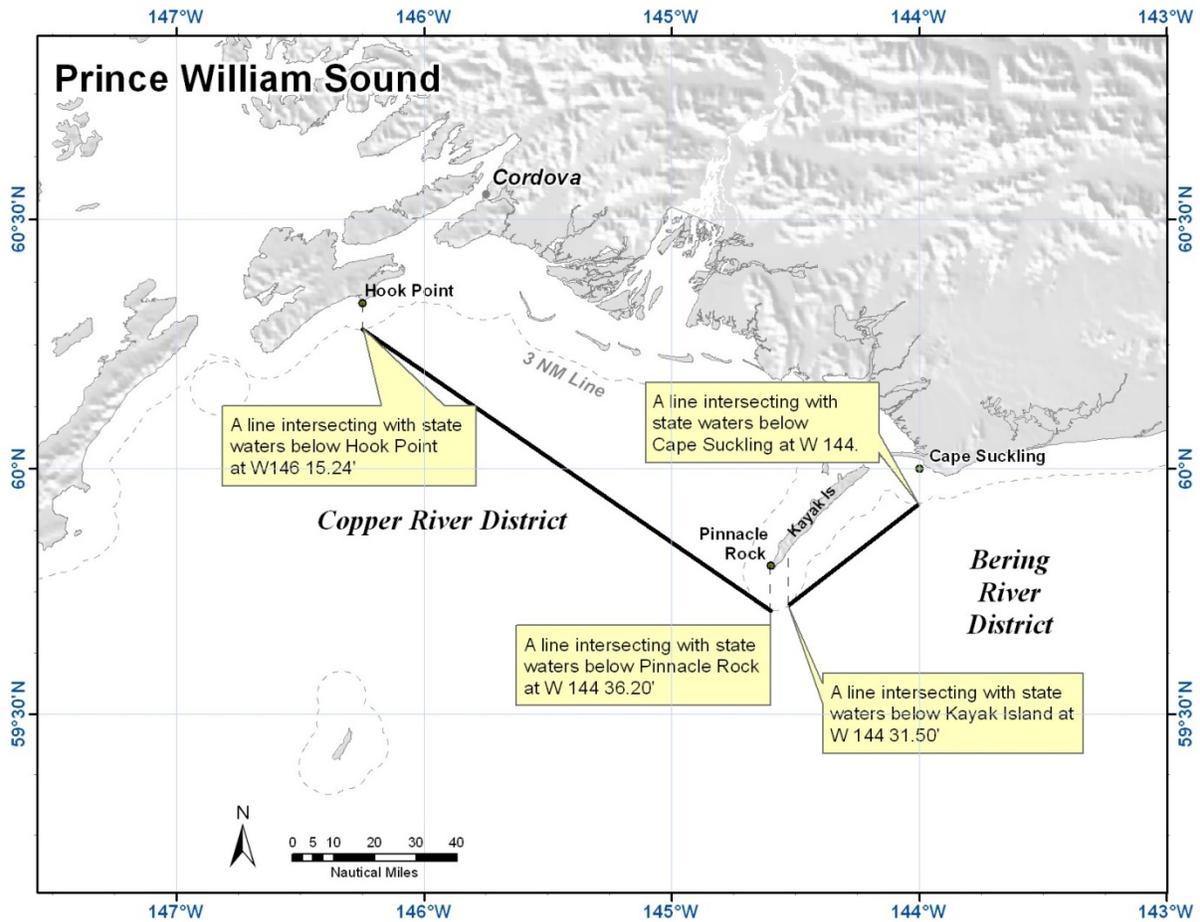
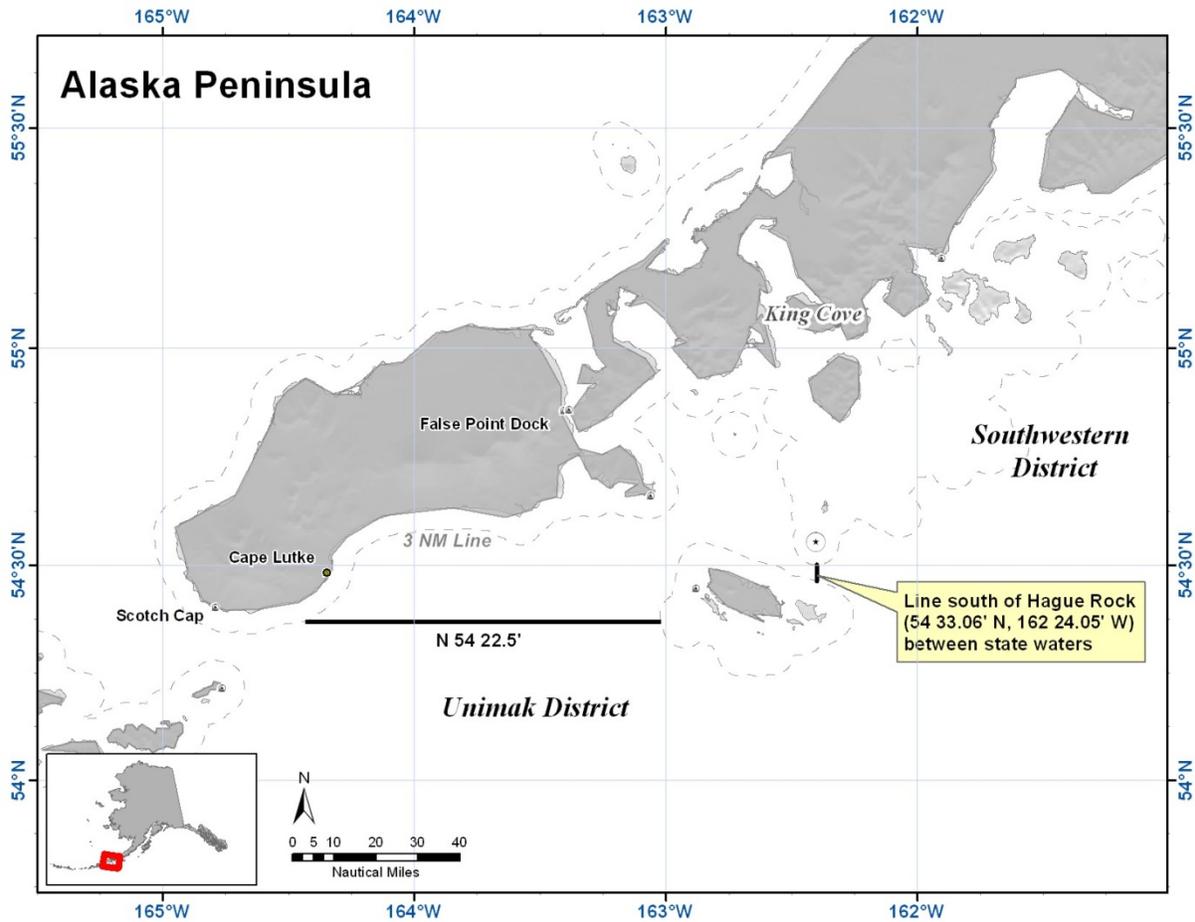


