

APRIL 2018

**UNITED STATES DEPARTMENT OF COMMERCE****National Oceanic Atmospheric Administration***National Marine Fisheries Service**P.O. Box 21668**Juneau, Alaska 99802-1668*

March 29, 2018

Chairman Dan Hull
North Pacific Fishery Management Council
West 4th Street, Suite 306
Anchorage, Alaska 99501

Dear Chairman Hull:

The North Pacific Fishery Management Council (Council) is currently in the process of amending the Fishery Management Plan for the Salmon Fisheries in the EEZ Off Alaska (FMP) to bring it into compliance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) given the Ninth Circuit's decision in *United Cook Inlet Drift Association v. National Marine Fisheries Service*, 837 F.3d 1055 (9th Cir. 2016) (*UCIDA v. NMFS*). A discussion paper prepared for the Council's October 2017 meeting noted that the Council and NMFS may need to reconsider whether the sport fishery for salmon in the exclusive economic zone west of the longitude at Cape Suckling (West Area EEZ) requires conservation and management under the FMP.

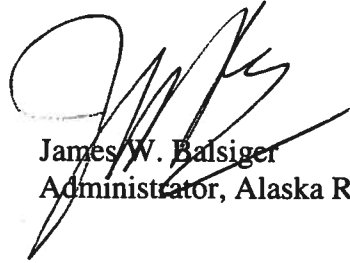
Since the October 2017 discussion paper, we have been working with NOAA General Counsel on the question of whether the sport fishery for salmon in the West Area EEZ must be included in the FMP given the decision in *UCIDA v. NMFS*. As you are aware, the Ninth Circuit held that section 302(h)(1) of the Magnuson-Stevens Act requires a Council to prepare an FMP for a fishery under its authority that requires conservation and management. However, the Ninth Circuit also acknowledged that under section 302(h)(1), a Council may determine that a fishery under its authority does not require conservation and management.

The Council and NMFS' rationale for removal of the West Area EEZ sport fishery was that: (1) State management of the sport fishery was consistent with the policies and standards of the Magnuson-Stevens Act, (2) Federal management of the sport fishery would serve no useful purpose or provide present or future benefits that justified the costs of Federal management, and (3) removal of the sport fishery from the FMP allowed the State to manage Alaska salmon stocks and directed fishing for those stocks as seamlessly as practicable throughout their range. This rationale indicates that the Council and NMFS determined that the sport fishery for salmon in the West Area EEZ did not require *Federal* conservation and management. However, this rationale does not explicitly address the determination required under *UCIDA v. NMFS*, which is whether the sport fishery for salmon in the West Area EEZ requires conservation and management. If the Council determines that the sport fishery in the West Area EEZ requires conservation and management, then it must be included in the FMP.



We recommend the Council initiate a determination as to whether the sport fishery for salmon in the West Area EEZ requires conservation and management. The Council could decide to undertake this determination in the FMP amendment currently being prepared for the Cook Inlet Area and the commercial salmon fishery that occurs within it, or the Council could decide to undertake this determination at a later time. In making this determination, the Council should consider NMFS's regulatory guidance on stocks and fisheries that require conservation and management at 50 C.F.R. section 600.305(c).

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Balsiger', is written over the typed name and title.

James W. Balsiger
Administrator, Alaska Region