

more saline and less suitable as habitat for Tiehm's buckwheat. Mineral exploration vehicles also can carry the seeds of nonnative invasive plant species into the area. Road improvements also allow easier and greater access for recreational vehicles and off-highway vehicles (OHVs), with OHV impacts documented in subpopulation 1. Both livestock grazing and OHV use can kill or damage individual plants and modify Tiehm's buckwheat habitat through fragmentation and soil compaction.

In addition, Tiehm's buckwheat is adapted to dry upland sites, subject only to occasional saturation by rain and snow. Under climate change predictions, we anticipate alteration of precipitation and temperature patterns, as models forecast warmer temperatures and slight increases in precipitation. The timing and type of precipitation received (snow vs. rain) may impact plant transpiration and the soil water recharge needed by Tiehm's buckwheat. Additionally, variability in interannual precipitation combined with increasing temperatures, as recently seen from 2015 through 2020, may make conditions less suitable for Tiehm's buckwheat by bolstering local rodent populations. High rodent abundance combined with high temperatures and drought may have contributed to the large herbivore impacts in 2020 in both the transplant experiment and native population. Thus, climate change may exacerbate impacts from other threats currently affecting this species and its habitat.

Tiehm's buckwheat does not currently receive regulatory protection from the State of Nevada. BLM has designated Tiehm's buckwheat as a sensitive species. However, BLM's regulations require operators to avoid adverse effects only to species listed as threatened or endangered under the Act and their habitat (43 CFR 3809.420(b)(7)), not sensitive species. Also, under BLM's regulations operators may explore, place mining claim monuments, and cause a surface disturbance of up to 5 acres after an operator gives notice to BLM and waits 15 days (43 CFR 3809.21(a)). BLM lacks discretion to require conservation measures for sensitive species as a condition for exploring for or developing minerals subject to disposal under the Mining Law of 1872, as amended (30 U.S.C. 22–54). In some circumstances, operators may include voluntary commitments to undertake protection or conservation measures as part of their proposed mining operations, as Ioneer has done in its proposed mine plan.

### Finding

Based upon the preceding information, the totality of threats described above, and other information contained in the Tiehm's buckwheat Species Status Assessment (SSA), the Service has determined that the petitioned action to list Tiehm's buckwheat under the Endangered Species Act of 1973, as amended, is warranted. The Service, therefore, will promptly publish a proposed rule to list Tiehm's buckwheat. We will open a public comment period at the time of publication of the proposed rule. Any information received from the public prior to the publication of the proposed rule will be considered and addressed when we address comments received on the proposed rule.

### Author

This document was prepared by the U.S. Fish and Wildlife Service, Reno Fish and Wildlife Office, 1340 Financial Blvd., Suite 234, Reno, NV 89521 and the U.S. Fish and Wildlife Service, Regional Office, 2800 Cottage Way, Sacramento, CA 95825.

### Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

### Martha Williams,

*Principal Deputy Director, Exercising the Delegated Authority of the Director, U.S. Fish and Wildlife Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No.: 210528–0119]

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:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement Amendment 14 to the Fishery Management Plan for the Salmon Fisheries in the Exclusive Economic Zone (EEZ) Off Alaska (Salmon FMP). If approved,

Amendment 14 would 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. The management measure implemented by Amendment 14 would be to apply the prohibition on commercial salmon fishing that is currently established in the West Area to the newly added Cook Inlet EEZ Subarea. This proposed 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 proposed rule is intended to promote the goals and objectives of the Magnuson-Stevens Act, the Salmon FMP, and other applicable laws.

**DATES:** Submit comments on or before July 6, 2021.

**ADDRESSES:** You may submit comments, identified by NOAA–NMFS–2021–0018, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA–NMFS–2021–0018 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

**Instructions:** Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (*e.g.*, name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Electronic copies of the Environmental Assessment, the Regulatory Impact Review, and the Social Impact Analysis (collectively referred to as the “Analysis”), and the draft Finding of No Significant Impact prepared for this proposed rule may be

obtained from <http://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](mailto:doug.duncan@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**Authority for Action**

NMFS manages U.S. salmon fisheries off of Alaska under the Salmon FMP. The Council prepared, and the Secretary of Commerce (Secretary) approved, the Salmon FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* Regulations implementing the Salmon FMP are located at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600. The Council is authorized to prepare and recommend an FMP amendment for the conservation and management of a fishery managed under the FMP. NMFS conducts rulemaking to implement FMP amendments and regulatory amendments.