Figure 2-7 Alaska Peninsula Area – The EEZ waters that are excluded from the management area are shoreward starting from the line at 54°22.5' and a line south of Hague Rock between state waters.



2.4 Alternative 4: Maintain the FMP in the East Area only

Under Alternative 4, the scope of the FMP would be modified to maintain federal management in the East Area, but remove the West Area from the FMP. The FMP would continue to delegate management of the Southeast Alaska troll fishery and sport fisheries to the State. Termination of federal management in the West Area would remove the FMP’s prohibition on commercial salmon fishing in the West Area. The State could prohibit commercial salmon fishing in the West Area for State registered vessels or it could

expand commercial fishing in the EEZ. Additionally, the Council would need to consider whether it wanted to amend the Fishery Management Plan for Fish Resources of the Arctic Management Area to close the Arctic to commercial salmon fishing. Currently, salmon fishing in the Arctic EEZ is prohibited by the Salmon FMP.

Note that, for many reasons detailed in this analysis, Alternative 4 is not a viable alternative and mainly serves to explore what could happen if the FMP were removed from the West Area. This was a key question in the early stages of this project, and in looking at what could happen if the FMP, and its prohibition on commercial fishing in the West Area, were removed from the West Area reaffirmed why an FMP is necessary and that the function of the FMP, to prohibit commercial fishing, is vital for optimal management of the salmon fisheries.

