publication of notification in the **Federal Register**, NOAA Weather Radio, Fishery Bulletins, and other appropriate means. All that remains is to notify the public that catastrophic conditions continue to exist, that IFQ participants may use paper forms, and that Federal dealers and Gulf for-hire permit holders may submit delayed reports. Such procedures are also contrary to the public interest because of the need to immediately implement this action because affected dealers continue to receive these species in the affected area and need a means of completing their landing transactions. With the continued power outages and damages to infrastructure that have occurred in the affected area due to Hurricane Ida, numerous businesses are unable to complete landings transactions, fishing reports, and dealer reports electronically. In order to continue with their businesses, IFQ participants need to be aware they can report using the paper forms, and Federal dealers and Gulf for-permit holders need to be aware that they can delay reporting.

For the aforementioned reasons, there is good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 27, 2021.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 211025–0215]

RIN 0648–BK31

Fisheries of the Exclusive Economic Zone Off Alaska; Cook Inlet Salmon; Amendment 14

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 14 to the Fishery Management Plan (FMP) for the Salmon Fisheries in the Exclusive Economic Zone (EEZ) Off Alaska (Salmon FMP). Amendment 14 will incorporate the Cook Inlet EEZ Subarea into the Salmon FMP's West Area, thereby bringing the Cook Inlet EEZ Subarea and the commercial salmon fisheries that occur within it under Federal management by the North Pacific Fishery Management Council (Council) and NMFS. This action will apply the prohibition on commercial salmon fishing that is currently established in the West Area to the newly added Cook Inlet EEZ Subarea. This final rule is necessary to comply with a U.S. Court of Appeals for the Ninth Circuit ruling and to ensure the Salmon FMP is consistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This final rule is intended to promote the goals and objectives of the Magnuson-Stevens Act, the Salmon FMP, and other applicable laws.

DATES: Effective December 3, 2021.

ADDRESSES: Electronic copies of the Environmental Assessment and the Regulatory Impact Review (collectively referred to as the ''Analysis'') and the Finding of No Significant Impact prepared for this final rule may be obtained from *https://www.regulations.gov* or from the NMFS Alaska Region website at *https://www.fisheries.noaa.gov/region/alaska.*

FOR FURTHER INFORMATION CONTACT: Doug Duncan, 907–586–7228 or *doug.duncan@noaa.gov.*

SUPPLEMENTARY INFORMATION: This final rule implements Amendment 14 to the Salmon FMP. NMFS published the Notice of Availability (NOA) for Amendment 14 in the **Federal Register** on May 18, 2021 (86 FR 26888), with public comments invited through July 19, 2021. NMFS published the proposed rule to implement Amendment 14 in the **Federal Register** on June 4, 2021 (86 FR 29977). Comments submitted on the NOA and the proposed rule for Amendment 14 were considered jointly. The Secretary of Commerce approved Amendment 14 on August 12, 2021, after considering public comment and determining that Amendment 14 is consistent with the Salmon FMP, the Magnuson-Stevens Act, and other applicable laws. No substantive changes have been made from the proposed rule in this final rule.

Background

The following provides a brief summary of the background for Amendment 14. Additional information is provided in the preamble of the proposed rule and the Analysis.

The Council's Salmon FMP manages the Pacific salmon fisheries in the EEZ from 3 nautical miles to 200 nautical miles off Alaska. The Council developed the Salmon FMP under the Magnuson-Stevens Act, and it first became effective in 1979. The Council has divided the Salmon FMP's coverage into the West Area and the East Area, with the boundary between the two areas at Cape Suckling, at 143°53.6′ W longitude. The Salmon FMP authorizes commercial salmon fishing in the East Area, and prohibits commercial salmon fishing in the West Area. Through Amendment 12 (December 21, 2012, 77 FR 75570), three small areas in the EEZ—including the Cook Inlet EEZ—where commercial salmon fishing with nets was originally authorized by the International Convention for the High Seas Fisheries of the North Pacific Ocean, as implemented by the North Pacific Fisheries Act of 1954, were excluded from the Salmon FMP and therefore not subject to the West Area prohibition on commercial fishing. Amendment 12's removal of these three areas in the EEZ from the Salmon FMP's West Area allowed the State of Alaska (State) to manage these areas independently and outside of an FMP.

Cook Inlet commercial salmon fishermen and seafood processors challenged Amendment 12 and its implementing regulations, including removal of the Cook Inlet EEZ from the Salmon FMP. *United Cook Inlet Drift Ass'n* v. *NMFS,* No. 3:13–cv–00104–TMB, 2014 WL 10988279 (D. Alaska 2014). On appeal, the Ninth Circuit held that section 302(h)(1) of the Magnuson-Stevens Act (16 U.S.C. 1852(h)(1)) requires a Council to prepare and submit FMPs for each fishery under its authority that requires conservation and management. *United Cook Inlet Drift Ass'n* v. *NMFS,* 837 F.3d 1055, 1065 (9th Cir. 2016). Because NMFS agreed that the Cook Inlet EEZ salmon fishery needs conservation and management by some entity, the Ninth Circuit ruled that the Magnuson-Stevens Act requires that fishery be included in the Salmon FMP.

Through its public processes, the Council spent significant time from 2017 to 2020 developing and evaluating management alternatives to comply with the Ninth Circuit's ruling. The Council considered four alternatives, which are described in Section 2 of the Analysis: Alternative 1, status quo management; Alternative 2, Federal management of the Cook Inlet EEZ with specific management measures delegated to the State; Alternative 3, independent Federal management of the Cook Inlet EEZ with specific management measures for the commercial salmon fishery sector in the Cook Inlet EEZ; and Alternative 4, independent Federal management of the Cook Inlet EEZ with a closure of the

Cook Inlet EEZ to commercial salmon fishing. Alternative 1 would have been inconsistent with the Ninth Circuit ruling, and at the December 2020 Council meeting, the State announced it would not accept a delegation of management authority. Therefore, Alternatives 3 and 4 were the only viable management alternatives for the Council by the time it took final action. After this extensive public review and development process, the Council recommended Alternative 4 as Amendment 14 to the Salmon FMP in December 2020. In accordance with section 304(a) and (b) of the Magnuson-Stevens Act, NMFS approved Amendment 14 and implements it with this final rule.

Amendment 14 and This Final Rule

Amendment 14 incorporates the Cook Inlet EEZ Subarea (defined as the EEZ waters of Cook Inlet north of a line at 59°46.15′ N) into the Salmon FMP's West Area, thereby bringing the Cook Inlet EEZ Subarea and the commercial salmon fishery that occurs within it under Federal management by the Council and NMFS. Amendment 14 applies the prohibition on commercial salmon fishing that is currently established in the West Area to the newly added Cook Inlet EEZ Subarea. Most other existing FMP provisions that apply to the West Area also apply to the Cook Inlet EEZ Subarea. This action specifically addresses management of the Cook Inlet EEZ Subarea and the commercial salmon fishery that occurs there. With Amendment 14 and this final rule, the Council and NMFS are amending the Salmon FMP and Federal regulations to comply with the Ninth Circuit's decision, the Magnuson-Stevens Act, and other applicable law.

This action (1) takes the most precautionary approach to minimizing the potential for overfishing, (2) provides the greatest opportunity for maximum harvest from the Cook Inlet salmon fishery, (3) avoids creating new management uncertainty, (4) minimizes regulatory burden to fishery participants, (5) maximizes management efficiency for the Cook Inlet salmon fishery and (6) avoids the introduction of an additional management jurisdiction into the already complex and interdependent network of Cook Inlet salmon fishery sectors.

This final rule implements Amendment 14 by removing the regulation that excludes the Cook Inlet EEZ Subarea from the directly adjacent West Area. This final rule revises the definition of ''Salmon Management Area'' at 50 CFR 679.2 to redefine the Cook Inlet Area as the Cook Inlet EEZ Subarea and incorporate it into the West Area. This final rule also revises Figure 23 to 50 CFR part 679 consistent with the revised definition of the Salmon Management Area at § 679.2. As part of the West Area, the Cook Inlet EEZ Subarea will be subject to the prohibition on commercial fishing for salmon at § 679.7(h)(2).

This final rule does not modify existing State management measures, nor does it preclude the State from adopting additional management measures that could provide additional harvest opportunities for the Cook Inlet salmon fishery, including commercial drift gillnet fishermen, within State waters.

As this action prohibits commercial salmon fishing in the Cook Inlet EEZ Subarea consistent with existing Federal management in adjacent West Area waters, no additional Federal fishery management measures are required. The West Area prohibition on commercial salmon fishing will continue to be enforced by State and Federal authorities under the revised boundaries resulting from this action. For additional information about Amendment 14 and implementing regulations, see the preamble to the proposed rule (June 4, 2021, 86 FR 29977).

Comments and Responses

NMFS received 56 comment submissions on the NOA for Amendment 14 and the proposed rule. NMFS has summarized and responded to 67 unique and relevant comments below. Several comment submissions were duplicates or addressed topics outside the scope of the proposed rule. The comments were from individuals, environmental groups, State government personnel, local government personnel, and industry participants. Comments are organized by topic into the following categories: Comments in support of this action, General comments, National Standards 1 and 3, National Standard 8, Economic impacts, Consistency with other National Standards, Impacts on marine mammals, Comments on the development of Amendment 14, Comments on State salmon management, and Comments on legal issues.

Comments in Support of This Action

Comment 1: This action will protect valuable Cook Inlet salmon runs for future generations of users from all states and is supported by the available scientific evidence. This action is necessary to preserve and protect this vital resource.

Response: NMFS acknowledges this comment.

Comment 2: This action will support sustainable management of all salmon stocks in Cook Inlet, provide harvest opportunities to a wide variety of Cook Inlet salmon fishery sectors, and reduce the likelihood of future fishery disaster declarations.

Response: NMFS acknowledges this comment.

Comment 3: The State has appropriately managed the Cook Inlet salmon fishery since before statehood and is better situated to continue in-season management of the Cook Inlet salmon fishery than the slow and cumbersome Federal management process.

Response: NMFS acknowledges this comment.

Comment 4: The Alaska Department of Fish and Game (ADFG) supports implementation of Amendment 14 as outlined in the proposed rule. The proposed rule and Analysis use the best scientific information available and provide a sufficient basis for NMFS to approve and implement Amendment 14.

Response: NMFS acknowledges this comment.

Comment 5: ADFG agrees with the conclusions included in the Analysis that implementation of Amendment 14 to prohibit commercial salmon fishing in the Cook Inlet EEZ is not expected to result in a significant change in the conditions of Cook Inlet salmon stocks and other living marine resources and their habitats.

Response: NMFS acknowledges this comment.

General Comments

Comment 6: The impacts of Amendment 14 are uncertain at best and disastrous at worst because it would severely complicate effective sustainable fishery management for biologists by limiting the entire drift gillnet fleet into a three nautical mile State waters corridor to harvest the returning fish.

Response: As described in Section 4.7.1.4 of the Analysis, NMFS acknowledges that this action would decrease the area available for the drift gillnet fleet to harvest Cook Inlet salmon relative to the status quo. Section 4.5.2 of the Analysis notes that during peak commercial fishing times the fishery can already be limited to State waters by the State for conservation and management purposes.

NMFS disagrees that Amendment 14 would complicate effective and sustainable management of the Cook Inlet salmon fishery. Closing the EEZ to commercial salmon fishing avoids creating the significant new management uncertainty associated with Alternative 3, the only other viable management alternative. Additionally, during Council deliberations and in public comment submitted on Amendment 14, the State concurred that, of the viable alternatives, Amendment 14 is most likely to achieve the salmon conservation and management objectives established by the Council and the specific requirements of the Magnuson-Stevens Act to prevent overfishing and achieve optimum yield on a continuing basis for the Upper Cook Inlet (UCI) salmon fishery. The State also agreed that Cook Inlet salmon stocks could be harvested successfully and sustainably within State waters and did not identify significant management concerns associated with this action.

As detailed in the preamble to the proposed rule, NMFS has determined that Amendment 14 best optimizes conservation and management of Cook Inlet salmon stocks when considering the viable management alternatives.

Comment 7: Salmon management under the Salmon FMP should include cooperation between the Council and ADFG and be fair to benefit all Cook Inlet salmon fishery sectors. Amendment 14 is not fair and creates an imbalance within the fishery.

Response: NMFS acknowledges the importance and benefits of cooperation from all fishery sectors when developing an FMP. This final action was developed through the Council process, which provided substantial opportunities for public input. Sections 1.3 and 2 of the Analysis and the preamble of the proposed rule describe the range of issues that the Council considered in selecting this final action, including Federal jurisdiction that is limited to Federal waters.

Amendment 14 limits user group conflicts by prohibiting commercial salmon fishing in the Cook Inlet EEZ subarea. This allows competing interests and conflicts among all Cook Inlet salmon fishery sectors to be balanced and resolved by the government entity (the State) with management authority to regulate harvest by all Cook Inlet salmon fishery sectors. Sections 4.5 and 4.6 of the Analysis describe the multiple salmon fishery sectors managed by the State within Cook Inlet. Federal fishery management under the FMP would apply only in the EEZ, where the drift gillnet fishery is the only commercial fishery sector and the predominant user group.

Independent Federal management of a separate commercial fishery sector in the Cook Inlet EEZ Subarea, an option considered and rejected by the Council under Alternative 3, would have changed the forum for some fishery sector conflicts in Cook Inlet from the Alaska Board of Fisheries to the Council. However, this management structure would not, in and of itself, lessen the conflicts inherent in the difficult task of allocating salmon, a finite resource, to all Cook Inlet salmon fishery sectors—subsistence, recreational, and different commercial gear types—that harvest Cook Inlet salmon from EEZ waters through to the headwaters of Cook Inlet streams and rivers. Under any of the action alternatives, NMFS would not manage the harvest of salmon within State waters, but would have to account for removals within State waters by all Cook Inlet salmon fishery sectors and the attendant uncertainty when determining the appropriate level of harvest in Federal waters.

Comment 8: Amendment 14 is contrary to and undermines Alaska's long-standing tradition and standard of excellent fisheries management.

Response: NMFS agrees that the State of Alaska has a long-standing tradition and standard of excellent salmon fisheries management but disagrees that Amendment 14 is contrary to or undermines the State's management of the Cook Inlet salmon fishery. The Council worked for more than 3 years on the development of Amendment 14 with input from stakeholders, NMFS, and ADFG. As detailed in the preamble to the proposed rule, this action maximizes utilization of Cook Inlet salmon resources while minimizing the potential for overfishing. Further, this action is consistent with longstanding Federal management of the West Area that has facilitated successful State management of Alaska's salmon resources throughout the region.