The Council recommended Amendment 14 to incorporate the Cook Inlet EEZ Subarea (defined as EEZ waters north of a line at 59°46.15' N) into the Salmon FMP's Fishery Management Unit as a part of the West Area. The West Area is currently defined as the EEZ off Alaska in the Bering Sea, Chukchi Sea, Beaufort Sea, and the Gulf of Alaska west of the longitude of Cape Suckling, at 143°53.6' W longitude except for the Cook Inlet Area, the Prince William Sound Area, and the Alaska Peninsula Area. This proposed rule would implement Amendment 14.

A notice of availability (NOA) for Amendment 14 was published in the **Federal Register** on May 18, 2021 with comments invited through July 19, 2021. All relevant written comments received by July 19, 2021, whether specifically directed to the NOA or this proposed rule, will be considered by NMFS in the decision to approve, disapprove, or partially approve Amendment 14. Commenters do not need to submit the same comments on both the NOA and this proposed rule. Comments submitted on this proposed rule by the end of the comment period for this proposed rule (See **DATES**) will be considered by NMFS in our decision whether to approve and implement Amendment 14.

**Background**

In December 2020, the Council recommended Amendment 14 to the Salmon FMP. Amendment 14 would 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 Council and NMFS. The management measure implemented by Amendment 14 would apply the prohibition on commercial salmon fishing that is currently established in the West Area to the newly added Cook Inlet EEZ Subarea. This proposed rule would implement Amendment 14 by removing the regulation that excludes the Cook Inlet EEZ Subarea from the directly adjacent West Area. This action specifically addresses management of the Cook Inlet EEZ Subarea and the commercial salmon fishery that occurs there.

*History of the Salmon FMP*

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 Salmon FMP was comprehensively revised by Amendment 3 in 1990 (55 FR 47773, November 15, 1990), and again most recently by Amendment 12 in 2012 (77 FR 75570, December 21, 2012).

Since 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. This action focuses on commercial salmon fishing management in the West Area. Prior to Amendment 12, the Salmon FMP authorized commercial fishing in the East Area, sport salmon fishing in both areas, and prohibited commercial salmon fishing in the West Area. However, the commercial salmon fishing prohibition in the West Area was not applied to three areas in the 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 (1954 Act). The Salmon FMP refers to these three areas of the EEZ where commercial net fishing for salmon occurs as the "Cook Inlet EEZ," the "Alaska Peninsula EEZ," and the "Prince William Sound EEZ," and refers to these areas collectively as the "traditional net fishing areas." Under the authority of the 1954 Act, NMFS issued regulations that set the outside fishing boundaries for the traditional net fishing areas as those set forth under State of Alaska (State) regulations and stated that any fishing in these areas was to be conducted pursuant to State regulations.

In 1990, the Council amended the Salmon FMP, continuing to prohibit commercial salmon fishing with nets in the EEZ, with the exception of the traditional net fishing areas managed by the State. The next major modification to the Salmon FMP occurred when the Council recommended Amendment 12 in December 2011. In developing Amendment 12, the Council recognized that the law governing the three traditional net fishing areas (the 1954 Act) had changed and the Salmon FMP was vague with respect to Federal management of the traditional net fishing areas. After considering various alternatives, the Council recommended and NMFS approved Amendment 12, which removed the three traditional net fishing areas from the Salmon FMP's Fishery Management Unit.

Removing the traditional net fishing areas from the Salmon FMP's West Area allowed the State to continue managing these areas independently, which the State has done since before the inception of the Salmon FMP in 1979. Any commercial fishing for salmon by State registered vessels in the traditional net fishing areas is managed solely by the State. In developing Amendment 12, the Council considered Federal management of the three traditional net fishing areas and the salmon fisheries that occur within them, but determined that (1) the State was managing the salmon fisheries within these three areas consistent with the policies and standards of the Magnuson-Stevens Act, (2) the Council and NMFS did not have the expertise or infrastructure (such as personnel, monitoring and reporting systems, and processes for salmon stock assessments) to manage Alaska salmon fisheries, and (3) Federal management of these areas would not serve a useful purpose or provide additional benefits and protections to the salmon fisheries within these areas. The Council recognized that salmon are best managed as a unit throughout their range and separate Federal management of a portion of the fishery would not be optimal. The Council also recognized the State's long-standing expertise and well developed infrastructure for salmon management and the fact that the State has been adequately managing the salmon fisheries in Alaska since Statehood. The Council determined that Amendment 12 was consistent with the management approach established in the original Salmon FMP in 1979.