Maintaining the FMP in the East Area would leave existing management structures in place, recognizing that the FMP is the nexus for the application of the Pacific Salmon Treaty and Endangered Species Act. NMFS issued the 2008 BiOp, including an ITS, that covers the Pacific Salmon Treaty and the deferral of management to the State for the duration of this management program, subject to the conditions that require re-initiation of consultation (NMFS 2008a). Additionally, NMFS prepared the FPSEIS (NMFS 2003). The primary federal action considered in the FPEIS for the Southeast Alaska salmon fishery was the annual decision regarding continued deferral of management to the State and the issuance of an ITS through the Endangered Species Act Section 7 consultation process.

2.5 Comparison of Alternatives

The two primary factors in deciding between the alternatives are (1) defining where and for which fisheries federal conservation and management is required and (2) understanding the risks of removing areas or fisheries from the FMP and the requirements of continuing federal management of areas and fisheries governed by the FMP. The NS7 guidelines state that the MSA requires that Regional Councils to prepare FMPs only for overfished fisheries and for other fisheries where regulation would serve some useful purpose and where the present or future benefits of regulation would justify the costs. In addition to the information provided in this section, Chapter 5 provides a comparison of the environmental impacts of the alternatives on marine resources and Chapter 4 and 5 provide analysis of the economic impacts of the alternatives.

2.5.1 Is federal conservation and management required?

The NS3 Guidelines provide guidance on structuring appropriate management units for stocks and stock complexes.²⁵ A fish stock, to the extent practicable, must be managed as a unit throughout its range, and interrelated stocks must be managed as a unit or in close coordination. A management unit that is less

²⁵ 50 CFR 600.320.

than the range of the stock may be justified if complementary management exists; or if it is planned for a separate geographic area or a distinct use of the stocks; or if the unmanaged portion of the resource is immaterial to proper management.

The NS7 Guidelines provide guidance on the criteria for deciding whether a fishery needs management under an FMP.²⁶ The Guidelines state that the principle that not every fishery needs management through regulations implementing an FMP is implicit in NS7. The NS7 Guidelines provide the following general factors that should be considered, among others, in deciding whether a fishery needs management through regulations implementing an FMP—

- (i) The importance of the fishery to the Nation and to the regional economy.
- (ii) The condition of the stock or stocks of fish and whether an FMP can improve or maintain that condition.
- (iii) The extent to which the fishery could be or is already adequately managed by states, by state/federal programs, by federal regulations pursuant to FMPs or international commissions, or by industry self-regulation, consistent with the policies and standards of the MSA.
- (iv) The need to resolve competing interests and conflicts among user groups and whether an FMP can further that resolution.
- (v) The economic condition of a fishery and whether an FMP can produce more efficient utilization.
- (vi) The needs of a developing fishery, and whether an FMP can foster orderly growth.
- (vii) The costs associated with an FMP, balanced against the benefits.

The section compares how each alternative addresses NS3 and each NS7 factor.

Managing fish stocks as a unit throughout their range

Under all of the alternatives, salmon stocks would continue to be managed as a unit throughout their range. The primary difference among the alternatives is the scope of the management unit within the FMP. In the East Area, while the FMP only authorizes the commercial troll fishery and the sport fishery, it relies on the combination of State management and management under the Pacific Salmon Treaty to ensure that salmon stocks, including trans-boundary stocks, are managed as a unit throughout their ranges and interrelated stocks are managed in close coordination.

²⁶ 50 CFR 600.340.

In the West Area, Alternative 2 would require a federal management regime for the portions of the commercial fisheries that occur in the traditional net areas of the EEZ. The FMP would not be able to rely on the measures in the Pacific Salmon Treaty, like in the East Area, and would instead need provisions that explicitly address each requirement in the MSA. This alternative would require that dual management be created and imposed and, in order to maintain management as a unit, federal management of the EEZ portion would need to be responsive to the State's management in the state water fisheries, just as it presently does for Pacific cod and sablefish, among other species. Dual management would be the only way to prevent overfishing and ensure that escapement goals are met and that interrelated stocks are managed in close coordination. Dual management could create inefficiencies as the federal process is inherently a much more lengthy process and is not responsive to inseason abundance information. For example, under the federal system, harvest limits are set in advance through notice and comment rule making, which would result harvests being restricted in years when returns were above forecast and harvests too high in years when returns were below forecast. Efficient and effective fisheries management would be sacrificed under any scenario in which a single component of the multi-use salmon fishery was managed independent of the other components.