Comment 9: Multiple commenters supported delegating management authority to the State in the Federal waters of Cook Inlet and opposed the adoption of Amendment 14 to the Salmon FMP.

Response: The State announced it would not accept a delegation of management authority at the Council's December 2020 meeting. NMFS cannot require or compel a state to accept a delegation of management authority for a fishery in Federal waters.

Comment 10: Several commenters, including the State (ADFG), indicated they would prefer the existing management structure analyzed by the Council as Alternative 1, status quo.

Response: As a result of the Ninth Circuit decision, the Council and NMFS cannot defer management of the Cook Inlet EEZ to the State by excluding the area from FMP management given that the commercial salmon fishery within the Cook Inlet EEZ requires conservation and management. Because the Cook Inlet EEZ must be included in the FMP, the State cannot continue to manage the Cook Inlet EEZ without explicitly being delegated management authority in the FMP. Therefore, Alternative 1 was not a viable option. Instead, the FMP must be amended to incorporate the Cook Inlet EEZ Subarea into the FMP, as described in Section 2 of the Analysis.

Comment 11: Cooperative Federal and State management takes place in other fisheries in Alaska, including other salmon fisheries in the East Area. Why can the Federal government work together with the State in all other regions except Cook Inlet?

Response: NMFS worked with ADFG throughout the development of Amendment 14. Cooperative Federal and State management is only possible to the extent the State is willing to accept a delegation of management authority, which the State has accepted for salmon fisheries in the East Area. As stated in the response to *Comment 9,* NMFS cannot require a state to accept a delegation of management authority. Prior to the December 2020 Council meeting, the State had not adopted a position on its willingness to accept a delegation of management authority for the Cook Inlet EEZ. The remarks that were made on the record by ADFG's voting representative at the December 2020 Council meeting provide the State's rationale for refusing a delegation of management authority.

Comment 12: Amendment 14 would increase the risk to public safety by moving hundreds of fishermen (each trailing 900–1,200 foot-long gillnets) into the already congested area within State waters.

Response: NMFS acknowledges this comment. As described in Section 4.7.4.2 of the Analysis, fishery congestion may increase and, together with the potential for decreased revenues, could have an indirect impact to vessel safety. That said, this action does move the fleet closer to other vessels for mutual assistance as well as shore-based emergency resources. Combined with ADFG's and the Alaska Board of Fisheries' consideration of safety in their management decisions, Amendment 14 is not expected to have a significant impact on safety. Section 4.5.2 of the Analysis also notes that during peak times, the fishery can already be limited to State waters and no significant safety issues have developed. For these reasons, the

Council and NMFS determined that Amendment 14 is consistent with National Standard 10.

Comment 13: Closing an area to commercial fishing that has been heavily utilized for nearly a hundred years is not a management plan.

Response: NMFS disagrees. Area closures, including those specific to a fishery or gear type, are commonly used by the Council and NMFS to achieve conservation and management objectives for FMPs.

Comment 14: People who have spent their lifetime honing their craft and knowledge will see it taken away by the Council process and its recommendation to close the EEZ. Do not approve this action.

Response: NMFS acknowledges this comment, but notes that there is opportunity for the drift gillnet fishery to continue within State waters where it currently harvests over half of its average annual catch. Further, of the viable management alternatives, the Council determined and NMFS agrees that closing the Cook Inlet EEZ to commercial salmon fishing is the management approach most likely to avoid uncertainty and maximize harvest of Cook Inlet salmon stocks while preventing overfishing.

Comment 15: Appendix 12 provides the State's answers on the impacts of its own proposal to close fishing in the EEZ. The State calls the EEZ portion of the Cook Inlet a small area. That is not accurate. The area is about 1,000 square miles and comprises about one-half of the Central District.

Response: NMFS interpreted ''small'' as relative to the entirety of Cook Inlet. NMFS acknowledges that the Cook Inlet EEZ is a substantial portion of the Cook Inlet Central District where the UCI drift gillnet fleet may operate, as described in Section 4.5.2.1 of the Analysis.

National Standards 1 and 3

Comment 16: Amendment 14 is inconsistent with the Magnuson-Stevens Act, including National Standard 3, because it does not apply to the entire salmon fishery, including State waters management practices (*e.g.,* escapement goals, management plans, allocations, and in season management decisions). Commercial fishers want a management plan that covers salmon stocks throughout their range to ensure management is consistent with the National Standards. This is not a request for preemption. NMFS' own regulations require: ''The geographic scope of the fishery, for planning purposes, should cover the entire range of the stocks(s) of fish, and not be overly constrained by political boundaries.'' 50 CFR 600.320(b). This action abdicates all Federal responsibility to the State to manage the fishery in State waters however it deems fit.

Response: NMFS determined that Amendment 14 is consistent with the Magnuson-Stevens Act, including National Standard 3. National Standard 3 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 (16 U.S.C. 1851(a)(3)). National Standard 3 guidelines explain how to structure appropriate management units for stocks and stock complexes (§ 600.320). The Guidelines state that the purpose of the Standard is to induce a comprehensive approach to fishery management (§ 600.320(b)). The guidelines define ''management unit'' as ''a fishery or that portion of a fishery identified in an FMP as relevant to the FMP's management objectives,'' and state 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'' (§ 600.320(d)).

The Council and NMFS determined that prohibiting commercial fishing in the Cook Inlet EEZ subarea would best enable Cook Inlet salmon to be managed as a unit throughout their range. The best information about salmon abundance is available as salmon move into freshwaters and the number of spawning salmon can be counted. This is referred to as escapement, and provides State managers the information they need to increase or decrease fishing effort in-season based on whether enough salmon are making it into freshwater to reproduce sustainably. Amendment 14 recognizes that management of salmon is best conducted through monitoring escapement—the point in the species' life history that is most appropriate for assessing stock status—and that escapement happens in the river systems, not in the EEZ waters. Under Amendment 14, the State manages for all sources of fishing mortality. The State monitors actual run strength and escapement during the fishery, and utilizes in-season management measures that are closely coordinated across all Cook Inlet fishery sectors, including fishery closures, to ensure that escapement goals are met. Therefore, Amendment 14 best achieves the objectives of National Standard 3 and avoids reductions in catch that are expected to account for the uncertainty and preseason management requirements created by the only other viable management alternative (Alternative 3).

Amendment 14 does consider the entire Cook Inlet salmon fishery and does apply to the entire Cook Inlet salmon fishery that occurs within the EEZ. Federal management must consider what occurs within State waters for planning purposes, in order to adequately determine what level of fishing may sustainably occur within the EEZ under the FMP consistent with the Magnuson-Stevens Act. However, the Magnuson-Stevens Act limits the jurisdiction of the Council and NMFS to Federal waters (*i.e.,* the EEZ) for the implementation of management measures. As explained in the preamble to the proposed rule, Amendment 14 considers all commercial, recreational, and subsistence fishing that constitute the Cook Inlet salmon fishery. However, in order for a Federal FMP to govern fisheries occurring within State marine waters, the conditions for preemption under Magnuson-Stevens Act section 306(b) (16 U.S.C. 1856(b)), listed below, must both be met.

1. The fishery must occur predominantly within the EEZ.

2. The results of the State's action or inaction must substantially and adversely affect the carrying out of the FMP.

As indicated by data presented in Sections 3.1, 4.5, and 4.6 of the Analysis, the conditions for preemption are not met in Cook Inlet. Under no circumstances does NMFS or the Council have authority to manage fishing within State internal waters.

Comment 17: NMFS incorrectly assumes that Alternative 3 requires Federal management to be responsive to State management to support Alternative 4. If NMFS sets maximum sustainable yield (MSY), optimum yield (OY), and annual catch limits (ACLs) for Cook Inlet salmon stocks, then the State must modify their management to comply with those limitations. If there is more harvest in EEZ waters then State waters harvest must be reduced to achieve OY. If the State is already managing the fishery in a manner consistent with the Magnuson-Stevens Act, then the dual management by the Council and the State should be seamless. Relatedly, some commenters suggested that NMFS implementing an OY that included State waters harvest is inconsistent with NMFS's stated inability to implement management measures within State waters.

Response: NMFS acknowledges that differences between Alternatives 3 and 4 were important in its consideration of Amendment 14. The State was not willing to accept a delegation of management authority so Alternative 2 could not be implemented. Consistent with the Ninth Circuit ruling, the status quo was also not a viable option. This left the Council with a decision between Alternatives 3 and 4.

NMFS does not agree that Federal management supersedes State management of a State fishery absent preemption, or that State management of a State fishery must be responsive to Federal management. NMFS has an obligation to prevent overfishing in fisheries under Federal jurisdiction, and must account for all sources of mortality when determining the allowable harvest for Federal waters, consistent with the Magnuson-Stevens Act and National Standard 1 (50 CFR 600.310(e)(2)(ii)). NMFS must consider a fishery that occurs within State waters; however, NMFS cannot modify fishery management within State waters. Therefore, NMFS will take action in the fisheries under its jurisdiction to prevent overfishing. NMFS has maintained this position throughout the development of Amendment 14. 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 of the fishery that occurs in state waters. Examples of this are Pacific cod fisheries in the Gulf of Alaska and Aleutian Islands. In specifying the Federal Pacific cod total allowable catch, NMFS must account for the State harvests so that total catch in state and Federal waters does not result in overfishing.

Management in Federal waters must adhere to the Magnuson-Stevens Act. Amendment 14 closes the EEZ waters of Cook Inlet, consistent with the Magnuson-Stevens Act and other applicable law. The State is not bound by the Magnuson-Stevens Act for its management within State waters, but this does not equate to State management being inconsistent with the Magnuson-Stevens Act. Under NMFS's National Standard 1 Guidelines, MSY, and OY can be specified at the fishery level (50 CFR 600.310(e)). In Cook Inlet, the salmon fishery has historically occurred in both State and Federal waters, and therefore specifying MSY and OY at the fishery level requires NMFS to consider fishing activity in State waters. However, though NMFS must consider fishing activity in State waters when establishing reference points, it cannot manage fishing activity in State waters. Thus, while MSY and OY account for State-water harvest, NMFS is only specifying an ACL for the Cook Inlet EEZ commercial salmon fishery. This is consistent with the National Standard 1 Guidelines, which instruct NMFS to establish a Federal ACL for State-Federal Fisheries like the Cook Inlet salmon fishery, because ''Federal management is limited to the portion of the fishery under Federal authority.'' 50 CFR 600.310(f)(4)(iii).

Absent the conditions for preemption, which are described more thoroughly in the response to *Comment 16,* NMFS does not have jurisdiction over State marine waters. As salmon stocks can be fully utilized in State waters consistent with appropriate conservation and management, additional harvest in EEZ waters is not necessary to achieve OY, and introducing an additional, independent management jurisdiction in the EEZ could increase the risk of overfishing as explained in the preamble to the proposed rule and the response to *Comment 33.*

Comment 18: The State's process for setting escapement goals does not comply with the Magnuson-Stevens Act, which requires the Council to set ACLs for each fishery based on peer-reviewed Scientific and Statistical Committee (SSC) recommendations. State management plans that affect harvest levels are based on flawed escapement goals set by Alaska Board of Fisheries.

Response: This action establishes an ACL of zero for the commercial salmon fishery in the Cook Inlet EEZ Subarea, consistent with Magnuson-Stevens Act requirements. Under the Magnuson-Stevens Act, NMFS must consider, but cannot modify, fishery management within State waters. The State is not bound by the Magnuson-Stevens Act within State waters. Additional description about the relationship between State and Federal management measures is provided in the response to *Comment 17.*

Further, the SSC found that State management of Cook Inlet salmon stocks relied on the best scientific information available and the resulting harvest levels were consistent with harvest levels that could be expected under Federal management. This information, along with additional consideration of the State's escapement-based management system, is provided in Section 3.1 of the Analysis. NMFS also determined there is not better scientific information available to manage Cook Inlet salmon stocks than the information reviewed in the Analysis.

Comment 19: The preamble to the proposed rule states that the Council and NMFS determined that the proposed OY would be fully achieved by the Cook Inlet salmon fishery within State waters ''because compensatory fishery effort among various sectors in State waters is expected to make up for closing the Cook Inlet EEZ to commercial salmon fishing.'' There is no evidence that the Council made any such determination, and that determination is not supportable. National Standard 1 requires that an FMP achieve OY, which is defined both in terms of the greatest overall benefit to the Nation as well as achieving the MSY. The State has made no attempt to achieve OY on most stocks of salmon.

Response: NMFS determined that Amendment 14 will achieve OY. The Analysis before the Council and NMFS, including the retrospective review of State management against proposed Federal management, demonstrated that managing salmon within the escapement goals established by the State prevented overfishing, allowed harvest by all Cook Inlet salmon fishery sectors, and that no management alternatives under consideration were expected to increase harvests of Cook Inlet salmon stocks. Therefore, of the viable management alternatives, Amendment 14 produces the greatest net benefit to the Nation by allowing harvest of Cook Inlet salmon by all fishery sectors to the extent possible while still protecting weak stocks from overfishing.

The Magnuson-Stevens Act does not prescribe the method for determining OY, and NMFS uses various methods to determine OY throughout the Nation, depending on the information available and the unique characteristics of specific fisheries.

Magnuson-Stevens Act section 3(33) defines ''optimum,'' with respect to the yield from a fishery, as the amount of fish that will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities and taking into account the protection of marine ecosystems; that is prescribed on the basis of the MSY from the fishery, as reduced by any relevant economic, social, or ecological factor; and, in the case of an overfished fishery, that provides for rebuilding to a level consistent with producing the MSY in such fishery (16 U.S.C. 1802(33)).

Under National Standard 1, OY must be achieved over the long-run but not necessarily with precision each individual fishing year. Further, while OY is derived from MSY, National Standard 1 does not require that a fishery achieve MSY in any particular year or over the long run. Accordingly, as the preamble to the proposed rule states, achieving OY in the Cook Inlet salmon fishery is complex and must incorporate management measures that limit the harvest of healthy stocks in order to prevent overfishing on co-occurring weak stocks. Because of this complexity, OY is specified at the fishery level for the Cook Inlet salmon fishery rather than for each individual stock. Specification of OY at the fishery level is consistent with National Standard 1 and guidelines that direct that ''OY may be established at the stock, stock complex, or fishery level'' (50 CFR 600.310(e)(3)).