The final rule implementing Amendment 12 was published in the **Federal Register** on December 21, 2012 (77 FR 75570). On January 18, 2013, Cook Inlet commercial salmon fishermen and seafood processors filed

a lawsuit in Federal district court challenging Amendment 12 and its implementing regulations. *United Cook Inlet Drift Ass'n v. NMFS*, No. 3:13-cv-00104-TMB, 2014 WL 10988279 (D. Alaska 2014). The lawsuit included a challenge to Amendment 12's removal of the Cook Inlet EEZ from the Salmon FMP. On appeal, the Ninth Circuit held that section 302(h)(1) of the Magnuson-Stevens Act (16 U.S.C. 1852(h)(1)) clearly and unambiguously 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 it be included in the Salmon FMP.

#### *Developing Management Alternatives*

The Council spent significant time from 2017 to 2020 developing and evaluating management alternatives to comply with the Ninth Circuit's ruling. The Council broadly identified two management approaches for amending the FMP, one that would incorporate the area into the Salmon FMP and delegate authority over specific management measures to the State with review and oversight by the Council (Alternative 2; Section 2.4 of the Analysis), and one that would incorporate the area into the Salmon FMP and retain all management within the Federal process (Alternative 3; Section 2.5 of the Analysis). The Analysis identified the management measures and processes that would be required to implement these two approaches, as well as the complexities, uncertainties, benefits, costs, and burdens to fishery participants associated with these two approaches. In October 2020, the Council considered all of this information and chose to identify an approach that would incorporate the Cook Inlet EEZ into the Salmon FMP and close the area to commercial salmon fishing as a separate and distinct management alternative (Alternative 4; Section 2.6 of the Analysis). This approach was previously identified as a potential management outcome under Alternative 3. Similar to Alternative 3, Alternative 4 would retain all management within the Federal process and would not delegate management authority to the State. It is also noted that the Council considered taking no action (Alternative 1; Section 2.3 of the Analysis), but this is not a viable approach because it would be inconsistent with the Ninth

Circuit ruling and the Magnuson-Stevens Act.

To obtain important participant insight into the management of Cook Inlet salmon fisheries, the Council formed the Cook Inlet Salmon Committee (Committee), consisting of Cook Inlet salmon fishery stakeholders from the harvesting and processing sectors. The Committee met six times from 2018 to 2020 to develop recommendations for the Council regarding management of the Cook Inlet EEZ. Ultimately, the Committee recommended that management be delegated to the State, but with expanded Federal oversight and review, as well as a management scope that included both the State marine and fresh waters of Cook Inlet. The Council did not include the Committee's recommended alternative for further consideration because the Council does not have any jurisdiction over State fresh waters and can only assert jurisdiction over fisheries occurring within State marine waters under very limited circumstances if the Secretary preempts state management under section 306(b) of the Magnuson-Stevens Act (16 U.S.C. 1856(b)). The conditions required for preemption are not met for the salmon fisheries in the State marine waters of Cook Inlet. A more complete discussion of the Committee's work and consideration by the Council can be found in Sections 1.4 and 2.7 of the Analysis, respectively.

Over the course of several years, Federal and State fisheries scientists and fishery managers developed proposed status determination criteria complete with all the reference points required by the Magnuson-Stevens Act for appropriate conservation and management of Cook Inlet salmon stocks. These criteria were reviewed by the Council and its Scientific and Statistical Committee (SSC). This was a significant undertaking and integral to the development and analysis of alternatives. This process included input from State scientists currently managing the fishery, as well as comments from Committee members and other stakeholders. The proposed status determination criteria and reference points served as the foundation for proposed Federal management of the Cook Inlet EEZ under Alternatives 2 and 3 but were also applied retrospectively to provide a comprehensive assessment of the State's escapement-based management of Cook Inlet salmon stocks. The Analysis found that State management of Cook Inlet salmon stocks has been consistently appropriate for conservation within the bounds of the status determination

criteria that would be implemented under Federal management. The analysis further determined that the addition of Federal management is unlikely to appreciably change salmon conservation metrics and thresholds established in Cook Inlet (Section 3.1 of the Analysis). However, while conservation objectives for Cook Inlet salmon stocks were consistent across alternatives, the Analysis demonstrated that the ability to fully achieve these objectives while accounting for management uncertainty and management flexibility varied among alternatives (Sections 3.1 and 4.7.1 of the Analysis).