Under Alternative 3, excluding the three net fisheries and the sport fishery in the West Area from the scope of the FMP would allow the State to manage Alaska salmon stocks seamlessly throughout their range. In recommending Alternative 3, the Council provided a rationale for removing these three areas and the sport fishery from the FMP. The Council determined that federal conservation and management are not necessary, consistent with the MSA. NS3 states that, to the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination. NS3 Guidelines provide guidance on structuring appropriate management units for stocks and stock complexes. The Council determined that prohibiting commercial fishing in the redefined West Area and excluding the existing net fisheries in the three net fishing areas and the sport fishery from the scope of the FMP, would achieve the Council's policy to facilitate State management of Alaska salmon stocks and to manage salmon as seamlessly as practicable throughout their range, rather than imposing dual management, as would happen if the FMP were retained in these areas. The Fishery Impact Statement, in chapter 4, provides more information on the commercial salmon fisheries and sport salmon fishery in the West Area.

Alternative 3 recognizes that FMP management would only apply to the portion of the fisheries in the EEZ and that salmon are more appropriately managed by the State as a unit in consideration of all fishery removals to meet in-river escapement. While the exact amounts of non-Alaska salmon caught in the fisheries in the three traditional net areas are unknown, the percent of non-Alaska salmon caught is believed to be very small. In Prince William Sound, where genetic work is ongoing, typically less than 5% of the Chinook salmon harvest is from the broad reporting group that includes Southeast Alaska, British Columbia, Washington, and Oregon. Section 5.3 provides more information on non-Alaska salmon caught in EEZ salmon fisheries.

Alternative 3 only addresses the Council's and NMFS's management of the salmon fisheries that occur in limited areas of EEZ waters. Alternative 3 would not impact in any way the federal management of federal lands and in-land waters and the resources there within, including salmon. Likewise, Alternative 3 would not impact in any way the federal government's involvement in or enforcement of international agreements. The State of Alaska would continue its ongoing work with its federal counterparts on a broad range of issues regarding salmon, including habitat and invasive species. The primary difference between Alternative 2 and 3 is that, under Alternative 3, the State would start to work with the Council and NMFS in the management of the drift gillnet fisheries that occur in the federal waters adjacent to Cook Inlet, Prince William Sound, or the Alaska Peninsula.

Under Alternative 4, the State's ability to manage the salmon stocks as a unit could be compromised if U.S. vessels, that are not registered under the laws of the State, harvest salmon in the West Area. Likewise, Alternative 4 could impact returns of non-Alaska stock to the Pacific Northwest as fishing in the EEZ would occur in the open ocean where stock from many regions mix. Therefore, Alternative 4 would not promote management of salmon stocks as a unit and could compromise existing salmon management.

Importance of the fishery to the Nation and to the regional economy

The commercial and sport salmon fisheries in each area under discussion are important to their regional economies. Chapter 4 provides detailed information on the importance of each salmon fishery in the EEZ. Alternatives 2 and 3 would not change the extent that the fisheries contribute to their regional economy and the Nation. Removing the three traditional net fishing areas and the sport fishery in the West Area from the FMP (Alternative 3), or maintaining them in the FMP (Alternative 2), would not change the importance of these fisheries in their regional economies or for the Nation because the State would remain as the primary manager of these fisheries and the vast majority of the EEZ would remain closed to commercial salmon fishing.

Under Alternative 4, State-managed salmon fisheries, and salmon fisheries in other regions, could experience a decline in harvest if sufficient amounts of salmon in the West Area are harvested by U.S. vessels that are not registered under the law of the State.

Condition of the salmon stocks and whether an FMP can improve or maintain that condition

Section 5.1 describes the condition of the Alaska salmon stocks that are governed by the FMP, including the status of the salmon stocks in the East Area relative to the FMP's status determination criteria. According to this information, Alaska salmon are not overfished and overfishing is not occurring. The State is in a unique position to manage Alaska salmon as a unit in consideration of all fishery removals and to meet escapement goals. The condition of each salmon stock is a result of many factors, including harvest by a number of fisheries that target salmon throughout their range.