The OY range for the Cook Inlet salmon fishery is defined as the combined catch from all salmon fisheries occurring within Cook Inlet [State and Federal water catch], which results in a post-harvest abundance within the escapement goal range for stocks with escapement goals, and below the historically sustainable average catch for stocks without escapement goals, except when management measures required to conserve weak stocks necessarily limit catch of healthy stocks. This OY is derived from MSY, as reduced by relevant economic, social, and ecological factors. These factors include annual variations in the abundance, distribution, migration patterns, and timing of the salmon stocks; allocations by the Alaska Board of Fisheries; traditional times, methods, and areas of salmon fishing; ecosystem needs; consideration of the risk of overharvesting; and inseason indices of stock strength. Factors of particular importance to NMFS include providing harvest opportunities for all Cook Inlet salmon fishery sectors and preventing overfishing by accounting for the co-occurrence of weaker stocks. Therefore, achieving OY may result in the harvest of some Cook Inlet salmon stocks that is below the maximum potentially allowable amount in any given year. Information regarding the potential for limited utilization of some Cook Inlet salmon stocks was reviewed by the Council and NMFS prior to the recommendation and approval of Amendment 14 and more information on this topic is provided in the Response to *Comment 23.*

Further, the only other viable management alternative (Alternative 3) presented additional challenges to achieving OY through the creation of new management uncertainty expected to result in reduced or eliminated EEZ harvests in any given fishing season and to impose additional costs on participants, as described in the preamble to the proposed rule and as provided in the responses to *Comments 27* and *33.*

Comment 20: Amendment 14 is not consistent with MSY management as required by the Magnuson-Stevens Act because salmon management would continue to rely upon flawed escapement goals set through the Alaska Board of Fisheries process. Existing escapement goals result in overescapement in the Kenai and Kasilof river systems which lowers harvests, decreases future yields, and reduces fish size. Lower escapement goals would allow more harvest by all users. Several commenters provided specific data the commenters argued support this comment and stated that the negative impacts of overescapement were not sufficiently addressed in the Analysis.

Response: The Magnuson-Stevens Act does not require management that achieves MSY. Rather, as codified by National Standard 1, conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the OY from each fishery for the U.S. fishing industry. Additional discussion of OY is provided in the response to *Comment 19.*

Further, NMFS has determined that MSY as defined by Amendment 14 is consistent with the Magnuson-Stevens Act. Under the Magnuson-Stevens Act, NMFS must ensure the capacity of the fishery to produce MSY on a continuing basis. In the National Standards guidelines, MSY is defined as ''the largest long-term average catch or yield that can be taken from a stock or stock complex under prevailing ecological, environmental conditions and fishery technological characteristics (*e.g.,* gear selectivity), and the distribution of catch among fleets'' (50 CFR 600.310(e)(1)). This information is considered, when and where known, during the State's escapement goal setting process, described in Sections 3.1 and 11 of the Analysis. Further, it is consistent with National Standard 1 to reduce harvest from MSY based on relevant economic, social, and ecological factors to achieve OY and prevent overfishing. This is also consistent with National Standard 6, which acknowledges the inevitable changes in a fishery that result from biological, social, and economic occurrences, as well as fishing practices, and dictates that ''[t]o the extent practicable, FMPs should provide a suitable buffer in favor of conservation'' (50 CFR 600.335(c)). Management measures that reduce harvest levels below MSY to account for uncertainty, protect weaker stocks, and provide harvest opportunity for all fishery sectors are consistent with the Magnuson-Stevens Act.

Multiple commenters expressed concern about overescapement for Cook Inlet salmon stocks. Overescapement means that the number of spawning salmon exceeds the upper bound of the escapement goal range established for a stock, and is considered in Section 3.1 of the Analysis. Commenters' concerns focused on two potential adverse impacts of overescapement. First, that overescapement results in forgone yield in the year that it occurs because more harvest is theoretically allowable at sustainable levels and any surplus fish not harvested cannot be harvested in the following year (*i.e.,* more harvest would keep escapement goal ranges from being exceeded and still be sustainable). The second concern asserted by the commenters is that when escapement goals are exceeded, or an escapement goal is set inappropriately high, too many fish spawning will decrease future yields, a concept referred to as overcompensation. The commenters assert that the potential drivers of overcompensation are likely density dependent and may include competition for habitat, competition for prey among juvenile salmon, disease, predation, or some combination of these and other factors that may also be exacerbated by other environmental variables.

The Council specifically conducted an independent analysis of MSY and the potential for overcompensation in Kenai and Kasilof river sockeye salmon stocks, which is presented in Section 13 of the Analysis. SSC review determined that the conclusions of this analysis were consistent with ADFG's analysis of escapement goals, that ADFG's escapement goals were established within the range expected to produce MSY, and that there is limited evidence for overcompensation across the observed range of escapements. This information indicates that the escapement goals established by the State for these stocks are appropriate estimates of MSY. Thus, while instances of overescapement will result in foregone yield in the current year, they are unlikely to result in reductions in future recruitment and yield for the primary stocks harvested by the drift gillnet fleet in Cook Inlet.

Information is not available to analyze overescapement or its potential impacts for the Cook Inlet salmon stocks without escapement goals, as described in the following comment. In the absence of specific stock information, conservative management using suitable proxies while following the precautionary principle is consistent with the National Standard 1 Guidelines for dealing with data-poor stocks (50 CFR 600.310(e)(1)(v)(b) & (h)(2)). The Guidelines provide flexibility in setting MSY and other reference points based on insufficient data and in consideration of stocks with unusual life history characteristics, including salmon. The risk of overfishing as a result of harvest rates that are too high is much greater than the uncertain and speculative risk of under harvest or overescapement. Therefore, in the absence of information, the State is managing the data-poor salmon runs consistent with NMFS's approach to management of data-poor fish stocks.

From a practical perspective, it is not possible to manage mixed stock salmon fisheries for MSY on all stocks as the composition, abundance, and productivity of stocks and species in the fishery vary substantially. Overescapement is a common occurrence in Cook Inlet, as noted in the Analysis Section 3.1. Overescapement usually results from (1) a lack of fishing effort, (2) unexpectedly large salmon runs, or (3) management or economic constraints on the fishery. Management constraints result, in part, from State management of salmon fisheries for maximum harvest of the largest, most productive salmon stocks, while protecting less abundant salmon stocks and species. The State has established clearly-defined goals to manage salmon to provide for escapement of identified stocks of concern within mixed-stock fisheries as described in Section 3.1 of the Analysis. Independent Federal management of a separate commercial salmon fishery in Cook Inlet would not be expected to reduce the potential for overescapement or address any of the factors that cause overescapement. As discussed in Sections 2.5 and 4.7.1.3 of the Analysis and the response to *Comment 17,* independent Federal management of a separate commercial fishery in the EEZ under Alternative 3 would be responsive to State management decisions and would also be more conservative to account for new management uncertainty in order to prevent overfishing. No management alternatives under consideration were expected to increase harvest levels above the status quo.

It is also noted in Section 4.5.2.2 of the Analysis that several recent years have been particularly challenging with respect to salmon management in Cook Inlet. In 2018, the sockeye run in UCI deviated particularly sharply from most previous runs, both in terms of size and timing. The total sockeye run was about 32 percent below what was forecast, and sockeye landings were 22 percent of the 1990–2017 annual average. As of 2018, this was only the second time that more than half the Kenai River sockeye run arrived after August 1. These challenges would be further exacerbated by the additional management uncertainty and lack of Federal management flexibility that were identified as concerns under Alternative 3 and described in the preamble to the proposed rule. Fishery managers do not have the benefit of complete information during the fishing season and must make decisions based on what is known. In these situations, conservative management decisions that may reduce the total harvest are prudent in order to avoid overfishing.

Comment 21: The Council and NMFS never conducted stock assessments for the nearly 1,300 Cook Inlet salmon stocks, and the FMP purports to conduct no annual stock assessments. This action allows MSY to be set at what harvest the State allows based on its escapement goals, which are often not set at biological MSY. Only one stock in Cook Inlet (Kasilof River Sockeye) has a biological escapement goal. Also, most salmon stocks in Cook Inlet have no escapement goals. For those stocks, the FMP would set OY at whatever level of fish get harvested, making OY equal actual yield. For example, for pink salmon, which commonly have returns of 20 million fish but no escapement goals, OY could be one fish. This does not satisfy National Standard 1 to ensure the greatest benefit to the nation or MSY.

Response: NMFS used the best scientific information available to evaluate MSY for Cook Inlet salmon stocks and specify MSY and OY for the Cook Inlet salmon fishery. Section 3.1 of the Analysis describes the escapement goals established for Cook Inlet salmon stocks, the approaches used in their development, salmon management considerations, and a retrospective analysis comparing proposed Federal reference points to State salmon management which found that State management would have overwhelmingly prevented overfishing had the Federal reference points been in place. Further, the State's incorporation of uncertainty into escapement goal development and management was reviewed the SSC, the Council, and NMFS and is presented in Section 11 of the Analysis.

There are not established escapement goals or monitoring for all the salmon runs in Cook Inlet due to practical and logistical constraints. However, the State, in conjunction with salmon resource users, has identified and monitors the most important salmon stocks. These include heavily utilized stocks of chinook, sockeye, and coho salmon. For the smaller stocks of sockeye, Chinook, pink, chum, and coho salmon, there is other information available (catch and indicator stocks) to indirectly monitor abundance. The State manages all the salmon stocks in UCI based on the information it collects from indicator stocks (stocks that can be assessed) and the performance of salmon fishery sectors in UCI. In the absence of specific stock information, the State has managed these stocks conservatively, with suitable proxies for MSY, following the precautionary principle, and NMFS finds that the State's escapement-based management is consistent with the National Standard 1 Guidelines for dealing with data-poor stocks (50 CFR 600.310(e) & (h)(2)). Therefore, in the absence of information, the State is managing the data-poor salmon runs consistent with NMFS's approach to management of data-poor fish stocks.

NMFS does not independently monitor returns of Cook Inlet salmon stocks or assess Cook Inlet salmon abundance. The biology of salmon is such that escapement is the best time for routine assessment and long-term monitoring because the number of spawning salmon can be counted with a high degree of accuracy. Accordingly, the State collects information on Cook Inlet salmon escapement—returns of specific salmon stocks to specific river systems—from sampling sites (*e.g.,* weirs, sonar stations, counting towers) that are generally located within State waters and NMFS relies on this information. It is not possible to collect complete information on escapement or run strength from sampling in the EEZ alone. Given that the Magnuson-Stevens Act does not generally provide NMFS with the authority to manage salmon resources within State waters (as discussed in the response to *Comment 16*), and that extensive information is already collected by the State on numerous salmon stocks, NMFS has limited ability to independently collect escapement information.

Additionally, NMFS, like the State, has limited funds for stock assessment research. NMFS allocates research funds based on national and regional priorities, and would need to eliminate or reduce existing projects to start a new project to gather the scientific information necessary to conduct a stock assessment for any given salmon run.

Because the State uses the best scientific information available for the management of Cook Inlet salmon stocks, State escapement goals were integral to the reference points developed for Amendment 14 and every other action alternative considered by the Council and NMFS.

NMFS is not proposing to specify OY as equal to actual yield for any salmon stocks. Instead, NMFS is specifying an OY for the entire Cook Inlet salmon fishery that is intended to achieve long-term average yields consistent with the State's escapement goals, reduced from MSY as necessary to protect weaker stocks. In specifying OY for the Cook Inlet salmon fishery, which includes a number of interrelated stocks, NMFS must also remain consistent with National Standard 1's instruction that fishery management measures prevent overfishing. Under the State's escapement-based management system, as well as under all of the management alternatives reviewed by the Council and NMFS, lower utilization of some stocks may occur to prevent overfishing of others. NMFS finds that this is consistent with the dual mandates of National Standard 1. Further, no alternative reviewed by the Council and NMFS was expected to increase the harvest of Cook Inlet salmon above the status quo.

Comment 22: Amendment 14's justification of preventing overfishing seems duplicitous: The main problem for both the main salmon runs of Cook Inlet (the Kenai and Kasilof) has been overescapement, not under-escapement. Properly-regulated fishing provides the solution to overescapement. While some species (*e.g.,* Kenai Chinook salmon) face declining return numbers, that does not impact the drift gillnet fishery as Chinook salmon do not swim close enough to the surface in the EEZ to catch. Closing the EEZ due to overfishing is not correct. There is no overfishing problem for this area.

Response: Certain salmon stocks within Cook Inlet are of conservation concern. These are identified in Section 3.1 of the Analysis. NMFS agrees that the Cook Inlet drift gillnet fishery has minimal catch of Chinook salmon within Cook Inlet, and that Amendment 14 is not likely to significantly increase the drift gillnet harvest of Chinook salmon.

However, NMFS disagrees that preventing overfishing is not an essential and valid rationale for this action. As noted in Section 3.1.2 of the analysis, the drift gillnet fleet can substantially interact with other stocks, such as Susitna River and Fish Creek sockeye, that the State has previously designated as stocks of concern. Similarly, Tier 2 coho and sockeye salmon stocks that the drift gillnet fleet utilizes were identified as briefly subject to overfishing. Conservative management that necessarily reduces the harvest of healthy stocks to avoid overharvest of weak stocks is appropriate management under the Magnuson-Stevens Act.

Finally, NMFS has an obligation to not only correct overfishing when it occurs, but to prevent it from occurring in the first place. As described in the preamble to the proposed rule, Amendment 14 takes the most precautionary approach to preventing overfishing.

NMFS acknowledges that Kenai and Kasilof River sockeye salmon stocks can exceed their established escapement goal ranges. The response to *Comment 20* provides information about the causes and potential impacts of overescapement.

Comment 23: Amendment 14 ignores the fact that most of the coho, pink and chum salmon go unharvested. Pink salmon are the largest stock of salmon that enter Cook Inlet, some years exceeding 20 million fish, and our harvest rate is about 2 percent instead of the 53 percent that ADFG says achieves MSY. The commercial fishery and processing sector are eager to use these underutilized stocks. As there is little recreational and subsistence harvest of pink and chum salmon, there will be little to no harvest of these underutilized stocks if the fleet is restricted to State waters, which is not consistent with achieving MSY or OY.

Response: NMFS acknowledges the potential for limited utilization of some Cook Inlet salmon stocks under Amendment 14 in Section 3.1.4 of the Analysis. The Cook Inlet salmon fishery is complex with mixed-stocks and many divergent users. It is difficult to manage a mixed-stock salmon fishery, like the Cook Inlet salmon fishery, for MSY on all stocks as the composition, abundance, and productivity of co-occuring salmon stocks vary widely. The Cook Inlet drift gillnet fishery sector targets mixed salmon stocks, and is unable to catch individual stocks without incidental catch of others.