Recognizing the significant regional, cultural, and economic importance of Cook Inlet salmon resources, the Council invested significant resources towards working to find solutions to challenges identified by stakeholders and fishery managers throughout the Salmon FMP amendment development process. While the Council identified some flexibility with the specific management measures that could be implemented under Federal management with specific management measures delegated to the State (Alternative 2) and Federal management (Alternatives 3 and 4), neither the Council, NMFS, the State, nor stakeholders were able to identify another fundamentally different management approach that could satisfy the Ninth Circuit ruling, the Magnuson-Stevens Act, and other applicable law.

After this extensive review and development process, and as explained in further detail below, the Council took final action to recommend Alternative 4 as Amendment 14 to the Salmon FMP. The Council determined, and NMFS agrees, that Federal management of the Cook Inlet EEZ through closure of the area to commercial salmon fishing (1) takes the most precautionary approach to minimizing the potential for overfishing, (2) avoids creating new management uncertainty, (3) minimizes regulatory burden to fishery participants, (4) maximizes management efficiency for Cook Inlet salmon fisheries, and (5) avoids the introduction of an additional management jurisdiction and the associated uncertainty it would add to the already complex and interdependent network of Cook Inlet salmon fisheries.

The Council considered but did not select Alternative 2, which would have delegated management authority over the Cook Inlet EEZ to the State. During Council deliberation, the State announced that it would not accept a delegation of management authority for Cook Inlet. Although section

306(a)(3)(B) of the Magnuson-Stevens Act allows a Council to delegate management authority to a state, subject to a three-quarters majority vote, neither the Council nor NMFS can compel a state to cooperate in a fishery management plan that delegates authority (16 U.S.C. 1856(a)(3)(B)). Therefore, after the State announced it would not accept delegated management authority for the Cook Inlet EEZ, Alternative 2 was no longer a viable option.

Because Alternative 1 (no action) and Alternative 2 (Federal management with specific management measures delegated to the State) were not viable, this focused Council consideration on Alternative 3 (Federal management) and Alternative 4 (Federal management with the Cook Inlet EEZ closed to commercial salmon fishing). The Council considered and rejected Alternative 3. The Council determined, and NMFS agrees, that a separately managed Federal commercial salmon fishery in the Cook Inlet EEZ would have significant management challenges alongside adjacent State-managed salmon fisheries, resulting in precautionary reductions in EEZ salmon harvests or closures of the area as detailed in Sections 2.5 and 4.7.1.3 of the Analysis. When a commercial salmon fishery could occur in the Cook Inlet EEZ, Alternative 3 would create new management uncertainty relative to the status quo because Federal harvest limits must be established pre-season and Federal fishery managers do not have the same tools and flexibility available to State managers to quickly respond to updated in-season information about salmon runs that deviate from pre-season estimates (Sections 2.5.3 and 2.5.10 of the Analysis). Alternative 3 would increase the risk of overfishing or forgone yield.

For example, if a salmon run is larger than expected and a Federal catch limit for a stock is reached, it is unlikely Federal managers would be able to adjust Federal catch limits to provide for additional harvest in the Cook Inlet EEZ within the window of harvest opportunity. These salmon would later be available for harvest in State waters, but because it would be difficult to predict the timing of Federal closures and such closures could occur with short notice, Alternative 3 is expected to make subsequent utilization in State waters more challenging. Conversely, if the run strength of one or more salmon stocks is weaker than expected, Federal managers would have less data to evaluate this as well as a longer delay to close the fishery, increasing the risk of not meeting escapement goals and overfishing weak stocks. It is important

to note that the Cook Inlet salmon fishery targets mixed stocks of salmon. The composition, abundance, and productivity of salmon stocks and species in the fishery varies substantially on an annual basis, and the need to conserve weaker stocks and avoid overfishing by reducing fishing effort sometimes results in foregone harvest from more productive stocks. This is of particular concern for salmon gillnet gear which cannot always target strong stocks while sufficiently limiting harvest on co-occurring weak stocks. These practical considerations, combined with the pre-season establishment of catch limits for each stock and stock complex, present significant challenges to consistently achieving appropriate harvest rates on all stocks under Alternative 3.

In addition, NMFS must manage the Federal fisheries under its jurisdiction to prevent overfishing, including accounting for all removals, even when the removals responsible for causing overfishing are outside of NMFS's jurisdiction. Therefore, if the proportion of salmon removals increase in State waters, harvests in the EEZ would be reduced to prevent overfishing. Because of these factors and NMFS's overriding responsibility under the Magnuson-Stevens Act to prevent overfishing, NMFS expects Cook Inlet EEZ catch limits under Alternative 3 would be much more conservative than EEZ harvest levels under the status quo. As a result of limited data, increased management uncertainty, decreased management flexibility, and uncertainty about future State water harvest levels, NMFS expects that Alternative 3 could often require closing the EEZ to commercial fishing to account for uncertainty and prevent overfishing.