Under all of the alternatives, the FMP would remain in place in the East Area. In the East Area, the Pacific Salmon Treaty controls the total Chinook salmon harvest and the FMP is the nexus for implementing the Treaty, so an FMP is integral to maintaining the condition of transboundary salmon stocks. Additionally, ESA-listed stocks are closely managed and the FMP is the nexus for implementing the ESA, as detailed in section 5.3. Therefore, the FMP is necessary to maintain the condition of the salmon stocks in in the East Area.

Per the MSA, under Alternatives 1 and 2, FMP management in the West Area would only apply to the EEZ and that portion of the salmon fisheries that occur in the EEZ in each traditional net fishing area. In the three traditional net areas, there are approximately 80 stocks (of the 289 statewide) with established salmon escapement goals. Of those stocks, only eight salmon stocks of concern are designated. Stocks of concern and the conditions which trigger concern designations are defined in the State's Policy for the Management of Sustainable Salmon Fisheries. Where Alaska salmon stocks have fallen below their escapement goals and concern designations have been established, the State has developed action plans, management plans, and research plans to achieve stock rebuilding goals. Often, these action plans involve time and area restrictions.

FMP management would not be able to control harvests in state waters and would have to be responsive to harvests in state waters. In other words, the EEZ portion of the fishery would only occur if there was harvestable surplus after accounting for removals in state waters, just as is done in the case of Pacific cod, pollock, etc. Additionally, the federal management system is not as flexible as the State's system and could inhibit the State's ability to respond in-season to the best available information in managing salmon stocks. For example, if the EEZ harvest level was set by NMFS preseason, and could not be adjusted based on inseason abundance information, the EEZ harvest would be constrained when salmon returns are greater than the preseason forecast. Including these areas in the FMP would not improve the condition of the salmon stocks since the FMP could not control harvests in state waters or ensure escapement goals are met. The FMP would, however, have the ability to prevent any influx of fishing effort not subject to State management from engaging in the harvesting of salmon in these three areas. However, as discussed in the subsequent section, the risk of this occurring is low. For these reasons, an FMP would not improve or maintain the condition of the salmon stocks in the three traditional net fishing areas.

Under Alternatives 1, 2, and 3, prohibiting directed commercial salmon fishing in most of the federal waters in the West Area would prevent overfishing by recognizing that the principal overfishing risk for salmon in comes from allowing intensive fishing during periods with weak returns. Managing the fisheries nearshore enables the State to manage mixed-stock fisheries for weak runs. Similarly, salmon stocks that return to the Pacific Northwest are managed to prevent overfishing. Because salmon abundance cannot be effectively estimated in advance, regional in-season estimates of abundance, and subsequent management actions taken, seek to ensure escapement goals are met and optimum production is achieved. Therefore, the FMP maintains the condition of the salmon stocks that spend a part of their

life in the West Area by prohibiting fishing and thus enabling fishery management at the appropriate scale.

Extent to which the fishery is already adequately managed by the State, consistent with the policies and standards of the Magnuson-Stevens Act

The State has managed the salmon fisheries since statehood in 1959 and the Council has relied on state management of the salmon fisheries in the EEZ since 1979. As such, the Council has determined that salmon fisheries are adequately managed by the State; therefore, the Council is only considering the role of federal management given existing State management. State salmon management is consistent with the policies and standards of the MSA, as explained throughout this document. The State actively manages Alaska salmon stocks in every region of the state through its use of escapement-based management. Escapement-based management takes into consideration the unique life history of Pacific salmon and escapement goals maintain spawning levels that provide for maximum surplus production. For these reasons, the primary issue then is whether federal conservation and management is required in addition to State management for those salmon fisheries where a portion of the harvest is from EEZ waters.

Need to resolve competing interests and conflicts among user groups and whether an FMP can further that resolution

Competing interests and conflicts exist among user groups that harvest salmon throughout its range. The Fishery Impact Statement in Chapter 4 describes the multiple salmon fisheries managed by the State. However, the FMP only applies in the EEZ, where the commercial fishery is the predominant user group and the FMP has no authority over the harvest of salmon within State waters by various user groups absent a successful action by the Federal government to preempt state management of salmon within state waters.

