



C2 Cook Inlet Salmon Final Action

December 2020

Action Memo

Council Staff: Jim Armstrong

Presenter: Doug Duncan

Action Required:

1. Review the Public Review Draft of the EA/RIR.
2. Recommend a preferred alternative, as appropriate.

BACKGROUND

The Council intends to take final action on the Cook Inlet Salmon issue at this meeting by adopting a preferred alternative for federal management of commercial salmon fishing in EEZ waters of Cook Inlet. The Public 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 approaches under consideration by the Council. Currently, the portion of the Cook Inlet EEZ where commercial salmon fishing occurs is excluded from the Fishery Management Plan for the Salmon Fisheries in the EEZ off Alaska (FMP). This exclusion from the FMP defers management of salmon fishing in the Cook Inlet EEZ to the State of Alaska. A Ninth Circuit Court ruling held that the Council must amend the FMP to include the Cook Inlet EEZ, in accordance with the MSA and all other applicable Federal law. The Council's action on this agenda item will only be applicable to commercial salmon fisheries in the Cook Inlet EEZ.

The Council conducted its initial review of the EA/RIR at its October 2020 meeting, at which time three alternatives were under consideration. At that review, and under the advice of its SSC, the Council approved release of the analysis for public review, with the existing purpose and need statement, instructing staff to accommodate SSC recommendations, as applicable. The Council also clarified that the option to apply the FMP's general West Area prohibition on commercial salmon fishing in the EEZ to the Cook Inlet EEZ should be reflected as a distinct alternative for consideration. A closure of the Cook Inlet EEZ to commercial salmon fishing was contemplated under Alternative 3 in the analysis, whereby closure would occur based on stock status or when information needed for management is absent. By adding Alternative 4, however, the Council clarified that it could also recommend an extended closure as a policy preference.

Subsequent to the October 2020 Council meeting, the Alaska Board of Fisheries and Council's Joint Protocol Committee met by web conference on November 5, 2020 to review and discuss potential impacts and management changes associated with this action. A presentation to the Committee was given by Doug Duncan (NMFS AKRO) and a summary of that meeting is provided under the Executive Director's Report in the agenda for this meeting. No action was taken by the Committee, however, some BOF members may choose to provide their own comments to the Council.

The Cook Inlet salmon action was initiated in 2017 in response to a Ninth Circuit Court finding that the Salmon FMP was out of compliance with the Magnuson-Stevens Act (MSA) by excluding areas that

overlap with federal waters. The Court ruling was brought about by litigation from the United Cook Inlet Drift Association (UCIDA) and Cook Inlet Fishermen's Fund (CIFF) which challenged the exclusion of the Cook Inlet EEZ from the FMP. Considerable time was dedicated to the identification of viable management measures through the Cook Inlet Salmon Committee, which was created to include stakeholders, including plaintiffs, in the development of an FMP amendment. Additionally, the Council directed and reviewed multiple iterations of the analysis during this period. In December 2019, UCIDA/CIFF appealed to federal court to expedite completion of an amended FMP. In January 2020, the Court established a deadline of Dec 31, 2020 for final Council action, but gave no instruction on the content of the amendment. The Council was provided with the Committee's recommendations at its June 2020 meeting, however, many of the Committee's recommendations were predicated on expanding the scope of the federal FMP into State jurisdictional waters and decision making, which is untenable under the MSA.

ALTERNATIVES

The Council is considering the following range of alternatives. In October 2020, the Council modified Alternatives 2 and 3 to clarify their specific applicability to the commercial fishery in the EEZ, and added Alternative 4 to include the Cook Inlet EEZ in the FMP's West Area.

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 Ninth Circuit decision, however, NEPA requires that Federal agencies analyze a no action alternative.

Alternative 2: Federal management of the commercial 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 in the West Area and establish a Federal management regime for the commercial 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 commercial fishery in the EEZ. 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 to the commercial 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.

Each Alternative contains elements that address:

- management policy and objectives,
- conservation and management measures,
- status determination criteria,
- annual catch limits and accountability measures,
- methods to report bycatch and measures to minimize bycatch and the mortality of unavoidable bycatch,
- a process to annually determine the status of the stocks and provide stock assessment and fishery evaluation information, and

- the process for Federal oversight and review of State management measures applicable to the commercial salmon fishery in the Cook Inlet EEZ and implemented under the authority delegated to the State by the FMP.
- monitoring, recordkeeping, and reporting requirements.