As explained in Sections 3.1 and 4 of the Analysis, the State does not fully utilize pink and chum salmon in UCI, in part due to efforts to conserve coho, chinook, and sockeye salmon and to provide harvest opportunity for all commercial, recreational, and subsistence fishery sectors. Commercial fishery sectors targeting pink and chum salmon, including the drift gillnet fishery, also catch coho and sockeye salmon. Several sockeye and coho salmon stocks in Cook Inlet have been designated as stocks of concern or were subject to brief periods of overfishing, and other fishery sectors in Cook Inlet, including the recreational and subsistence sectors, utilize these stocks. Consideration of recreational and subsistence fishing opportunities, in addition to commercial fishing, are required under National Standard 1. The State has attempted to ensure the conservation of Cook Inlet salmon resources and allocate the harvest of the resources in a manner consistent with the goal of maximizing the benefits across all users. As a result, commercial harvest of some stronger stocks (pink and chum) is constrained to protect weaker stocks (coho and sockeye) that are important to all fishery sectors.

Comment 24: How can NMFS assume that salmon management in State waters, which has resulted in multiple fishery disaster declarations for Cook Inlet, including those made in 2018 and 2020, will result in OY being achieved?

Response: On March 8, 2021, the Alaska Governor Mike Dunleavy requested the Secretary of Commerce determine a commercial fishery failure due to a fishery resource disaster for the 2018 Eastside set net fishery in Cook Inlet, and all 2020 salmon fisheries in UCI, under the Magnuson-Stevens Act at 16 U.S.C. 1861a(a). These requests are under review and the Secretary of Commerce has not made a determination. The Secretary of Commerce can determine a commercial fishery failure under the Magnuson-Stevens Act. The Act provides that at the discretion of the Secretary or at the request of the Governor of an affected State or a fishing community, the Secretary shall determine whether there is a commercial fishery failure due to a fishery resource disaster as a result of—

(A) natural causes;

(B) man-made causes beyond the control of fishery managers to mitigate through conservation and management measures, including regulatory restrictions (including those imposed as a result of judicial action) imposed to protect human health or the marine environment; or

(C) undetermined causes.

The State's request cited natural or undetermined causes that would fall outside the control of fishery managers to correct, regardless of jurisdiction. Specifically, the State's request cited unfavorable ocean conditions and the impacts of recent marine heatwaves that contributed to low salmon abundance and poor marine survival which have resulted in fishery closures and restrictions. None of the management alternatives considered could directly address these factors, which are outside of the control of fishery managers. However, when considering all factors within the control of fishery managers, and the ability of management to respond to the wide variety of factors that can affect a fishery, NMFS determined that Amendment 14 will achieve OY for the Cook Inlet salmon fishery.

NMFS also notes that the fishery management actions taken in these years allowed escapement goals to be met for most Cook Inlet salmon stocks, at levels which would be consistent with the OY range being specified under Amendment 14. While this resulted in lower fishery revenues, it is consistent with the precautionary management approach to preventing overfishing that NMFS is obligated to apply under National Standard 1.

The Gulf of Alaska pink salmon disaster declaration for 2016 did not apply to the UCI management area and is therefore outside the scope of this action. However, it is again noted that the cause for this disaster fell outside the control of fishery managers.

Comment 25: Amendment 14 will preclude essential fishery management tools, such as data from early commercial harvests in the EEZ and the test fishery, which are necessary to achieve OY.

Response: Amendment 14 does not prohibit scientific research, which may include test fisheries, nor does Amendment 14 purport to regulate scientific research activity as ''fishing'' under the Magnuson-Stevens Act (see 16 U.S.C. 1802(16)). Both the Anchor Point Offshore Test Fishery and the Port Moller Test Fishery (which currently occurs in EEZ waters off Alaska closed to commercial salmon fishing) receive Letters of Acknowledgement from the Alaska Fisheries Science Center supporting their scientific activities. Amendment 14 would not change the State's ability to conduct scientific test fisheries in this manner.

NMFS acknowledges that fishery dependent data, such as early season harvest, can play an important role in salmon management. However, early season harvest occurs before there is more complete information about realized run strength and can result in fishery exploitation rates that are too high. An important factor in the consideration of Amendment 14 is that it would minimize both scientific and management uncertainty related to harvests in the EEZ relative to the other viable alternative. Further, the State indicated that it could obtain this needed information through the offshore test fishery in Cook Inlet. Therefore, this action is not expected to limit the data and management tools necessary to achieve OY.

Comment 26: NMFS has not sufficiently analyzed the environmental and conservation impacts that will occur to Cook Inlet salmon stocks as a result of Amendment 14 and this final rule. These impacts are unknown, untested, and highly controversial, and raise serious questions as to whether the approval of Amendment 14 will significantly damage the long-term conservation of the fishery.

Response: NMFS disagrees, and notes that Section 3 of the Analysis comprehensively evaluates the environmental impacts of Amendment 14. A copy of the resulting Finding of No Significant Impact is available from NMFS (see **ADDRESSES**). This evaluation includes Cook Inlet salmon stocks. The response to *Comment 34* reviews the uncertainties that were presented to the Council, NMFS, and the public prior to the recommendation and approval of Amendment 14.

National Standard 8

Comment 27: Amendment 14 fails to meet National Standard 8's requirement to minimize to the extent practicable adverse economic impacts on communities and allow for their sustained participation. Amendment 14 would essentially put UCI drift gillnet fishermen and processors out of business for no good reason and harm associated communities. This could be a final blow to the commercial fishing industry of Cook Inlet.

Response: NMFS has determined that Amendment 14 is consistent with National Standard 8. National Standard 8 provides that conservation and management measures shall, consistent with the conservation requirements of the 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 based on the best scientific information available, 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 (16 U.S.C. 1851(a)(8)).

Regarding the sustained participation of fishing communities, Section 4.5.5 of the Analysis describes the relative importance of Cook Inlet salmon resources to fishing communities. Section 4.7.1.4 of the Analysis acknowledges that Amendment 14 may have negative impacts to the drift gillnet fleet, but that other Cook Inlet salmon fishery sectors, which are also part of fishing communities and provide corresponding benefits, would be likely to benefit as a result. Therefore, NMFS determined this action will not negatively affect the sustained participation of fishing communities.

Regarding minimizing adverse economic impacts to fishing communities to the extent practicable, NMFS and the Council anticipated similar impacts under both Alternatives 3 and 4. Both available options were expected to significantly constrain or eliminate drift gillnet harvest in the Cook Inlet EEZ. However, Alternative 3 would have created additional management uncertainty, imposed additional costs on participants to operate in the EEZ (*e.g.,* installation and operation of a Vessel Monitoring System (VMS)), and increased the potential for an unanticipated closure of the Cook Inlet EEZ to commercial salmon fishing before or during each season. NMFS concluded that an unexpected EEZ closure after participants had made significant investments to operate in the Federally-managed fishery for the season and were prepared to operate would be more disruptive than the potential for a marginal reduction in catch and deliveries but a certain fishery season in State waters under Amendment 14. Furthermore, given the increased management uncertainty under Alternative 3, it is possible that any additional fishing opportunity in the Cook Inlet EEZ would not have resulted in increased harvests relative to Alternative 4 and that the available harvest opportunities would not be sufficient to recoup the additional costs associated with Alternative 3. Amendment 14 reduces uncertainty regarding whether a Federal fishery will open in any given year and results in less additional costs and burdens on fishery participants who can continue to operate in State waters without incurring the additional operating costs necessary to fish in the EEZ; therefore, Amendment 14 minimizes adverse economic impacts to the extent practicable. Additional discussion of the potential economic impacts to harvesters and processors are provided in the responses to *Comments 30* and *33.*

Further, as required by National Standard 8, Amendment 14 balances the needs of fishing communities with required conservation of Cook Inlet salmon stocks. NMFS has a mandatory obligation to prevent overfishing, and must minimize adverse economic impacts only to the extent practicable in light of this conservation mandate (50 CFR 600.345(b)(1)). Between the two viable management alternatives identified by the Council, NMFS finds Amendment 14 is most likely to prevent overfishing and will minimize adverse economic impacts to the extent practicable. Understanding that this action does not change allocations or modify management within State waters, this action is likely to optimize conservation and management of Cook Inlet salmon stocks beyond the other viable alternative available to the Council and NMFS.

Comment 28: The loss of revenue from commercial fishing will negatively affect Kenai Peninsula and other fishing communities. Local spending on support services and associated tax revenue will decrease. NMFS did not sufficiently analyze the proposed EEZ closure so the community and economic effects are not known, however, it is safe to say there will not be an increase of economic activity if the EEZ is closed.

Response: NMFS acknowledges that a loss of revenue from commercial fishing could negatively affect fishing communities on the Kenai Peninsula and elsewhere. However, NMFS finds that this negative impact is uncertain, that community impacts may not be discernable compared to the status quo, and that negative impacts may be offset. As described in Section 4.1.7.4 of the Analysis, the drift gillnet fleet may be able to increase their harvest within State waters. Further, the State may modify fishing regulations to further account for the EEZ closure. If the drift gillnet fleet cannot achieve its historical salmon harvest within State waters, other Cook Inlet salmon fishery sectors may increase their harvest, which is expected to offset reductions in economic activity as a result of the EEZ closure.

Generally, communities, support services, and tax revenues more associated with the drift gillnet fleet will be more likely to experience adverse impacts if the drift gillnet fleet cannot achieve its historical harvest. Conversely, communities more associated with other commercial salmon sectors in Cook Inlet, as well as recreational, subsistence, and personal use users, would benefit if overall decreases in harvest by the drift gillnet fleet provide additional harvest opportunities within State waters. Compensatory fishing effort in State waters, as well as increased salmon availability and catch rates within State waters, as a result of the EEZ closure to commercial salmon fishing are expected to offset losses and minimize forgone yield. Given the complexities involved with the diverse and interdependent network of salmon fishery sectors within Cook Inlet, it is not possible to precisely estimate the magnitude and distribution of these potential benefits across specific communities and users. It is likely that impacts would be distributed across many communities given the different users involved. It is also likely that some benefits would accrue to some of communities that would potentially also experience adverse impacts based on their engagement in or dependence on the UCI salmon drift gillnet fishery (*e.g.,* Kenai and Kasilof, both of which have residents and business enterprises engaged in the commercial set gillnet, sport, and personal use salmon fishery sectors in addition to the UCI salmon drift gillnet fishery sector).

Comment 29: Closing the EEZ will result in lost revenues to the city of Homer, home to 20–25 percent of the drift gillnet fleet (more than 100 permit holders). It would no longer be practical to operate out of Homer because of increases in transit times, expenses, and extended hours on machinery and crew required to fish exclusively in State waters. It is a huge burden to relocate to Kasilof or Kenai rivers for the season, where the fishery is crowded with boats, openings are in a much smaller area, the quality of fish is deteriorating, and prices are lower than the fish caught in open waters of the EEZ. These permit holders will be forced to either move or go out of business.

Response: NMFS acknowledges that communities with vessels that are more dependent on the Cook Inlet EEZ for access to drift gillnet fishing opportunities may experience greater adverse impacts as a result of this action due to the relatively high costs to access productive fishing areas within State waters when operating out of the southern UCI. Further, NMFS acknowledges that the drift gillnet fleet may shrink as result of the reduced profitability for some participants. The Analysis before the Council and NMFS included this information.

As summarized in Section 4.7.1.4 of the Analysis, changes in the harvest levels of the UCI drift gillnet fleet due to an EEZ closure would have the potential to differentially affect communities, including communities associated with the UCI drift gillnet fishery and those associated with other salmon fishery sectors. With respect to the former, communities would be affected differently based on their relative engagement in and dependency on the UCI drift gillnet fishery, as measured by gross revenue diversification of locally owned drift gillnet vessels, gross revenue diversification of the larger ''community harvesting sector,'' gross revenue diversification of local UCI drift gillnet fishery permit holders, or some combination thereof, or the metrics used to categorize levels of community engagement. While a few different communities ranked high on a single engagement or dependency indicator, the data in Sections 4.5.5.2.1, 4.5.5.2.3, and 4.5.5.3.2 of the Analysis taken together suggest that the communities of Kasilof, Kenai, Nikiski, Nikolaevsk, Ninilchik, and Soldotna are among the communities potentially the most vulnerable to community-level adverse impacts specifically associated with the drift gillnet harvesting sector resulting from an EEZ closure, although the larger and more diversified Homer fleet has, by far, more revenue potentially at risk in absolute terms than the fleet of any other community.

NMFS expects that reductions in harvest by the drift gillnet fleet will be largely offset by increases in harvest by other fishery sectors. Further, during Council deliberations and in public comment submitted on Amendment 14, the State concurred that, of the viable alternatives, Amendment 14 is most likely to achieve the salmon conservation and management objectives established by the Council and the specific requirements of the Magnuson-Stevens Act to prevent overfishing and achieve optimum yield on a continuing basis for the UCI salmon fishery. The State also agreed that Cook Inlet salmon stocks could be harvested successfully within State waters. All fishery sectors within Cook Inlet provide revenues to fishing communities and associated support businesses. NMFS also notes that Amendment 14 minimizes adverse economic impacts to the extent practicable when compared to the only other viable alternative.

Economic Impacts

Comment 30: Homer depends on Cook Inlet salmon stocks, but for about 20 years has realized decreased benefits with the decline of harvested Cook Inlet salmon stocks. A major processor in our community had a devastating fire at its location. The company, a major player in the processor sector, decided not to rebuild the facility, with the uncertainty surrounding the management of Cook Inlet salmon stocks being a factor in its decision. This facility used to employ residents year-round along with some seasonal summer help, mostly from out of state. Amendment 14 would continue these problems.

Response: NMFS acknowledges the importance of Cook Inlet salmon to fishing communities including Homer and that uncertainty creates challenges. However, NMFS determined that independent Federal management of a separate commercial salmon fishery in the Cook Inlet EEZ, the only other viable management alternative, would not increase the stability of the commercial environment because it would impose additional costs on vessels, increase uncertainty for harvesters and processors, and potentially impact fishing communities.

The complexities associated with salmon management and fluctuations in salmon abundance can make it difficult to create a stable and predictable commercial environment. NMFS would not expect the only other viable management alternative, Alternative 3, to provide additional regulatory and harvest certainty for commercial salmon harvesters and processors. As described in Sections 2.5 and 4.7.1.3 of the Analysis, Alternative 3 would create additional management uncertainty and result in the increased potential for an unanticipated closure of the Cook Inlet EEZ to commercial salmon fishing before or during each season. NMFS concluded that an unexpected EEZ closure during a time that a processor was prepared to receive deliveries of fish would be more disruptive than the potential for a marginal reduction in catch and deliveries but a certain fishery season under Amendment 14. Additional discussion of the potential impacts to processors is provided in the response to *Comment 33*.

Comment 31: If you look at the fishermen now, you won't see many young faces. It's hard to get deckhands when the pay has been repeatedly cut due to regulatory restrictions that limit commercial harvest. Young fishermen who were encouraged to get into this fishery and borrow money for permits have had their feet knocked out from under them.