Therefore, in the West Area, an FMP (Alternative 2) would not further the resolution of the State's difficult task of allocating salmon to the multiple user groups - subsistence, sport, personal use, and different commercial gear types - that harvest salmon from EEZ waters though to headwaters of Alaska streams and rivers.

Under Alternatives 1, 2, and 3, prohibiting commercial salmon fishing in the vast majority of the EEZ enables salmon from different regions to return to their natal region and be subject to harvest by various usergroups in those areas. Again, this recognizes that salmon are best managed relatively nearshore where competing interests and conflicts among usergroups can be resolved by the appropriate management authority.

Economic condition of a fishery and whether an FMP can produce more efficient utilization

The Fishery Impact Statement in Chapter 4 describes the economic conditions of the FMP salmon fisheries in each area. The economic conditions of the fishery and the efficiency of the utilization are more closely tied to State salmon management. In the East Area, all of the alternatives would maintain the FMP's primary function to delegate management to the State and thus maintaining efficient utilization under the Pacific Salmon Treaty. Under Alternative 3, removing the three traditional areas and the sport fishery in the West Area from FMP management would not change the economic conditions of these fisheries or change the efficiency of the utilization of salmon resources. Alternative 4, which would remove the entire West Area from the FMP, could negatively impact the economic condition of the fishery to the extent that unregulated fishing becomes possible, which, if realized, would affect escapement and curtail state-managed fisheries. Under Alternatives 1, 2, and 3, prohibiting directed commercial salmon fishing in most of the federal waters in the West Area would enable efficient utilization and maintain the economic conditions of the existing salmon fisheries through State management.

Needs of a developing fishery, and whether an FMP can foster orderly growth

The salmon fisheries in the EEZ are fully developed. The FMP fosters orderly growth of salmon fishing in State waters, and in natal regions, by predominantly closing EEZ waters. Under all of the alternatives, only the commercial salmon troll and sport fishery would be permitted in the East Area. In the West Area, Alternatives 1, 2, and 3 would maintain the prohibition on commercial salmon fishing in the vast majority of the EEZ, with the exception of the three traditional net fishing areas. Only Alternative 4 would not foster orderly growth, because any salmon fishing in the EEZ, outside of state managed salmon fisheries, would be unregulated.

Costs associated with an FMP, balanced against the benefits

The most costly alternative would be Alternative 2, under which a new federal/state management regime would need to be created and implemented for the salmon fisheries in the three traditional net fishing areas and the sport fishery in the West Area. Specific objectives and management measures would be required in the FMP to provide sufficient framework to define state and federal roles under a delegated management program in the West Area. Specific objectives and management measures for the West Area would need to be established, in a manner similar to those in the crab and scallop fisheries, in order to comply with the MSA, define roles, and address concerns that may arise under delegated management in the West Area. Additionally, the costs and time associated with developing explicit objectives and management measures for an FMP that does not delegate authority to the State could be significant (outside current range of alternatives, see section 2.6).

To date, neither the Council nor NMFS have identified any benefits of an additional layer of federal management on top of State salmon management for these fisheries. As discussed in Chapter 5, an FMP

in these areas would not further NMFS's obligations under the Marine Mammal Protection Act and Endangered Species Act, or for Essential Fish Habitat, and therefore is not beneficial from the perspective of other marine resources. An FMP would not benefit the condition of salmon stocks in these areas, as discussed above. While there is the perception that an FMP could benefit certain salmon fishermen in the EEZ relative to other salmon user groups, that perception is not supported by current federal management practices. Therefore, the Council recognized that applying federal management would be costly, redundant, and not provide any conservation or management benefits.

2.5.2 What are the risks of removing certain federal waters and the West Area sport fishery from the FMP?

Under Alternatives 3 and 4, there is a risk that vessels not registered with the State could harvest salmon without regulation in those EEZ waters not covered by the FMP. The assessment of risk is largely dependent on the modification being considered: the Council, NMFS, and the State would have to understand the risks associated with removing the entire West Area (Alternative 4) or only those areas where the traditional net fisheries occur (Alternative 3).