Another important consideration under Alternative 3 is the requirement for effective monitoring, recordkeeping, reporting, and enforcement of directly adjacent but separately managed State and Federal salmon fisheries within Cook Inlet. To ensure that salmon catch from the Cook Inlet EEZ could be accurately accounted for in order to avoid exceeding Federal catch limits, additional Federal fishery monitoring would be required (Section 2.5.7 of the Analysis). This would include requiring a Federal Fisheries Permit, completion of a required Federal logbook, and required use of a Vessel Monitoring System (VMS). Federal Fisheries Permits and logbooks would be provided at no cost to participants, but would require time to obtain and complete. The average cost for purchase, installation, and activation of a VMS is estimated at \$3,500, and annual variable

costs may include transmission costs of around \$800 and potential maintenance and repairs averaging \$77 (Section 4.7.2.2.6 of the Analysis). While there are grants available to help offset the initial purchase price of a VMS unit, ongoing operation and maintenance costs would be the responsibility of participants. These additional costs and burdens from required monitoring, recordkeeping, and reporting would not be expected to produce commensurate benefits given the anticipated reductions in EEZ harvests and could disproportionately impact economically marginal participants.

Ensuring that vessels participating only in the State waters fishery do not harvest in EEZ waters is another important consideration. As described in Section 2.5.7 of the Analysis, NMFS had concerns about monitoring vessels not registered to participate in the EEZ fishery to ensure that they do not intentionally or inadvertently harvest fish in the EEZ. This concern could be most simply addressed by opening the EEZ drift gillnet fishery at different times than when the State salmon drift gillnet fishery is open to allow for clear enforcement of the single open area. However, staggering the opening of EEZ and State salmon drift gillnet fisheries presents significant feasibility concerns given the dynamic nature of State management and the limited flexibility of Federal managers. For example, a short notice opening in State waters could disrupt a scheduled Federal opening. Additional monitoring of State waters participants could allow for concurrent State and Federal water openings, but this is not a viable solution because FMP requirements could not be imposed on vessels only registered and operating in the State waters drift gillnet salmon fishery.

Under Alternative 3, the annual Council consideration and determination of whether to allow an EEZ fishery would also increase uncertainty for fishery participants and processors, as well as make it difficult for State managers to optimize management of salmon fisheries within State waters given the strong interactions between all salmon fisheries in Cook Inlet and the potential for highly variable biological and management conditions across Cook Inlet in a given year. For example, multiple sets of State management measures and contingency plans would have to be developed in order to account for (1) whether the EEZ is open in a given year, (2) the potential for multiple salmon stock abundance scenarios, and (3) a potentially unpredictable closure of the EEZ to

commercial salmon fishing in a given year if a Federal catch limit is reached sooner than predicted. Therefore, NMFS expects that Alternative 3 would pose significant challenges to achieving optimum yield (OY) on a continuing basis.

Finally, the Council acknowledged that neither the Council nor NMFS currently has the expertise or infrastructure to optimally manage salmon fisheries in the EEZ off Alaska independent of the State. Federal managers would be dependent on a high degree of voluntary cooperation from State managers for successful management of Cook Inlet salmon stocks under Alternative 3. For a commercial salmon fishery to occur in a given year under Alternative 3, the conservation and management conditions described in Section 2.5.3 of the Analysis must be met. These include a Federal salmon data gathering process for Cook Inlet that is adequately supported with data from State salmon fisheries in Cook Inlet, a harvestable surplus of salmon available in the EEZ that could support directed fishery openings, and salmon harvest reporting tools that allow the Federal catch accounting system to adequately monitor harvest and bycatch such that overfishing can be prevented. While management capacity could be developed over time, independent Federal management could nonetheless result in annual closures of the Cook Inlet EEZ due to separate Federal and State management (Section 2.5.3 of the Analysis). Developing expertise would require significant agency resources, and new Federal infrastructure would increase the burden of regulatory compliance on participants. Even with an established Federal infrastructure and experienced managers, it is expected that EEZ harvests would be reduced over the long term for the reasons stated above without significant anticipated conservation and management benefits.

#### **Amendment 14 and This Proposed Rule**

With Amendment 14 and this proposed rule, the Council and NMFS are proposing to amend the Salmon FMP and Federal regulations to comply with the Ninth Circuit's decision, the Magnuson-Stevens Act, and other applicable law. Amendment 14 and this proposed rule would 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 Council and NMFS. With Amendment 14, most existing FMP

provisions that apply to the West Area, including the prohibition on commercial salmon fishing, would also apply to the Cook Inlet EEZ Subarea.