Response: Section 4.5.3.2 of the Analysis describes the trends in the age of UCI drift gillnet fishery participants which indicate the average age of a permit holder in the Cook Inlet drift gillnet fishery is increasing. This indicates that older harvesters may be continuing to fish beyond their expected retirement age or younger harvesters have been slow to replace them, or some combination. However, the median age increase of Cook Inlet drift gillnet fishery permit holders was lower than the 28 percent increase for other State fishery permit holders as a whole over the same time period. This indicates that the Cook Inlet drift gillnet fishery may be providing more new entrant opportunities than other State fisheries in Alaska.

Regarding economic conditions in the fishery, biological trends and associated socioeconomic conditions within the Cook Inlet fishery have fluctuated widely over time, even with access to the EEZ. These cyclical trends are not expected to be modified by any of the management alternatives that were considered for this action.

Comment 32: Many commenters stated that Amendment 14 eliminates a viable fishery by closing waters traditionally fished by the drift gillnet fleet prior to the establishment of the EEZ. They indicated this would devastate the lives of hardworking families, and will eliminate the potential for future entrants to participate in the fishery. This will destroy longstanding commercial fishing heritage and culture in the region negatively impacting a struggling group of 500 small boat fisherman and small communities in Alaska.

Response: NMFS acknowledges that this action may have adverse impacts on drift gillnet fishermen. However, NMFS disagrees that this action would eliminate the drift gillnet fishery, and NMFS determined that no other viable management alternative considered by the Council during the development of Amendment 14 would have less adverse economic impacts. Section 4 of the Analysis describes economic trends in the fishery over time. It is noted that there are cyclical periods of high earnings and low earnings. In recent years, revenues in the fishery have been low. None of the action alternatives were expected to result in significant changes to the existing economic conditions. As described in Section 4.7.1.4 of the Analysis, this action will have the greatest impact to drift gillnet participants that fish primarily or exclusively in the EEZ. This action closes a portion of the area previously open to the drift gillnet fleet; all commercial salmon fishery sectors within Cook Inlet have operated, and will continue to operate, within the State waters of Cook Inlet. This includes State water areas where the drift gillnet fleet currently harvests over half of its annual catch, on average, and where all other commercial salmon harvest in Cook Inlet occurs.

Comment 33: Many commenters noted that the proposed rule preamble states that the economic impact of the closure "would be proportional" to the extent that individual vessels rely on the EEZ or will impact fishing communities only to the extent that they are dependent on fishing in the EEZ. Closing the EEZ was not sufficiently analyzed and will have more severe economic impacts than expected. Many commenters suggested that a closure of the EEZ is likely to collapse the commercial salmon fishing industry in Cook Inlet altogether. One of the last remaining Cook Inlet processing companies gave public comment that losing fish landings due to closing the EEZ would drive them out of business. Set net fishermen cannot operate without processors, and processors have explained that closure of the EEZ makes business in Cook Inlet impractical.

Response: NMFS disagrees that the impacts of closing the EEZ to commercial salmon fishing were not sufficiently analyzed. Sections 3 and 4 of the Analysis present a comprehensive assessment of the impacts of each alternative using the best scientific information available, including Amendment 14.

NMFS is aware that a majority of commenters had significant concerns with the economic impacts of this action. There were many assertions to the effect that Amendment 14 would collapse commercial fishing within Cook Inlet. However, these commenters did not present additional information to support the conclusion that the commercial salmon fishery in Cook Inlet would collapse; NMFS disagrees with this conclusion and the Analysis does not support it. The drift gillnet fleet will still be able to fish within State waters where they currently harvest over half their average annual catch. Further, this action is not expected to decrease the harvest from other commercial salmon fishery sectors in Cook Inlet or other commercial fisheries that deliver to Cook Inlet processors. Compensatory salmon fishery effort is expected within State waters, and NMFS anticipates that at least some of the fish that the drift gillnet fleet previously harvested in the Cook Inlet EEZ will be harvested by the commercial fishery sector within State waters. However, even if there is no additional commercial harvest within State waters, which is not anticipated, the majority of the commercial salmon harvest will continue to occur within the State waters of Cook Inlet, consistent with existing conditions.

Existing processors in Cook Inlet, as well as the other processors outside of Cook Inlet where commercially caught Cook Inlet salmon are transported for processing, are described in Section 4.5.4.1 of the Analysis. Six processors accounted for an average of 91.8 percent of the ex-vessel value of the UCI drift gillnet fishery harvest from 2009–2018. During this same period, the UCI salmon drift gillnet fishery accounted for an average of 61 percent of the total seafood purchases (salmon, halibut, crab, etc.) of the three most dependent facilities and accounted for an average of 19 percent of the total purchases of the three least dependent facilities. Given the number of processors, including operations that are well diversified into other fisheries, it is unknown if this action would impact processing capacity beyond other factors outside of the control of fishery managers such as natural variations in salmon abundance and market conditions.

Additionally, this action does not change the ability of drift gillnet fleet to direct market or process their own catch for sale, or for new entrants in the processing sector to take advantage of a market opportunity.

It is also noted that the only other management alternative available to the Council and NMFS was expected to have more adverse economic impacts. That alternative, Alternative 3, would have required participants to obtain a Federal Fisheries Permit, VMS, logbooks, and accurate GPS positioning equipment as described in Sections 2.5.7 and 4.7.2.2 of the Analysis. Alternative 3 would also have required NMFS to set total allowable catch (TAC) before each fishing season. As a result, TAC would be set conservatively relative to the status quo in order to reduce the risk of overfishing and could not be increased in a timely manner if inseason information indicates that run strength is stronger than predicted. Commercial salmon harvest in the EEZ would be prohibited if the Council and NMFS did not project a harvestable surplus, with an appropriate buffer for the increased management uncertainty. Further, as described in Section 2.5.3 of the Analysis, gaps in data could have required closing the EEZ to commercial fishing in any given year. Finally, Alternative 3 would have increased uncertainty each year for fishery participants in developing a fishing plan because NMFS would have determined whether the Cook Inlet EEZ could be open to commercial fishing on an annual basis and shortly before the start of the fishing season. If the EEZ was open, NMFS could have closed it unexpectedly early if harvest limits were reached. NMFS concluded that these factors would create more adverse economic impacts and instability than the consistent management approach under Alternative 4.

Comment 34: The economic impacts of Amendment 14 on Cook Inlet commercial salmon fishermen are not adequately analyzed. It is not clear whether a drift gillnet fisherman's commercial catch will be reduced by 5 or 95 percent and this action could be the tipping point to put Cook Inlet commercial drift gillnet fishermen out of business.

Response: NMFS acknowledges that there is uncertainty regarding the economic impacts of Amendment 14. This uncertainty was before both the Council and NMFS in making their decisions to recommend and approve Amendment 14, respectively. A number of factors, summarized below, make it difficult to predict the exact impacts of this action despite the Council and NMFS using the best scientific information available; nonetheless, there is enough information to conclude that, on average, the drift gillnet fleet could continue to harvest the majority of their existing catch.

Generally, NMFS expects that the Cook Inlet drift gillnet fleet could maintain their existing levels of salmon removals in State waters, which currently constitutes over 50 percent of their average annual catch, as described in Section 3.1.4 of the Analysis. Vessels could also relocate their previous EEZ fishing effort to State waters. However, as stated in Section 4.1.7.4 of the Analysis, on a vessel by vessel basis, the impact of Amendment 14 would be proportional to the extent that they rely on the EEZ for target fishing. As different vessels have different levels of dependency on the EEZ, as well as ability and willingness to adapt to fishing only in State waters, the impacts are more variable to individual harvesters and are not possible to predict with available information.

Additionally, the State may modify management of the drift gillnet salmon fishery sector within State waters to account for the EEZ closure. This could include providing additional time and area openings for the fishery sector within State waters. Under current State regulations, the drift gillnet fishery sector typically operates for two or three 12 hour periods per week, with the potential for additional time if salmon abundance is high, as described in Section 4.5.2.1 of the Analysis.

Furthermore, the conditions within the fishery during any given year have a substantial impact on the ability of each fishery sector to harvest their target stocks. These include, but are not limited to, overall salmon abundance, run timing, management measures required to conserve weak stocks, and management measures required to provide each fishery sector with a harvestable surplus of their target stocks.

Section 4.7.1.4 of the Analysis does acknowledge that the loss of EEZ fishing opportunities may cause the drift gillnet fleet to shrink. However, this may provide additional harvest opportunity for remaining participants in the drift gillnet fishery sector, as well as other Cook Inlet salmon fishery sectors.

Analysts have obtained and synthesized the best scientific information available, presenting conclusions and recognizing uncertainty wherever possible. Consistent with National Standard 2 guidelines on FMP development (50 CFR 600.315(e)(2)), ''[t]he fact that scientific information concerning a fishery is incomplete does not prevent the preparation and implementation of an FMP (see related §§ 600.320(d)(2) and 600.340(b)).''

Comment 35: According to a 2015 McDowell Group report, the seafood industry in Southcentral Alaska directly employs over 10,000 people seasonally and has an annual economic output of $1.2 billion. Amendment 14 jeopardizes that industry. The closure of the EEZ reduces the effectiveness of the fleet dramatically—48 percent of the historical harvest of the drift fleet is from this area. All of the Cook Inlet salmon fishery sectors that rely on our annual salmon returns are important to the City of Kenai. Amendment 14 effectively eliminates one of those sectors and should be opposed.

Response: NMFS acknowledges the significant economic importance of Cook Inlet salmon resources and commercial fishing and processing to fishing communities. Section 4.5.5 of the Analysis presents detailed information about community engagement in the Cook Inlet salmon fishery, dependency, and fishery tax related revenue. NMFS disagrees that this action would effectively eliminate the drift gillnet fishery in Cook Inlet. As described in Section 4.5.2.3 of the Analysis, more than half of the annual average catch of the drift gillnet fleet occurs in State waters. While this action may have adverse impacts to the drift gillnet fleet operating in the EEZ, it is expected to provide continued harvest opportunities to the drift gillnet fleet within State waters and potentially increased harvest opportunities to all other harvesters within State waters.

Comment 36: Amendment 14 would disrupt the steady supply of fish over the summer which keeps the processing sector operating efficiently. By waiting for the fish to enter the proposed State waters corridor, the quality of the salmon is less than when harvested in the EEZ. This results in lower prices to the harvester and potentially less market value for the processor.

Response: NMFS acknowledges that this action may reduce processing efficiency and could result in lower prices in some circumstances. These considerations are described in Sections 4.5.4 and 4.5.5.2.2 of the Analysis. The potential impacts of these adverse conditions are presented in Section 4.7.1.4 of the Analysis.

Comment 37: It costs thousands of dollars to prepare for fishing each year. If the EEZ is closed the commenter indicated they will have to look at cutting insurance or other expenses and take higher risks and that the harvest opportunities in state waters are not sufficient to keep a business going. Relatedly, some commenters indicated that they would be unable to make boat and permit payments under the conditions resulting from Amendment 14.

Response: The potential impacts of reduced revenues on harvesters are described in Sections 4.7.1.4 and 4.7.4.2 of the Analysis. This may include a reduction in active drift gillnet fleet size, as well as potential indirect adverse impacts to vessel maintenance and safety due to the potential for reduced revenues. The Analysis shows that the adverse economic impacts resulting from the only other viable management alternative (Alternative 3) were expected to be worse, due to increased uncertainty, significantly reduced or eliminated EEZ harvests, and additional regulatory expenses for monitoring, recordkeeping, and reporting.

NMFS disagrees that harvest opportunities in State waters are insufficient to support commercial fishing. Over half the drift gillnet harvest, and the entirety of the set gillnet harvest, currently occurs within State waters. This includes an average of $10.9 million in gross revenue just from State water drift gillnet harvest from 2009 to 2018, and an average of $12.6 million in gross revenue from the UCI set gillnet fishery sector over the same period. Participants can maintain or increase their participation within State waters, and the State may modify its management measures to account for the EEZ closure.

Comment 38: The UCI salmon fishery provides most of the funding for the Cook Inlet Aquaculture Association (CIAA). The loss of that funding as a result of Amendment 14 will force the CIAA to close, wiping out years of effort on salmon rehabilitation projects, closing all their hatchery and stocking programs, and more.

Response: NMFS acknowledges that if this action decreases harvests by commercial users in Cook Inlet, revenues to CIAA may be reduced, as noted in Section 4.7.1.4 of the Analysis. However, as summarized in the response to *Comment 35,* the majority of commercial salmon fishing in Cook Inlet is expected to continue.

Comment 39: I had planned for my retirement based on income from fishing and the sale of my limited entry salmon permit. Because of the State's mismanagement and the reallocation of salmon away from commercial fishermen my retirement nest egg is non-existent and the price of permits is very low. Amendment 14 will exacerbate these problems.

Response: Sections 4.5.3 and 4.6 provide a detailed description of the harvest and economic performance of the Cook Inlet drift gillnet salmon fishery sector including permit prices, as well as other Alaska salmon fisheries, over time. The Analysis shows that the performance of the Cook Inlet salmon fishery, as well as other Alaskan salmon fisheries, have varied significantly over time. No alternatives were expected to modify these cyclical trends, although NMFS determined that of the alternatives, Alternative 4 (Amendment 14) best facilitates management of the Cook Inlet salmon fishery by allowing for predictable, flexible management within State waters without additional management uncertainty.

Comment 40: All of our catch has been caught within the EEZ. Amendment 14 will have severe impacts and eliminate our ability to participate in the fishery.

Response: NMFS is aware and acknowledges that Amendment 14 may have more adverse impacts on participants unable or unwilling to relocate their fishing activity to State waters. As described in Section 4.7.1.4 of the Analysis, the impact of Amendment 14 will be proportional to the extent that participants rely on the EEZ for target fishing, and that the drift gillnet fleet may shrink as a result of reduced profitability.

Consistency With Other National Standards

Comment 41: Amendment 14 is a political decision not supported by the best scientific information available as required by National Standard 2 and the Magnuson-Stevens Act. One commenter cited a donation by a prominent sport fishing advocate to the governor as evidence.

Response: NMFS determined that Amendment 14 is consistent with National Standard 2. The Council's decision to recommend Amendment 14 and NMFS's decision to approve Amendment 14 and publish this final rule were supported by the Analysis, which contained the best available scientific information. The Council and NMFS considered and weighed all of the information available in making the decisions, including public testimony, to recommend and approve Amendment 14, respectively.