Removing areas from the FMP could create an opportunity for unregulated commercial salmon fishing activity by US vessels in those areas. Concerns with unregulated commercial fishing vessels would be greatly reduced if only the three specific areas are removed from the FMP, because the opportunity for fishing without being detected would be limited when compared to the entire West Area. An unregistered vessel may be able to circumvent State regulations if the vessel never enters State waters or has no contacts with the State. The primary concern would be with a catcher processor, or other processing platform that could support several partner catcher vessels, entering into unregulated EEZ waters. If the FMP were lifted only from the traditional net areas, such a scenario is thought to be unlikely due to the risk and limitations associated with a business plan dependent on fishing relatively small pockets of salmon fishing grounds separated by substantial distance, avoiding entry into state waters under any circumstance, and shedding all state permits and licenses. According to the State, if a vessel involved in unregulated fishing entered state waters for fuel, supplies, or a mechanical or medical emergency, the vessel would be subject to state enforcement – greatly increasing risk of failure for such a business plan.

Removing the sport fishery from the Salmon FMP for the West Area creates a somewhat similar circumstance; State regulations would apply to sport fishing activity in the EEZ, unless a vessel does not register with the State and never enters state waters in support of their fishing activity. The risk of unregulated sport fishing similar to circumstances described above is thought to be negligible since any financial incentive would be much lower and anglers fishing waters off Alaska uniformly do so from an Alaskan port and on vessels dependent on State waters and ports for fishing, transit, moorage, and supplies.

Inherent in the choice of Alternative 3 is the conclusion that commercial and sport salmon fishermen will continue to be registered with the State when fishing for salmon in these areas and therefore be subject to

the laws of the State governing commercial and sport salmon fishing. Based on the logistical complications and business risks identified in the preceding paragraphs, it is reasonable to expect that salmon fishing occurring in these areas will be by vessels registered with the State and that fishing in these areas will be regulated by the State. The intent of Alternative 3 is for continued State regulation of salmon fishing in these areas. Removal of federal management in these areas does not indicate the Council's intent for unregulated salmon fishing to occur in these areas. If a vessel owner or group of vessel owners decides to cut all ties with the State and fish in these areas unregulated by the State, the Council could take action to regulate salmon fishing in these areas. While it is premature to specify the precise action the Council would take in this situation, when faced with a similar situation in the past the Council has immediately closed EEZ waters to fishing, while it works to develop a long-term management solution. It is reasonable to assume that the Council would undertake a similar course of action in these areas (i.e., immediately close these areas to fishing for salmon while developing a long-term management solution) if fishing for salmon by vessels not regulated by the State occurs. Closing these areas would, of course, impose costs on all operations utilizing these salmon fishing areas, including the participants in the traditional net fisheries. As previously stated, the federal regulatory process is significantly slower and more complex than state management processes. Council action to re-instate FMP control over salmon fishing in these three EEZ areas could involve a substantial period of time, and prove costly to the traditional net fisheries operating there.

In developing a long-term solution, the Council may consider a permanent closure of these areas based on factors such as weighing the costs of federal management with the fact that the portion of the total salmon fisheries that occur in EEZ is relatively small and Alaska salmon could be fully harvested in state waters with commercial and/or sport harvest closed in the EEZ. Or, the Council may close these areas until it developed a salmon management structure that complied with applicable federal law.

The Council weighed the risk of potential for unregulated fishing against the risk associated with strengthening the role of federal management in the West Area. The Council chose not to include the traditional net areas in the revised FMP because the State's ability to manage directed salmon fisheries seamlessly across the traditional fishing range and to manage salmon stocks as a unit would be diminished.

2.5.3 Amending the MSA

In the absence of an FMP, the State's inability to act against unregistered vessels in EEZ waters could be addressed by a change to the MSA. MSA § 306(a)(3)(C) allows the State to regulate a fishing vessel that is not registered with the State and that is operating in a fishery in the EEZ off Alaska, if no FMP was in place on August 1, 1996, for the fishery in which the vessel is operating. In addition, the Secretary and the Council must find that Alaska has a legitimate interest in the conservation and management of the

fishery.²⁷ The FMP was in place on August 1, 1996. Modification to §306(a)(3)(C) by removing the phrase “on August 1, 1996” could provide the State with the authority to regulate non-State registered vessels commercially fishing for salmon in the EEZ, which would, in turn, reduce the concern regarding unregulated fishing in EEZ waters not under an FMP. While it is clear that the intent of Congress is to provide Alaska with the authority to regulate non-State registered vessels in the absence of an FMP and that the Secretary and Council recognize the State’s legitimate interest in the fishery, the relevance of the August 1, 1996, date to this authority is not clear.