The reference points of maximum sustainable yield (MSY) and OY would be separately specified for the Cook Inlet salmon fishery. Additionally, an annual catch limit (ACL) would be separately specified for the commercial salmon fishery in the Cook Inlet EEZ Subarea, reflecting the fact that Cook Inlet salmon stocks have historically been harvested in both State and Federal waters. This action would not modify reference points already established for the rest of the existing West Area. MSY would be established for the Cook Inlet salmon fishery as the maximum amount of harvest possible under the State's escapement goals, which is the largest long-term average catch that can be taken by the fishery under prevailing ecological, environmental conditions and fishery technological characteristics (*e.g.*, gear selectivity), and the distribution of catch among fishery sectors (50 CFR 600.310(e)(1)(i)). This includes the use of indicator stocks to manage where escapement is not directly known. Escapement goals account for biological productivity and ecological factors (Sections 3.1 and 11 of the Analysis). The Cook Inlet salmon fishery includes the stocks of salmon harvested by all sectors within State and Federal waters of Cook Inlet.

The OY range for the Cook Inlet salmon fishery would be 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; and inseason indices of stock strength.

The Council and NMFS determined that the proposed OY would be fully achieved in Cook Inlet State water salmon fisheries 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. Therefore,

Amendment 14 would establish an ACL of zero for the commercial salmon fishery in the Cook Inlet EEZ Subarea. The proposed management measure of closing the Cook Inlet EEZ Subarea to commercial salmon fishing would achieve the proposed ACL. Given that the Cook Inlet EEZ Subarea management measure is fishery closure, additional reference points and accountability measures are not necessary and therefore would not be specified.

This proposed rule would revise 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 proposed rule would also revise 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 would be subject to the prohibition on commercial fishing for salmon at § 679.7(h)(2).

#### *Objectives and Rationale for Action*

The primary objective of this action is to apply Federal management to the commercial salmon fishery in the Cook Inlet EEZ in accordance with the Magnuson-Stevens Act. In recommending Amendment 14, the Council ultimately concluded that managing the Cook Inlet EEZ by prohibiting commercial salmon fishing optimized conservation and management of Cook Inlet salmon fisheries when considering the costs and benefits of the available management alternatives. Through this proposed action, the Council would continue to apply its longstanding salmon management policy for the West Area, which is to facilitate State salmon management in accordance with the Magnuson-Stevens Act and applicable Federal law. As with the rest of the West Area, this policy would be achieved by prohibiting commercial fishing for salmon in the Cook Inlet EEZ Subarea so that the State can manage Alaska salmon stocks as a unit within State waters. NMFS determined that salmon fishery resources in Cook Inlet can be fully utilized by salmon fisheries occurring within State waters and that the State manages its salmon fisheries based on the best available information using the State's escapement goal management system. This proposed rule would not modify existing State management measures, nor would it preclude the State from adopting additional management measures that could provide additional harvest opportunities for harvesters, including commercial drift gillnet fishermen, within State waters.

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 Cook Inlet salmon fisheries, and (6) avoids the introduction of an additional management jurisdiction into the already complex and interdependent network of Cook Inlet salmon fisheries.

#### *Consistency of Proposed Action With the National Standards*

In developing Amendment 14, the Council considered consistency of the proposed action with the Magnuson-Stevens Act's 10 National Standards (16 U.S.C. 1851) and designed its proposed action to balance their competing demands. While all 10 of the National Standards were considered, five national standards figured prominently in the Council's recommendation for Amendment 14: National Standard 1, National Standard 2, National Standard 7, National Standard 3, and National Standard 8.

#### National Standard 1

National Standard 1 states that conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the OY from each fishery for the United States fishing industry. OY is 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. This action establishes MSY on the basis of State escapement goals and proxies that were evaluated through the analytical process for this action and determined to be consistent with the goals and objectives of the Salmon FMP and the conservation objectives of the Magnuson-Stevens Act.

For the Cook Inlet salmon fishery, OY is based on the MSY escapement goals, qualitatively reduced to account for management measures required to conserve weak stocks. This OY ensures the Cook Inlet salmon fishery produces the greatest net benefit to the Nation by maintaining an economically viable fishery while still providing recreational and subsistence opportunities, accounting for consumption of salmon by a variety of marine predators, and

protecting weaker stocks. As illustrated by Sections 3 and 4 of the Analysis, the State has consistently achieved this OY through its management strategy, and by allowing the State to continue managing Cook Inlet salmon as a unit, NMFS anticipates that OY would continue to be achieved in State water salmon fisheries. Thus, NMFS finds that the proposed OY for the Cook Inlet salmon fishery would be achieved on a continuing basis under Amendment 14.