Comment 42: The Analysis did not use the best available information because it omits the dismal harvest in 2019 and the disastrous harvests in 2020. This information was available to NMFS and the Council but not used. This missing information was critical to the decision to close the fishery in the EEZ because much of the reduced harvest in 2019 and 2020 was the result of State closures of fishing opportunities in the EEZ. Restrictions on fishing in the EEZ in 2020, despite relatively high abundance of salmon returns, resulted in a fishery disaster with the average drift permit holder grossing only about $4,400 for the entire season. Complete closure of the EEZ will be far worse.

Response: The Analysis constitutes the best scientific information available. Final data from the 2019 and 2020 Cook Inlet salmon fishery was not available to analysts at the time of Council consideration. Consistent with the National Standard 2 guidelines (50 CFR 600.315(a)(6)(v)), mandatory management actions should not be delayed due to the promise of future data collection, nor should non-final data be introduced late into the Council decision-making process. That said, data now available on these seasons is summarized here.

The 2020 UCI commercial salmon fishery harvest and value was historically low. The total UCI drift gillnet harvest in 2020 was approximately 273,067 sockeye salmon, which was approximately 82 percent less than the previous 10-year average. The 2020 drift gillnet harvest of 47,689 coho salmon was 56 percent less than the previous 10-year average. The 2020 drift gillnet harvest of 25,223 chum salmon was approximately 84 percent lower than the previous 10-year average, while the pink salmon harvest was estimated to be 293,676 fish, or 40 percent higher than the 10-year even-year average. 2020 personal use fishery harvests of Cook Inlet salmon were approximately 11 percent below the 10-year average. Cook Inlet recreational salmon harvest data are not yet available for the 2020 season. Escapement for UCI salmon stocks in 2020 were mostly above or within established goal ranges for sockeye, chum and coho salmon, but were poor for Chinook salmon.

The total UCI drift gillnet harvest in 2019 was approximately 749,101 sockeye salmon, which was about 53 percent less than the average annual harvest from the previous 10 years. The 2019 drift gillnet harvest of 88,618 coho salmon was 17 percent less than the previous 10-year average harvest. The 2019 drift gillnet harvest of chum salmon was 112,518 and the pink salmon harvest was estimated to be approximately 27,607 fish. 2019 personal use fishery harvests of Cook Inlet salmon were 6 percent below the

10-year average. However, recreational salmon harvests were approximately 23 percent above the 10-year average, driven by some of the largest harvests on record for the Kenai mainstem and other Kenai drainages. Escapement for UCI salmon stocks in 2019 were mostly above or within established goal ranges for sockeye, chum and coho salmon, but were poor for Chinook salmon.

For both 2019 and 2020, the State took management action to avoid overfishing on weak stocks which also limited the commercial harvest of healthy stocks. Primarily, weak Kenai River Chinook salmon runs resulted in the State taking restrictive actions in the sport fishery and the Eastside set gillnet fishery (Upper Subdistrict). For the Eastside set gillnet fishery, this meant the State restricted fishing time to less than what can be allowed under State sockeye salmon management plans and imposed gear restrictions, both of which limited the ability of the set gillnet fishery to harvest additional sockeye salmon.

While the drift gillnet fleet realized lower than average catches in 2019 and 2020, the catch by other Cook Inlet salmon fishery sectors likely increased as a result. The 2019 and 2020 Northern District commercial coho salmon harvests were approximately 41 and 27 percent greater than the 10-year averages, respectively. In 2019, the Northern District harvest of sockeye salmon was approximately 89 percent greater than the 10 year average. The State suggested that increases in Northern District coho harvest may be due to less overall fishing time in the drift gillnet fishery because the State's management actions kept the drift gillnet fleet in the Expanded Corridors to target Kenai and Kasilof sockeye salmon and conserve Northern District coho salmon in July and August. For sockeye salmon, the State indicated that decreased fishing hours in the Central District by the drift gillnet fleet may have increased sockeye salmon abundance in the Northern District, where these fish are harvested by the Cook Inlet salmon fishery sectors in the Northern District. Similarly, decreases in harvest by the drift gillnet fleet may have also contributed to one of the highest Cook Inlet recreational salmon fishery sector harvests on record in 2019.

However, decreased fishing in the Central District can also increase escapements of sockeye salmon into the Kenai and Kasilof rivers, which occurred in 2019 and 2020. As described in Section 4.7.1.4 of the Analysis, NMFS notes that catch rates of Northern District salmon stocks, as well as Kenai River salmon stocks are generally higher in Federal waters, and it is unknown whether additional EEZ harvests by the drift gillnet fleet could have been allowed in these years without resulting in overfishing of weak stocks or limiting harvest opportunity in other Cook Inlet salmon fishery sectors.

Factors outside of the control of fishery managers were a significant contributor to reductions in harvest during these years. In 2020 sockeye salmon run timing was highly atypical, with the highest daily sockeye salmon passage recorded in August in the Kenai River, and the latest peak of sockeye salmon movement recorded. This meant abundances of sockeye salmon were relatively low during traditional peak fishing times. Further, the State had implemented low abundance sockeye salmon management plan provisions in combination with restrictive management measures to avoid overfishing late-run Chinook salmon. As discussed in the response to *Comment 24,* the State cited factors outside of the control of fishery managers and undetermined causes as the causes of the fishery disaster declaration request for UCI in 2020. NMFS notes that these variations would be particularly challenging to address through Federal management under Alternative 3, as harvest limits would be established preseason and there would be limited flexibility for NMFS to adapt them to rapidly changing conditions inseason. These challenges are described in Sections 2.5 and 4.7.1.3 of the Analysis.

In summary, drift gillnet harvests were significantly lower than average in 2019 and 2020. In both of these years, the drift gillnet fleet had relatively limited fishing time in the EEZ compared to historical conditions as they were limited by management measures required to conserve Northern District coho and sockeye salmon stocks. Catches of these stocks by Northern District fishery sectors did improve substantially for 2019, but were limited by weak stock management measures in 2020. Freshwater sport harvests in Kenai drainages were some of the highest on record in 2019, but data is not yet available for 2020. Personal use harvests were slightly lower but largely consistent with 10-year averages. The Eastside set gillnet fishery was significantly limited by weak Chinook salmon stock management considerations in both years and realized significantly reduced harvest as a result.

This information is largely consistent with conclusions presented in the Analysis. With limited fishing time in Federal waters, harvests by the drift gillnet fleet did decrease, while some other fishery sectors realized increases. Escapement of Kenai and Kasilof sockeye salmon stocks did increase above target ranges during these years, and while some of this increase is likely attributable to reduced drift gillnet harvest in Federal waters, management action required to prevent overfishing on Kenai river late-run Chinook salmon and conserve Northern District salmon stocks was a significant driver of constrained salmon harvests throughout the Cook Inlet salmon fishery during this period. Further, for the Kenai River late-run sockeye, record late run timing presented significant management challenges under the established management framework. NMFS notes that the limitations imposed by weak stock management and the challenges of unpredictable run timing would be exacerbated by the only other viable alternative considered by the Council and NMFS. This information is consistent with recent trends in fishery performance and the conclusions of the Analysis presented to the Council and reviewed by NMFS prior to making their decision on Amendment 14.

Comment 43: The best scientific information available shows that closure will have no appreciable conservation benefits.

Response: Of the viable management alternatives, NMFS determined that Amendment 14 takes the most precautionary approach to preventing overfishing and maximizes conservation and management benefits as detailed in the preamble to the proposed rule and as provided in the responses to *Comments* on *National Standards 1 and 3.*

Comment 44: Amendment 14 violates National Standard 4, which requires that all allocations not discriminate between residents of different states. Amendment 14 effectively allocates the entire fishery to the State. The State discriminates against out-of-state fishers, including the Alaska resident-only dipnet fishery that harvests hundreds of thousands of salmon per year to the detriment of other resource users. The Analysis points out that it is highly likely that closing the EEZ waters of Cook Inlet will reallocate fish resources from the drift gillnet fishery to the other Cook Inlet salmon fishery sectors.

Response: The State's management decisions regarding allocations among fishery sectors under State jurisdiction are State decisions that are outside the scope of this action. For the action under review, NMFS determined that Amendment 14 is consistent with National Standard 4. As summarized in

Section 4.7.1.4 of the Analysis, this action does not allocate or assign fishing privileges among commercial salmon fishery participants or other salmon fishery sectors, but it may result in changes in historical patterns of harvest between Cook Inlet fishery sectors. However, it is not possible to estimate the magnitude of the harvest benefits to these other fishery sectors because of the complexities of the Cook Inlet salmon fishery and intertwined State management plans.

Further, Amendment 14 does not discriminate between residents of different states. The closure of the Cook Inlet EEZ to commercial salmon fishing applies equally to all participants regardless of residency. As described in Section 4 of the Analysis, the majority of the salmon fishery within Cook Inlet, regardless of sector, has historically occurred within State waters.

Comment 45: Amendment 14 does not treat all Alaska stakeholders equitably. Amendment 14 unfairly discriminates against the drift gillnet fishery and has negative economic impacts on only the drift gillnet fleet. Nearly half of the drift gillnet fleet's harvest and income comes from the EEZ and it would be far more than half our harvest if we were allowed to fish there throughout the season.

Response: Amendment 14 and this final rule treat all stakeholders equitably. The drift gillnet fleet is the only commercial fishery sector and the only significant salmon harvester that operates in the Cook Inlet EEZ. As discussed in the response to *Comment 16,* NMFS only has authority to manage the portion of the Cook Inlet salmon fishery that occurs in the EEZ. This action applies equally to all participants in the Cook Inlet drift gillnet fishery in the EEZ regardless of residency.

NMFS analyzes the impact of management actions relative to existing conditions within the fishery. Historical conditions within the fishery are described in Section 4 of the Analysis.

Comment 46: NMFS should disapprove Amendment 14 because it turns all control of the fishery over to the State, which is inconsistent with the Magnuson-Stevens Act requiring all Federal fisheries be managed in the national interest.

Response: Amendment 14 and this final rule implements Federal management of the commercial salmon fishery within the Cook Inlet EEZ consistent with the national interest. With Amendment 14, the Council and NMFS are directly managing the commercial salmon fishery within the Cook Inlet EEZ and are not turning over control of the portion of the fishery that has occurred within the EEZ to the State. Of the viable alternatives, NMFS expects that Amendment 14 will maximize harvests consistent with conservation requirements in the State waters of Cook Inlet and that this action will not change net benefit to the nation. Further discussion of this is provided in the preamble to the proposed rule and the response to *Comment 19.*

The Council and NMFS may choose to revisit management of the Cook Inlet EEZ at any time if a management measure becomes available that will better achieve OY. Absent the conditions for preemption being met, which are described in the response to *Comment 16,* neither NMFS nor the Council would be able to modify management within State marine waters.

Comment 47: Amendment 14 was driven by the following Council policy: ''The Council's salmon management policy is to facilitate State of Alaska salmon management in accordance with the Magnuson-Stevens Act, Pacific Salmon Treaty, and applicable Federal law.'' The facilitation of State management is not a policy goal of the Magnuson-Stevens Act. The State's role is to participate through the Council process, not as a substitute for the Council.

Response: NMFS disagrees that the Council's salmon management policy is inconsistent with the Magnuson-Stevens Act. While the Magnuson-Stevens Act does not include this specific objective, a Council has broad discretion to adopt management policies that are consistent with the goals of Magnuson-Stevens Act, including achieving OY, preventing overfishing, and managing stocks as a unit throughout their range.

Comment 48: The Magnuson-Stevens Act gives NMFS the authority to manage anadromous species, including salmon, ''beyond the EEZ''. Amendment 14 fails to manage salmon within State waters as required by the Magnuson-Stevens Act.

Response: NMFS interprets ''beyond the EEZ'' as granting authority to manage anadromous species further than 200 nautical miles (nm) from shore, beyond sovereign jurisdictional limits, rather than within 3nm. Marine waters from the Alaskan coastline out to 3 nm are under State jurisdiction. Absent the conditions for preemption, NMFS does not have jurisdiction to manage fisheries, or fish stocks, within State marine waters. Under no circumstances does NMFS have jurisdiction to manage fisheries or fish stocks within State internal waters (*i.e.,* landward of the coastline).

Comment 49: The only thing standing in the way of resolving this issue is the State's refusal to accept MSY principles as outlined in the Magnuson-Stevens Act. The Ninth Circuit recognized this fact when ruling in favor of Cook Inlet fishermen and requiring Federal management of the Cook Inlet fishery.

Response: As detailed in the responses to *Comments 19* and *20,* MSY was appropriately considered when evaluating management alternatives to address the Ninth Circuit ruling and in the decision to approve Amendment 14.

The Ninth Circuit did not consider the whether State management of the Cook Inlet salmon fishery is consistent with the Magnuson-Stevens Act, as the State is not subject to the Magnuson-Stevens Act in its management of State salmon fisheries. Rather, the Ninth Circuit ruling required the portion of the Cook Inlet salmon fishery under Federal jurisdiction to be incorporated into the Salmon FMP.

Impacts on Marine Mammals

Comment 50: ADFG agrees with the conclusions included in the Analysis that Amendment 14 is not expected to result in a change to the incidental take level of marine mammals, including beluga whales, Steller sea lions, humpback whales, and fin whales, or have a significant impact on prey availability to these species.

Response: NMFS acknowledges this comment.

Comment 51: The State is concerned with NMFS's statement that prohibiting commercial salmon catch in the Cook Inlet EEZ Subarea under Alternative 4 could improve the density of salmon prey available to endangered Cook Inlet beluga whales present in northern Cook Inlet during the summer months as noted in Section 3.3.1.1 of the Analysis. Contrary to assertions by Norman *et al.* 2020, it is unlikely that salmon abundance is limiting beluga whale recovery in Cook Inlet, as the overall abundance of salmon in Cook Inlet largely remains at historical levels and therefore most likely is not driving the Cook Inlet beluga whale decline due to density dependence.

Response: NMFS acknowledges this comment.

Comment 52: NMFS should present the comparative conservation benefits and detriments for Cook Inlet beluga whales associated with a Federally managed salmon fishery in the EEZ.

Response: NMFS analyzed the impacts of each management alternative on Cook Inlet beluga whales in Section 3.3.1.1 of the Analysis. This section provides information and analysis on the impacts of each alternative on Cook Inlet beluga whales, including Alternative 3.

Comment 53: Salmon, particularly Chinook, are among the most important prey species for Cook Inlet beluga whales and prey availability is a known factor potentially limiting the recovery of Cook Inlet beluga whales. NMFS suggests that the impact of the proposed action on Cook Inlet beluga whale prey availability is uncertain. NMFS should describe relevant research on Cook Inlet salmon, especially Chinook. NMFS should also address the extent to which salmon fishery management in Cook Inlet is expressly accounting for beluga prey needs, or could be modified to do so. Additional attention to these factors might benefit Chinook populations and, in turn, the Cook Inlet beluga whale population. All this to say that details like place and species matter greatly in terms of importance for recovery.