2.6 Alternatives Considered but Eliminated from Detailed Study

None of the alternatives in this analysis consider removing the FMP’s primary management function – delegating salmon fishery management to the State – and having the Council and NMFS actively manage salmon fishing in the EEZ. The Council considered federal management of the salmon fisheries, but determined that it was not a viable alternative because the Council and NMFS do not have the expertise or infrastructure to manage Alaska salmon fisheries, and expanded federal management is not necessary for the conservation and management of salmon. The Council recognized that salmon are best managed as a unit throughout their range and parsing out a portion of a fishery because it occurred in federal waters and applying a separate management structure on that piece of the fishery would not be the optimal way to manage salmon. The Council also recognized the State’s long-standing expertise and infrastructure for salmon management and the fact that the State has been managing the salmon fisheries in Alaska since statehood. This maintains the Council’s policy for salmon management established with the original FMP in 1979. Therefore, the Council eliminated an alternative to remove delegation from the State and apply active federal management of the EEZ salmon fisheries. As such, the Council has not considered specific federal management measures for those salmon fisheries that occur in the EEZ, in the absence of State management (e.g., a catch share plan, harvest strategies, time/area closures, observer coverage, recordkeeping and reporting.).

None of the alternatives in the analysis consider managing any three traditional net areas differently from the others. The Council considered whether to manage the three areas separately but found that there is no distinction between these areas relative to the National Standards and the criteria for determining where federal conservation and management are required.

None of the alternatives in the analysis consider removing the East Area, or the commercial troll fishery and sport fishery that occur in the EEZ, from the FMP. The Council recognized that the East Area is substantively different from the West Area and that FMP serves an important role in the East Area as the nexus for the Pacific Salmon Treaty and the Endangered Species Act.

²⁷ This management issue is not limited to Alaska salmon—the MSA §306(a)(3)(C) “August 1, 1996” date poses problems for any species that was part of an FMP on August 1, 1996, but has subsequently been removed from the FMP.

3 Options for Updating the Salmon FMP

Section 303(a) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) requires a fishery management plan to be consistent with a number of provisions, including ten national standards, which guide fishery management. The National Standard (NS) Guidelines provide guidance on how the MSA provisions should be addressed and implemented within an FMP, and should be closely considered when developing options for meeting the MSA requirements or determining which requirements are satisfied in the current *Fishery Management Plan for the Salmon Fisheries in the EEZ off the Coast of Alaska* (FMP).²⁸ Additionally, federal regulations contain regulatory provisions that implement the FMP and are included in chapter 6.²⁹

The North Pacific Fishery Management Council's (Council's) December 2010 motion provided the following direction:

Component: FMP updates

Develop options to update the Salmon FMP to meet the MSA required provisions in section 303(a) for an FMP, using existing state salmon management to the extent possible.

In April 2011, the Council reviewed a discussion paper that provided a description of the provisions in the existing FMP, and considered whether some action (update, revise, or remove) is required (NPFMC 2010b). The discussion paper reviewed the FMP and annotated each FMP provisions that directly address an MSA requirement and whether the provision should be updated or revised.

Table 3-1 provides a review of the FMP provisions and associated MSA requirements or federal regulations. In general, the FMP has provisions to address most of the MSA requirements, but the text should be updated. A number of provisions should be extensively revised to reflect current management, but most likely would not require a change in the nature of the provision. For example, some sections should be modified to include the Pacific Salmon Treaty or the North Pacific Anadromous Stocks Act of 1992.

The discussion paper also preliminarily identified MSA requirements that are not addressed in the 1990 FMP or subsequent amendments. The discussion paper highlighted that the FMP does not contain annual catch limits (ACLs) and accountability measures (AMs), methods to report bycatch and measures to minimize bycatch and the mortality of unavoidable bycatch, or a Fishery Impact Statement. Additionally, if an existing FMP provision should be revised, the discussion paper identified preliminary options for Council consideration that use existing State salmon management to the extent possible. The provisions that the Council may want to remove or replace with a new provision are sport fishery management,

²⁸50 CFR part 600, Subpart D.

²⁹50 CFR part 679.