



# North Pacific Fishery Management Council

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## C3 Cook Inlet Salmon FMP Amendment

December 2022 Council Meeting

### Action Memo

- Council Staff: Nicole Watson
- Other Presenters: Doug Duncan (NMFS) – project lead, Marcus Hartley (Northern Economics), Dr. Mike Downs (Wislow Research)
- Action Required:
1. Review the Initial Review Draft of the EA/RIR.
  2. Affirm the suite of provided alternatives are appropriate.

### BACKGROUND

The North Pacific Fishery Management Council (Council) is considering an action that would amend the *Fishery Management Plan for the Salmon Fisheries in the EEZ off Alaska* (FMP) to manage the salmon fisheries that occur in Federal (EEZ) waters of Cook Inlet. The Initial Review Draft of the EA/RIR prepared for this action is posted to the agenda and describes and analyzes the impacts of the four management alternatives under consideration by the Council.

The Council passed a motion at its October 2022 meeting with a purpose and need to develop an analysis for a new amendment to the Salmon FMP for initial review at the December 2022 meeting. The Council requested that staff update the previous final review draft considered by the Council in December 2020 to reflect recent events and identify possible variations on the alternatives analyzed in that document that meet the new purpose and need. In response to both the 2016 Ninth Circuit ruling and the 2022 summary judgment opinion of the Alaska District Court in *UCIDA et al. v. NMFS*, the Council is now considering new management measures and modified alternatives that comply with Magnuson-Stevens Act requirements for the Cook Inlet salmon fishery in the EEZ, such as status determination criteria, annual catch limits, and accountability measures.

At this meeting, the Council will review the analysis and determine whether any adjustment is required to the alternatives under consideration. This amendment is being considered under an accelerated timeline, in order to be responsive to the District Court.

### ***Purpose and Need***

The Council intends to amend the Salmon FMP to manage salmon fishing in the Federal waters of upper Cook Inlet. Federal management must be consistent with the Magnuson-Stevens Act, including the required provisions for an FMP specified in section 303(a). This proposed action is necessary to bring the Salmon FMP into compliance with the Magnuson-Stevens Act consistent with the 2016 Ninth Circuit decision and the recent summary judgment opinion of the Alaska District Court in *UCIDA et al. v. NMFS*.

## **Alternatives**

In response to the District court's order and the previous Ninth Circuit ruling, modifications to two alternatives included in the December 2020 final review draft have been proposed. Possible variations on options for Alternatives 2 and 3 may also help address issues previously identified in public comment and Council discussion regarding the burden of the annual management cycle and introduction of new management uncertainty with the application of Federal management. No modifications have been made to Alternative 1 (No Action) as it is required under NEPA for analytical purposes nor to Alternative 4 (the Council's previous preferred alternative in December 2020, implemented as Amendment 14 to the FMP), as it was found contrary to law.

**Alternative 1: No Action.** No amendment to the Salmon FMP. This alternative would maintain the existing management regime, which excludes the Cook Inlet EEZ and the commercial salmon fishery within it from Federal management under the FMP. Alternative 1 is not a viable alternative given the 2016 Ninth Circuit decision, however, NEPA requires that Federal agencies analyze a no action alternative.

**Alternative 2: Federal management of the fishery in the EEZ with specific management measures delegated to the State.** Amend the Salmon FMP to include the Cook Inlet EEZ in the FMP's fishery management unit and establish a Federal management regime for the salmon fishery that delegates specific management measures to the State of Alaska, to use existing State salmon management infrastructure, in compliance with the MSA and Ninth Circuit ruling. Alternative 2 would identify the management measures that would be managed by the Council and NMFS, the management measures that would be delegated to the State to manage with Federal oversight, and the process for delegation and oversight of management.

**Alternative 3: Federal management of the fishery in the EEZ.** Amend the Salmon FMP to include the Cook Inlet EEZ in the FMP's fishery management unit and apply Federal management to the salmon fishery that occurs in the EEZ.

**Alternative 4: Federal management of the commercial fishery in the EEZ with the EEZ closed to commercial fishing.** Amend the Salmon FMP to include the Cook Inlet EEZ in the FMP's fishery management unit in the West Area and apply Federal management by applying the existing West Area prohibition on commercial salmon fishing in the EEZ to the Cook Inlet EEZ. Although this was the Council's Preferred Alternative in 2020, Alternative 4 is not a viable alternative given the 2022 District Court opinion.

A detailed summary of the Alternatives and associated elements can be found in Table ES-1 included in the Executive Summary of the draft EA/RIR provided for review.