Response: NMFS acknowledges that salmon, particularly Chinook, are important prey for Cook Inlet beluga whales. All of the action alternatives considered and examined in the Analysis were expected to maintain or increase salmon prey availability for Cook Inlet beluga whales. As described in Section 3.3 of the Analysis, the current level of fishery removals in Cook Inlet is not known to be a threat to Cook Inlet beluga whales, but there is uncertainty regarding beluga whale energetic needs. Significant changes in the abundance of salmon stocks are not expected under Amendment 14. This action would maintain salmon abundance at or above existing levels. Further, the drift gillnet fleet has *de minimis* catch of Chinook salmon which is not expected to increase as a result of this action, as stated in Section 3.1.4 of the Analysis. Therefore, additional information about Chinook salmon research is outside the scope of this action.

Additionally, the State must still meet all salmon escapement goals, plus maintain a harvestable surplus for in-river users, for all salmon stocks within Cook Inlet. Therefore, this action is not expected to reduce prey availability for Cook Inlet beluga whales.

Comment 54: NMFS should consider the potential for increased disturbance and displacement of beluga whales and salmon from Cook Inlet beluga whale critical habitat, including key foraging areas, and opportunities for NMFS to better conserve and recover beluga whales that could help inform future recovery efforts. The proposed action will concentrate the fleet into a smaller area, potentially causing new sources of disturbance and displacement of belugas. The same increased noise could also displace or disperse the salmon themselves. NMFS should assess whether the noise and commercial activities in new places that are triggered by its decision are likely to disturb and/or displace belugas from foraging areas.

Response: NMFS undertook a review of this action consistent with its requirements under section 7(a)(2) of the Endangered Species Act (ESA). The NMFS Protected Resources Division concurred that this action may affect, but is not likely to adversely affect, Cook Inlet beluga whales or their critical habitat. Based on the available data for Cook Inlet beluga whale distribution in the action area, the whales have not been recorded in recent years in the portions of the action area surrounding the Kenai and Kasilof Rivers during the most active part of the salmon drift gillnet fishing season from June to mid-August.

The fishing season duration is not expected to change as it is driven by the timing of the salmon runs. While drift gillnet effort may concentrate within certain areas of State waters, these areas minimally overlap with the range of Cook Inlet beluga whales during the salmon fishing season and no documented take of Cook Inlet beluga whales has occurred there, as described in Section 3.3.1.1 of the Analysis. Further, as noted in Section 4.7.1.4 of the Analysis, participation in the drift gillnet fishery could decline as a result of this action, which could result in fewer vessels on the fishing grounds during summer and less gear deployed.

As described in Sections 3.1.4 and 3.3.1.1 of the Analysis, decreased harvest of Northern District salmon stocks by the drift gillnet fleet as a result of the EEZ closure would increase availability of these stocks to other Cook Inlet salmon fishery sectors in Northern Cook Inlet and marine mammals that forage in Northern Cook Inlet, and could also potentially lead to higher salmon escapements in Northern Cook Inlet. NMFS does not expect overall salmon harvests or fishery activity to increase as the State must still achieve escapement goals. Salmon migration patterns or distribution are not expected to change as a result of this action.

NMFS does not expect that Cook Inlet beluga whales would be affected by any increase in vessel noise as a result of this action. Overall increases in vessel noise are not expected as a result of this action. Any incremental localized increase in noise as a result of this action would likely be immeasurably small given the high baseline level of vessel noise and activity throughout the inlet and the fact that most drift gillnet vessels already fish in State waters for a significant portion of the fishery. Thus, NMFS does not expect that the effects from potentially increased vessel noise on listed species could be measurable or detected, and therefore considers such effects to be insignificant.

Comment 55: In response to the proposed action, the State could open the Northern District to the drift gillnet fishery, particularly since it may be difficult for the fleet to maintain past harvest numbers otherwise. The Analysis should assess the impact of that reasonably likely reaction, which could place the fleet at the mouths of numerous additional rivers critical for beluga foraging, potentially resulting in far greater disturbance and displacement. NMFS's Biological Opinion should also assess this potential impact and NMFS should consider conditioning any jeopardy finding on the State agreeing to keep the Northern District closed—with consultation re-initiated upon any attempt to open it. If NMFS cannot require reinitiation of consultation in that event, then it should find jeopardy.

Response: NMFS completed informal consultation under section 7(a)(2) of the ESA regarding the potential impacts of Amendment 14 and determined that the action may affect, but is not likely to adversely affect, Cook Inlet beluga whales or their critical habitat. This action is not expected to result in the Northern District being opened to the drift gillnet fleet. Section 4.7.1.4 of the Analysis suggests that additional harvest opportunity for the drift gillnet fleet could be provided north of the EEZ line, but within the Central District where drift gillnet fishing already occurs there is no or minimal potential temporal overlap with Cook Inlet belugas during the fishing season. Existing commercial fishery restrictions within State regulations for the Central District, which minimize harvest of Northern District salmon stocks by Central District fishery sectors (*e.g.,* the drift gillnet fishery) and generally prohibit fishing near river mouths, are not modified by this action or expected to be changed as a result. Therefore, this action is not expected to increase disturbance or displacement of Cook Inlet belugas.

NMFS acknowledges that the State may change management measures for the Cook Inlet salmon fishery in State waters as a result of this action. Such changes may warrant reinitiating ESA section 7 consultation if there are effects of this action that may affect listed species or critical habitat in a manner or to an extent not previously considered.

Comments on the Development of Amendment 14

Comment 56: Multiple commenters felt that Amendment 14 is a punitive or unjust management solution. They suggested the Ninth Circuit ruling required the FMP to be amended, and that the Council and NMFS responded by punitively closing the fishery.

Response: NMFS disagrees that Amendment 14 is punitive. Amendment 14 implements the Ninth Circuit ruling by amending the Salmon FMP to include the Cook Inlet EEZ Subarea. The Analysis provides a comprehensive description of the purpose and need for this action, the management alternatives considered, and an analysis of their respective impacts. The Council and NMFS carefully evaluated costs and benefits of each management alternative and, of the two viable management alternatives, selected the alternative expected to minimize adverse impacts. NMFS provided its rationale in support of Amendment 14 in the preamble to the proposed rule.

Comment 57: The Council did not identify a preliminary preferred alternative until it made a final decision on Amendment 14, and withheld key information that the State was not willing to accept a delegated program until after the close of the Council's public comment period. This is contrary to the Council's published principles for stakeholder involvement that require the Council to make key information readily available to stakeholders to facilitate public input, before making a final recommendation to NMFS.

Response: All Council standard operating procedures and policies as well as Magnuson-Stevens Act procedural requirements were followed in the process of developing Amendment 14. All information considered by the Council and NMFS during the consideration of Amendment 14 was posted to the Council eAgenda and available to the public.

Selecting a preliminary preferred alternative is not a required step in the Council process. Closure of the EEZ was considered under Alternative 3 (Federal Management) where it could have been adopted as an inseason management measure, or a preseason decision, as described in Section 2.5 of the Analysis. At the October 2020 Council meeting, the State's representative on the Council expressed concerns about the existing alternatives, and the Council specifically chose to separate a proactive EEZ closure out of Alternative 3 to create Alternative 4 (Amendment 14) so it could be better analyzed and reviewed, as well as to give the public notice of its specific consideration. The Council's analysis of management alternatives for the Cook Inlet Salmon FMP amendment, including Alternative 4, was completed and publicly available more than three weeks (26 days) prior to the Council's consideration and final action at the December 2020 Council meeting. A total of 225 members of the public provided written comments or public testimony to the Council at that meeting.

NMFS did not have a predetermined policy position before the December 2020 meeting, consistent with substantive consideration of public comment, and had no role in the State's policy decision to decline delegated management authority (Alternative 2).

Comment 58: The Council heard from hundreds of fishermen and Alaskans who testified against the adoption of this EEZ closure proposal. Many believed none of the available alternatives provided a scientific or balanced management plan. Producing an amendment to the Salmon FMP that includes all of the Cook Inlet fishery, including State waters and the EEZ, is not an insurmountable task as NMFS and the Council have made it seem. It will however require that the agencies work with the stakeholders cooperatively instead of continuing their adversarial and unreceptive behavior. Stakeholders are asking that salmon management in Cook Inlet comply with the Federal law and the Magnuson-Stevens Act. We only want what the law already requires.

Response: NMFS is aware that many members of the public testified or commented to the Council and NMFS against adoption and approval of Amendment 14, as well as expressed dissatisfaction with all of the alternatives considered by the Council. Developing an FMP that optimizes conservation and management of Cook Inlet salmon stocks while complying with the Magnuson-Stevens Act and other applicable law, as well as successfully integrating with the highly complex and interdependent network of Cook Inlet salmon fishery sectors, is a challenging and controversial task.

Section 2 of the Analysis identifies the management alternatives considered by the Council and NMFS. This includes detailed discussion of the advantages and disadvantages of each approach. Sections 1 and 2 of the Analysis provide an overview of the requirements for amending the FMP, including consistency with the Magnuson-Stevens Act and Ninth Circuit decision.

The Council specifically considered the management recommendation developed by stakeholders on the Council's Salmon Committee. The Council did not choose to analyze this recommendation further because it proposed to apply Federal management measures within State waters, which is outside of Council and NMFS jurisdiction. More detail on the Salmon Committee recommendation and its consideration by the Council is presented in Section 2.7 of the Analysis.

Comment 59: Multiple commenters that participated in the Council consideration of the FMP amendment to address Cook Inlet asserted that the process to develop Amendment 14 was not fair or well considered. Specifically, commenters expressed concerns with the process, unfairness in consideration, conflicts of interest, perceived misdirection, the Council's perceived facilitation of the State's desired outcome of EEZ closure, and that there was insufficient notice and opportunity for public comment. One commenter requested that NMFS extend the comment period citing overlap with the drift gillnet fishing season in Cook Inlet. All of these commenters opposed approval of Amendment 14.

Response: Under the Magnuson-Steven Act, the Council is responsible for developing FMPs and FMP amendments, and stakeholders have an opportunity to express their opinions on the action and alternatives being considered. All Council standard operating procedures and policies as well as Magnuson-Stevens Act requirements were followed in developing Amendment 14, and all Council deliberations were open to the public and are part of the public record. Sufficient opportunity for public comment was provided throughout Council development of the action from 2017 through 2020. These opportunities occurred at public meetings noticed in the **Federal Register** as well as at regularly scheduled Council meetings. The Council took public testimony and considered written and oral public comments, providing stakeholders with consistent opportunities for involvement on this issue. In addition, the public was able to review and comment on analytical documents being developed by the Council during these same meetings.

Specific to the rulemaking for this action, the window to submit comments on the relevant **Federal Register** documents was from May 18, 2021, through July 19, 2021, which provided ample opportunity for comment outside of the fishing season and a large number of comments were received. Additionally, under the Magnuson-Stevens Act, a 60-day comment period is required for proposed amendments to FMPs (16 U.S.C. 1854(a)(1)(B)), and NMFS does not have discretion to extend this statutorily-set comment period.

Comments on State Salmon Management

Comment 60: Cook Inlet salmon stocks were built up between 1970 and 1990 and there were enough fish for everyone. However, for more than 20 years the State has been systematically sabotaging the commercial fishing industry in Cook Inlet to benefit recreational and personal use fishery sectors. Year after year there have been a series of increasing restrictions on all the commercial fishermen, limiting the time and the area where we can fish. This fishery was once the second largest salmon fishery in the State, in terms of economic value, now we are having back-to-back disasters because of State mismanagement. Amendment 14 would exacerbate these problems.

Response: The conclusions in this comment regarding adverse impacts to Cook Inlet salmon stocks due to State management are not supported by available information. Sections 3 and 4 of the Analysis present information about returns of Cook Inlet salmon and fishery harvest over time with a brief summary provided here.

Salmon that return to Cook Inlet are harvested by numerous commercial and non-commercial fishery sectors. While the non-commercial fishery sectors have grown over time as the population of southcentral Alaska has grown, the claim that this growth has disadvantaged the commercial sector is not supported by available information. Commercial, recreational, and subsistence harvests have all generally increased and decreased in proportion to salmon abundance, as described in Sections 4.5 and 4.6 of the Analysis. From 2010 to 2014, revenues in the drift gillnet fishery were near or above long term averages, while more recent fishery performance has been consistent with earlier periods of lower revenues.

As shown in Sections 3.1, 4.5.2, and 4.6 of the Analysis, salmon abundance is cyclical and harvest fluctuates over time. Exact causes for poor salmon returns are variable and frequently involve a variety of factors outside the control of fishery managers to mitigate, including unfavorable ocean conditions, freshwater environmental factors, disease, or other likely factors on which data are limited or nonexistent. The ocean and freshwater environments are changing, and the impacts of those changes on salmon abundance are difficult to forecast because they, in turn, depend on somewhat uncertain forecasts of global climate as noted in Section 3.6.3 of the Analysis. Further, the decline in productivity for some stocks have required that managers implement measures to conserve them, which often reduces the harvest of healthy stocks. These conditions, and others outside the control of fishery managers, are cited as the cause of fishery disaster requests, which are described in greater detail in the response to *Comment 24.*

Regardless of the management alternative selected, the FMP is limited to implementing management measures within the EEZ. As explained in Sections 2 and 2.7 of the Analysis, NMFS generally has authority to manage only the fisheries that occur in the EEZ. The Magnuson-Stevens Act does not provide authority for the Council or NMFS to manage fisheries occurring predominately in State waters, which would be required for the Council to change escapement goals or to allocate more salmon to a specific user group.

Comment 61: The State, the Council, and NMFS have not updated commercial season openings and closures to coincide with changes in the timing of the runs of the several species of salmon in UCI. Sockeye salmon, for example, have been running later than in previous decades. ADFG nevertheless closed the commercial season in much of UCI on August 1, before significant numbers of sockeye salmon had run.

Response: NMFS evaluated the average harvest timing from 2009 to 2018 in Section 4.5.2 of the Analysis. While some recent years have had later run timing which has complicated management, there is significant variability in salmon run timing that is not predictable within and across salmon fishing seasons. This variability is particularly problematic for the relatively inflexible and data limited Federal management of a separate commercial salmon fishery in the Cook Inlet EEZ that would have been required under Alternative 3, the only other viable management approach. In contrast, under Amendment 14, State management has less uncertainty to account for, is more flexible, and can be more responsive to variability as the State can readily increase harvests inseason if realized run strength is greater than expected or more rapidly close the fishery in the event of a conservation concern.