In addition, by prohibiting commercial salmon harvest in the Cook Inlet EEZ, the Council and NMFS would avoid creating new management uncertainty and reduce the risk of overfishing inherent to an independent Federal management regime that would not be well-suited to respond to in-season data as necessary to adjust harvest levels. Amendment 14 and this proposed rule would enable the State to continue to manage salmon fisheries in State waters to achieve escapement goals and maximize economic and social benefits from the fishery. While the closure of the Cook Inlet EEZ Subarea to commercial fishing impacts a significant proportion of the drift gillnet fleet's harvest, the closure would minimize the possibility of overfishing and would be expected to allow utilization of salmon to be maximized over the long-term among all fishery participants as State management measures are refined to account for a predictable closure of the Cook Inlet EEZ Subarea (Section 4.7.1.4 of the Analysis).

The Council and NMFS properly weighed the adverse economic impacts that are anticipated to occur for some EEZ commercial salmon fishery participants from a closure of the Cook Inlet EEZ Subarea against the risk of overfishing and long-term achievement of OY through State fisheries. The Council and NMFS continue to recognize that the State is best situated to respond to changing conditions inseason to fully utilize salmon stocks consistent with the constraints of weak stock management in a mixed stock fishery. In light of this fact, through this action, the Council and NMFS are fulfilling their duty to manage the Cook Inlet EEZ and have determined that closing the Cook Inlet EEZ to commercial salmon fishing is the management approach most likely to maximize utilization of the resource while preventing overfishing. Management measures under the Salmon FMP and other Federal FMPs, together with the State's scientifically-based management program in State waters of Cook Inlet adjacent to the West Area, would continue to ensure

that overfishing of salmon does not occur.

#### National Standard 2

National Standard 2 states that conservation and management measures shall be based upon the best scientific information available. The Council carefully evaluated the available biological, ecological, environmental, economic, and sociological scientific information to determine how to most effectively conserve and manage Cook Inlet salmon resources. This process included SSC review to provide scientific advice for the fishery management decision, evaluation of uncertainty in the development of salmon escapement goals (Section 11 of the Analysis), and a comprehensive description of social and economic conditions in the Cook Inlet salmon fishery (Section 4 of the Analysis), as well as consideration of alternative scientific points of view regarding the potential for overcompensation in Cook Inlet salmon stocks (Section 13 of the Analysis). From this analysis, the Council determined that the State's escapement goal management system is based on and uses the best available scientific information to manage Cook Inlet salmon fisheries. Section 3.1 of the Analysis found State salmon management to be almost entirely consistent with proposed Federal measures for status determination criteria and reference points required by the Magnuson-Stevens Act. Specifically, this Analysis indicated that the State has and is appropriately conserving and managing Cook Inlet salmon stocks, that the State largely could have achieved Federal reference points over that time period, and that independent Federal management would not have been expected to produce significant conservation changes or benefits relative to State management of the salmon fishery based on Federal reference points. The Council also evaluated the social and economic impacts of their action using the best available scientific information.

#### National Standard 7

The very high degree of consistency between existing State management and proposed Federal management was also important in the Council's consideration of National Standard 7, which states that conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication. The proposed management approach of closing the Cook Inlet EEZ to commercial salmon fishing avoids unnecessary duplication of management to the greatest possible extent. The

Council did recognize that this action could have significant costs because it closes an area responsible for just under 50 percent of drift gillnet fleet harvests, on average. However, under the only other viable alternative, the Council also expected significant reductions in EEZ harvests and possible fishery closures, but with added participation costs, management costs, and uncertainty, as described above. Ultimately, the Council determined, and NMFS agrees, that this action would provide for sufficient salmon harvest opportunity in State waters to largely offset the costs. In addition, closure of the Cook Inlet EEZ minimizes regulatory burden and participants would not have to track or participate in management of the Cook Inlet salmon fishery across multiple jurisdictions to plan their businesses. Finally, closure of the Cook Inlet EEZ would create the most efficient Cook Inlet salmon management arrangement of the two available management approaches. Under National Standard 7, management measures should not impose unnecessary burdens on the economy, on individuals, on private or public organizations, or on Federal, state, or local governments. As explained in more detail below under *Potential Impacts of the Action*, when the Council considered the costs and benefits of management by closure under Amendment 14 (Alternative 4), the Council determined, and NMFS agrees, that Amendment 14 is consistent with National Standard 7.

