EEZ Waters Are Not Separable

NMFS MSA Guidelines and National Standard Guidelines state:

§600.305 General. p.3
(a) (3) The national standards are statutory principles that must be followed in any FMP. The guidelines summarize Secretarial interpretations that have been, and will be, applied under these principles.

MSA National Standard 3 Guidelines p.44
(a) *Standard 3.* To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.
(b) *General.* The purpose of this standard is to induce a comprehensive approach to fishery management. 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.

The Council's Salmon FMP Discussion Paper reiterates the previously determined position that salmon should be managed as a unit throughout their range.

1.6.1 The Fishery Management Unit in the 1990 FMP
"The intended effect of the 1990 FMP was to conserve and manage the salmon resources in the North Pacific Ocean and to allow the fisheries that occur in State and EEZ waters to be managed as one fishery." p.32

1.6.2 The Fishery Management Unit in the 2012 Salmon FMP
"The Council recognized that salmon are best managed as a unit throughout their range and parsing out a portion of a fishery because it occurred in Federal waters and applying a separate management structure on that piece of the fishery would not be the optimal way to manage salmon." p.34

2.6.2 Alternative 2: Cooperative Management with the State
"…Further, because the fisheries take place in the EEZ and State waters without formal recognition of the boundary between these two areas, the OY should not and cannot be subdivided into separate parts for the EEZ and State waters." p.71

Attempting to bifurcate the UCI salmon fishery between the EEZ and state waters, through the use of an imaginary boundary line, does not comply with the intent of the MSA, or the National Standards or with the Councils prior actions and statements. Commercial fishing representatives maintain that a salmon FMP must apply to the entire fishery, not just a portion of it. As experts in our fishery we thoroughly understand and have repeatedly explained that it is not possible to differentiate between catches in EEZ versus State waters.

There is no scientifically valid method, known to the committee, that can differentiate between State or Federal waters harvest of salmon in the Cook Inlet commercial salmon fishery.

Cook Inlet experiences extreme tidal changes, in the Central District where the drift fleet fishes the vertical change can be up to 28 feet in 6 hours. The direction changes in 6 hours intervals from ebb to flood and back again. Tidal currents can run up to eight knots. Currents obviously run generally

north and south, but also move east and west. Irregular bathymetry, particularly south of Kalgin Island, generates current volatility. Tidal rips form, move and dissipate unpredictably. Winds may also blow from any direction and will affect the movement of fishing vessels and the movement of salmon.

Drift gillnetting on any particular day, for any one of 500+ vessels, is also unpredictable. Prior to, and during, each 12-hour fishing opening, vessel captains search the surface of the inlet looking for jumpers, tide rips or other likely fishing spots. Each time the 900 or 1,200-foot-long gillnet is deployed is considered one "set". A set may last as long as it takes to let the net out and pull it back on board – if it is obviously not catching and there are better prospects around. Another example is a set that lasts for a large part of the 12 hour fishing period; the net is deployed, it begins catching salmon and continues to catch as the captain tows the net from one end or the other, to keep it perpendicular to the current; and periodically reels in part of the net from alternating ends to pick fish while the balance of the net continues to fish. During a set like this, depending on the tide, the vessel could end up more than 20 miles north or south of the start position or, possibly, even near the same location as the set began, if it fished through a tide change.

More typical are short sets, lasting an hour or two, that that are picked up to allow the vessel to re-position. In drift gillnetting, while the net is deployed, the vessel moves with the current, but the salmon schools move more independently of the currents and can change their direction and depth. The fleet of fishing boats is in constant motion either with the currents or while under power.

The boundary line between the EEZ and state waters is not defined in a way that allows a vessel to determine its position relative to the line. The near shore boundary of the EEZ line is described as the line coterminous with the seaward boundary of the coastal states. The seaward boundary for Alaska, under the Submerged Lands Act, is typically described as three miles from the Mean Lower Low Water Line, or in some places the seaward boundary may be fixed by Supreme Court decree. There is no electronic device available that can be purchased and placed on a vessel that can determine where three miles from the Mean Lower Low water line is located or a line that the Supreme Court has decreed, unless that is a straight line. The location of the imaginary line is also subject to other differing interpretations. There are several different graphic depictions of the line within NMFS documents. There are differing verbal descriptions of the line in NMFS documents, in legal documents (NOAA Shore and Sea Boundaries, Volume Three) and in Supreme Court rulings. If the actual location of the line is somewhere in the Central District of Cook Inlet, then it will be in an area that is intensely utilized by the fishing fleet. Fishing vessels may drift back and forth across the line randomly while on sets; a deployed net may be on both sides of any line at the same time. It is not realistic to consider that any methodology intended to gather data only for EEZ waters will have any degree of reliability or consistency. The imaginary boundary line is also not relevant to how the fishery must function, for many of the same reasons listed above.

Trying to determine harvest by location is not a new concept, it has been attempted since before statehood. When the Dept. of Interior managed the fishery, they attempted to track catch data by location in Cook Inlet. They created an array of numbered "statistical areas" within a series of boxes formed by intersecting lines that generally run north-south and east-west over the inlet. When Alaska became a state, the ADFG continued using the same or a similar system. Some of these "stat areas" have the same number as they did prior to statehood. When a fisherman sells his or her catch to a processor there is a line on the fish ticket to record what statistical area the fisherman was in that day. For all the reasons described above, this system of gathering data relative to where the fish

were caught was entirely meaningless, as it related to the drift fleet, as no one could describe with any accuracy what statistical area they were in and they may have been in many different areas over the course of the day. Perhaps, in realizing that this data was not relevant to managing the drift fishery, the ADFG never gathered this statistical area data in a systematic method and in fact, often lumped all the data into a single statistical area, of their choosing, for easier recording of the daily harvest. Because of this historical practice, there is no valid method, using historical data, that can differentiate between salmon harvested in the EEZ or in state waters and any attempts to use historical harvest data from the drift fleet in apportioning the harvest will be equally invalid.

The statistical areas are somewhat meaningful for management of the near shore set net fishery as those nets are fixed in place.