Comment 62: State management of Cook Inlet salmon stocks has resulted in lost food production estimated to be at least 150 million meals, assuming a third of a pound per meal, because of wasted salmon and overescapement. This enormous loss of interstate commerce and national food production has occurred for years under the State's mismanagement. The State did nothing to relax its restrictions on the commercial fishermen in UCI to help the national need for nutritious food during the COVID–19 pandemic as meat packing plants, farms, and other closures of food production occurred throughout the nation.

Response: NMFS notes that food production is inclusive of commercial, recreational, and subsistence fishing. As described in the response to *Comment 19,* Amendment 14 is expected to achieve OY from the Cook Inlet salmon fishery.

Comments on Legal Issues

Comment 63: Amendment 14 fails to comply with any of the statutory requirements for closing a fishery. Under 16 U.S.C. 1853(b)(2)(C), an FMP may designate areas where all fishing is prohibited, but the FMP must ''ensure that such closure'':

(i) Is based on the best scientific information available;

(ii) includes criteria to assess the conservation benefit of the closed area;

(iii) establishes a timetable for review of the closed area's performance that is consistent with the purposes of the closed area; and

(iv) is based on an assessment of the benefits and impacts of the closure, including its size, in relation to other management measures (either alone or in combination with such measures), including the benefits and impacts of limiting access to: Users of the area, overall fishing activity, fishery science, and fishery and marine conservation.

Response: Amendment 14 does not constitute a closure that prohibits all fishing under 16 U.S.C. 1853(b)(2)(C). Amendment 14 closes the Cook Inlet EEZ to one salmon fishery sector. Under the Salmon FMP, recreational fishing can still occur in the Cook Inlet EEZ.

Comment 64: The fishery management Council system is unconstitutional because there is not sufficient discretion for appointed Council members to be removed from their positions.

Response: The constitutionality of the Magnuson-Stevens Act is outside the scope of this rulemaking, and NMFS has approved Amendment 14 and promulgated this final rule consistent with the requirements of the Magnuson-Stevens Act. NMFS continues to interpret the Magnuson-Stevens Act in a manner consistent with the Constitution, particularly because

NMFS retains significant discretion to reject Council recommendations.

Comment 65: Amendment 14 is not consistent with Alaska's authority under the Statehood Act.

Response: To the extent this comment is arguing State management is inconsistent with Federal law, that is outside the scope of this rulemaking. Alaska is not bound by the Magnuson-Stevens Act in its management of salmon in state waters, and NMFS does not have jurisdiction over state water fisheries under the Magnuson-Stevens Act absent preemption in accordance with section 306(b).

To the extent this comment is arguing the State's escapement-based management does not produce the greatest net benefits to the nation, NMFS disagrees. The Analysis demonstrates that the State's escapement-based management has historically consistently allowed harvest by all Cook Inlet salmon fishery sectors after accounting for limitations necessary to protect weaker stocks from overfishing. No management alternatives under consideration were expected to increase harvest levels above the status quo; in addition, NMFS determined that the alternative selected (Amendment 14) provides the greatest opportunity for maximum harvest from the Cook Inlet salmon fishery while minimizing the potential for overfishing and avoiding additional management uncertainty.

Comment 66: The Alaska resident only personal use fishery violates the Commerce Clause of the U.S. Constitution and is unconstitutional.

Response: This comment is outside the scope of Amendment 14.

Comment 67: This action is not consistent with the Alaska State Constitution (Art. 8, Sec. 15) that prohibits an exclusive right or special privilege of a fishery, as it may cause economic distress among fishermen and those dependent upon them for a livelihood.

Response: This action applies to the Federally managed waters of the EEZ and the Alaska State Constitution is therefore not applicable. Regardless, this action creates no exclusive right or privilege of fishery, and minimizes adverse economic impacts to the extent practicable as described in the Final Regulatory Flexibility Analysis (FRFA).

Changes From Proposed to Final Rule

There have been no substantive changes in this final rule to the regulatory text from the proposed rule. A title heading has been added to Figure 23 to 50 CFR part 679.

Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator (AA) has determined that this final rule is consistent with Amendment 14 to the Salmon FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

NMFS prepared an environmental assessment (EA) for this action and the AA concluded that there will be no significant impact on the human environment as a result of this rule. This action closes a portion of the area open to the Cook Inlet drift gillnet fleet but will not result in significant changes to the Cook Inlet salmon fishery's total harvest, or result in other changes that would significantly impact the quality of the human environment. A copy of the EA is available from NMFS (see **ADDRESSES**).

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

A Regulatory Impact Review was prepared to assess costs and benefits of available regulatory alternatives. A copy of this analysis is available from NMFS (see **ADDRESSES**). The Council recommended and NMFS approved Amendment 14 and these regulations based on those measures that maximize net benefits to the Nation. Specific aspects of the economic analysis are discussed below in the FRFA section.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' Copies of the proposed rule, this final rule, and the small entity compliance guide are available on the Alaska Region's website at: *https://www.fisheries.noaa.gov/region/alaska.*

Final Regulatory Flexibility Analysis

This FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS's responses to those comments, and a summary of the analyses completed to support the final rule.

Section 604 of the Regulatory Flexibility Act (RFA) requires that, when an agency promulgates a final rule under section 553 of Title 5 of the U.S. Code (5 U.S.C. 553), after being required by that section or any other law to publish a general notice of final rulemaking, the agency shall prepare a FRFA (5 U.S.C. 604). Section 604 describes the required contents of a FRFA: (1) A statement of the need for and objectives of the rule; (2) a statement of the significant issues raised by the public comments in response to the IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made to the proposed rule as a result of such comments; (3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments; (4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; (5) a description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and (6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes including a statement of the factual, policy, and legal reasons for selecting the alternative adopted and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

A description of this final rule and the need for and objectives of this rule are contained in the preamble to the proposed rule (86 FR 29977, June 4, 2021) and final rule and are not repeated here.

Public and Chief Counsel for Advocacy Comments on the IRFA

An IRFA was prepared in the Classification section of the preamble to the proposed rule (86 FR 29977, June 4, 2021). The Chief Counsel for Advocacy of the SBA did not file any comments on the proposed rule. NMFS received no comments specifically on the IRFA, but the majority of comments expressed concern about the potential economic impact of this action. No comments provided information that refuted the conclusions presented in the IRFA.

Number and Description of Small Entities Regulated by This Final Action

This final rule directly regulates holders of State of Alaska S03H Commercial Fisheries Entry Commission Limited Entry salmon permits (S03H permits). In 2021, 567 S03H permits were held by 502 individuals, all of which are considered small entities based on the $11 million threshold. Additional detail is included in Sections 4.5.3 and 4.9 in the Analysis prepared for this final rule (see **ADDRESSES**).

Recordkeeping, Reporting, and Other Compliance Requirements

This final rule does not add reporting or recordkeeping requirements for the vessels participating in the Cook Inlet salmon fishery. With the Cook Inlet EEZ closed to commercial salmon fishing, no recordkeeping or reporting requirements are needed. The NOAA Office of Law Enforcement and the State of Alaska Department of Public Safety would continue their existing enforcement activity in Cook Inlet under the revised West Area boundary resulting from this action to monitor and respond to any illegal commercial salmon fishing occurring in the Cook Inlet EEZ Subarea. Additional detail is provided in Section 4.7.2 of the Analysis.

Description of Significant Alternatives Considered to the Final Action That Minimize Adverse Impacts on Small Entities

The Council considered, but did not select three other alternatives. The alternatives, and their impacts to small entities, are described below.

Alternative 1 would take no action and would maintain existing management measures and conditions in the fishery within recently observed ranges, resulting in no change to impacts on small entities. This is not a viable alternative because it would be inconsistent with the Ninth Circuit's ruling that the Cook Inlet EEZ must be included within the Salmon FMP.

Alternative 2 would delegate management to the State. If fully implemented, Alternative 2 would maintain many existing conditions within the fishery. Fishery participants would have the added burdens of obtaining a Federal Fisheries Permit, maintaining a Federal fishing logbook, and monitoring their fishing position with respect to EEZ and State waters as described in Sections 2.4.8 and 4.7.2.2 of the Analysis. However, the State is unwilling to accept a delegation of management authority. Therefore, Alternative 2 is not a viable alternative.

Alternative 3 would result in a separate Cook Inlet EEZ drift gillnet salmon fishery managed independently by NMFS and the Council. Alternative 3 would increase direct costs and burden to S03H permit holders and fishery stakeholders due to requirements including a Federal Fisheries Permit, VMS, logbooks, and accurate GPS positioning equipment as described in Sections 2.5.7 and 4.7.2.2 of the Analysis. Alternative 3 would also require that a total allowable catch (TAC) be set before each fishing season. The TAC would be set conservatively relative to the status quo in order to reduce the risk of overfishing without the benefit of inseason harvest data. Commercial salmon harvest in the EEZ would be prohibited if the Council and NMFS do not project a harvestable surplus, with an appropriate buffer for the increased management uncertainty. Further, as described in Section 2.5.3 of the Analysis, gaps in data could also require closing the EEZ to commercial fishing in any given year. Finally, Alternative 3 would increase uncertainty each year for fishery participants in developing a fishing plan because NMFS would determine whether the Cook Inlet EEZ could be open to commercial fishing on an annual basis and shortly before the start of the fishing season.

As discussed, Alternative 3 would impose substantial direct regulatory costs on participants but would not be expected to result in consistent commercial salmon fishing opportunities in the Cook Inlet EEZ. Alternative 4 will include the Cook Inlet EEZ in the Salmon FMP for Federal management by NMFS and the Council, consistent with the Ninth Circuit ruling. Alternative 4 will close the Cook Inlet EEZ but not impose any additional direct regulatory costs on participants and will allow directly regulated entities to possibly recoup lost EEZ harvest inside State waters. As a result, Alternative 4 minimizes impacts to small entities.

Based upon the best available scientific data, and in consideration of the Council's objectives of this action, it appears that there are no significant alternatives to the final rule that have the potential to accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes and that have the potential to minimize any significant adverse economic impact of the final rule on small entities. After the public process, the Council concluded that of the viable management alternatives, Alternative 4, Amendment 14, will best accomplish the stated objectives articulated in the preamble for the proposed rule, and in applicable statutes, and will minimize to the extent practicable adverse economic impacts on the universe of directly regulated small entities.

Collection-of-Information Requirements

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: October 26, 2021.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447; Pub. L. 111–281.

■ 2. In § 679.2, under the definition of "Salmon Management Area":

■ a. Revise paragraph (2) introductory text; and

■ b. Remove and reserve paragraph (2)(i).

The revision reads as follows:

§ 679.2 Definitions.

* * * * *

Salmon Management Area * * *

(2) *The West Area* means the area of the EEZ off Alaska in the Bering Sea, Chukchi Sea, Beaufort Sea, and the Gulf of Alaska west of the longitude of Cape Suckling (143°53.6′ W), including the Cook Inlet EEZ Subarea, but excludes the Prince William Sound Area and the Alaska Peninsula Area. The Cook Inlet EEZ Subarea means the EEZ waters of Cook Inlet north of a line at 59°46.15′ N. The Prince William Sound Area and the Alaska Peninsula Area are shown in Figure 23 to this part and described as:

* * * * *

■ 3. Revise Figure 23 to part 679 to read as follows:

Figure 23 to Part 679—Salmon Management Area (see § 679.2)

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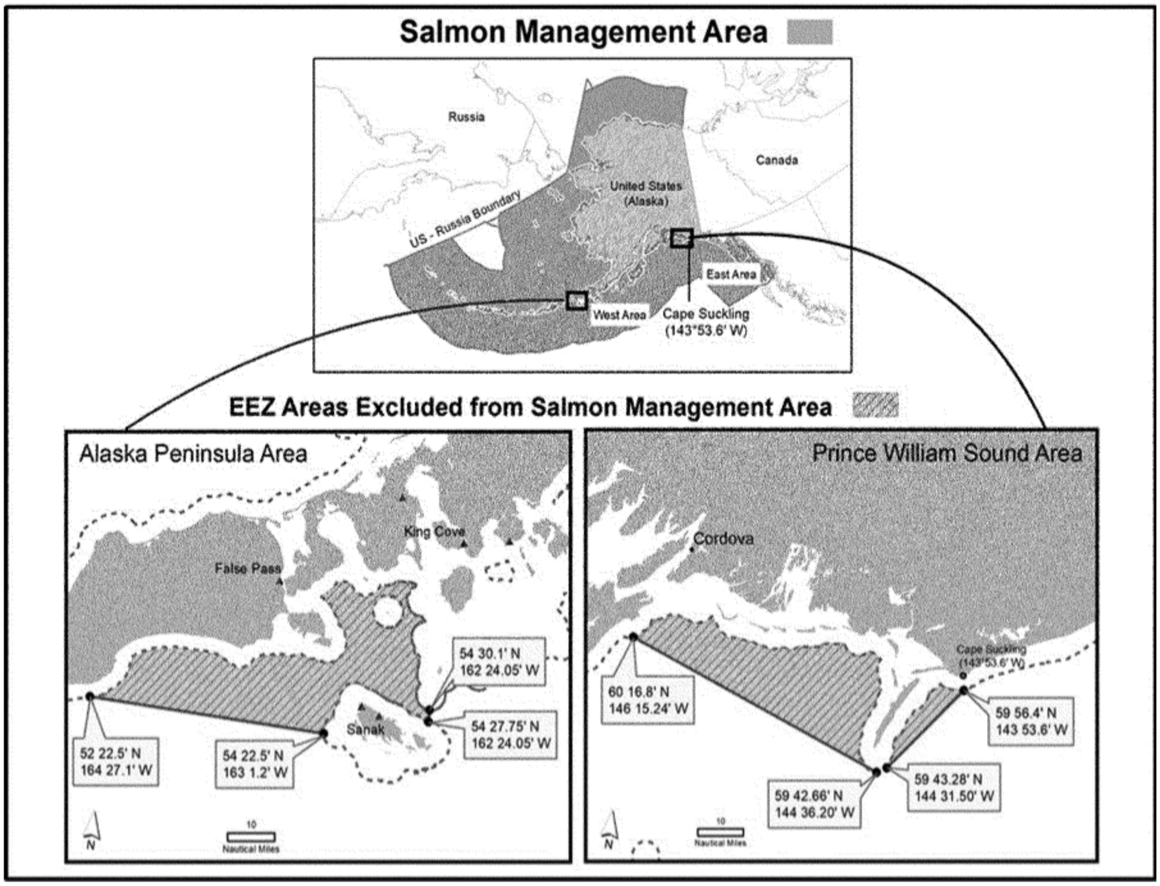
Figure 23 to part 679. Salmon Management Area



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