#### National Standard 3

The Council highlighted that management of salmon in Cook Inlet is highly complex, requiring multiple interdependent management plans to achieve sustainable harvest of Cook Inlet salmon stocks that benefit all user groups. 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. Given the significant degree of interaction among salmon fisheries in Cook Inlet, management of salmon stocks as a unit throughout all Cook Inlet salmon fisheries is particularly important. Management action in one Cook Inlet salmon fishery often has direct relationships with harvest rates and harvest composition by stock in other regional salmon fisheries. With commercial salmon fishing being prohibited in the Cook Inlet EEZ, all salmon fishing in Cook Inlet would occur within State waters under State management which continues to promote unity of management of Cook

Inlet salmon stocks across their range. Separate Federal management under Alternative 3 would significantly disrupt management unity and would impose unnecessary duplication without additional benefits. Optimizing yield within acceptable management uncertainty thresholds is best accomplished by a single management entity in Cook Inlet. Developing Amendment 14 required extensive discussions and coordination between the managers of State and Federal jurisdictions to determine the best means of achieving the FMP's objectives and implementing a comprehensive approach to fishery management. The Council determined, and NMFS agrees, that management by closure of the federal fishery, which allows one jurisdiction (the State) to manage the harvest of salmon stocks as a unit, is consistent with National Standard 3.

#### National Standard 8

The Council acknowledged that this action would likely have adverse impacts on drift gillnet salmon harvesters operating in the Cook Inlet EEZ and their associated communities, but would also likely have corresponding benefits to other salmon users within many of the same communities. National Standard 8 requires that conservation and management measures shall, consistent with the conservation requirements of the Magnuson-Stevens Act, take into account the importance of fishery resources to fishing communities by utilizing economic and social data that are based upon 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. The Analysis considered the social and economic importance of the Cook Inlet salmon fisheries to fishing communities, and recognized these communities participate in a variety of salmon fisheries apart from the drift gillnet fishery. While the Analysis identified varying dependence on the Cook Inlet EEZ portion of the Cook Inlet commercial salmon fishery, no community was identified as solely dependent on the EEZ portion of the drift gillnet fishery (Section 4.5.5 of the Analysis). In addition, the Council recognized that closing the Cook Inlet EEZ to commercial salmon fishing would result in additional harvest opportunity in State waters, and that the associated benefits would be distributed across Cook Inlet fishing communities given the diversity of users involved. In all, the Analysis supports a finding that

this action would provide for the sustained participation of fishing communities in Cook Inlet salmon fisheries, even if there is some redistribution of benefits. Under this proposed action, it is likely that at least some of these benefits would accrue to communities that also experience adverse impacts based on their engagement and dependence on multiple Cook Inlet salmon fisheries. Therefore, this action is consistent with National Standard 8.

In addition, closure of the Cook Inlet EEZ Subarea would minimize adverse economic impacts to the extent practicable by avoiding the costs of additional monitoring, recordkeeping, and reporting that would be required to access the Cook Inlet EEZ Subarea under Alternative 3, despite reduced harvest opportunities and the annual possibility of closure to account for added uncertainty. Further, National Standard 8 requires NMFS to consider adverse economic impacts within the constraints of conservation and management goals. This action is explicitly intended to prevent overfishing and achieve the conservation and management goals of the Salmon FMP while recognizing that an economically viable fishery would still occur within State waters.

#### *Potential Impacts of the Action*

This action would close a portion of the historically used fishing area for the Upper Cook Inlet (UCI) drift gillnet salmon fishery. The UCI drift gillnet salmon fishery currently operates in both State and EEZ Cook Inlet waters without specific reference to the boundary and is the only commercial salmon fishery that would be directly regulated by this action.

As described in Section 4.7.1.4 of the Analysis, the impacts of closing the Cook Inlet EEZ on UCI salmon drift gillnet vessels would be proportional to the extent that they rely on the EEZ. The entire active UCI salmon drift gillnet fleet likely fishes in the Cook Inlet EEZ Subarea at some time during each fishing season, but over the entire season, each vessel differs with respect to its level of economic dependency on fishing in this area. Section 4.5.2.3 of the Analysis describes that from 2009 through 2018 an estimated average of 48.7 percent of gross revenue (\$10.3 million) for the UCI drift gillnet fleet was generated from salmon caught in the Cook Inlet EEZ Subarea. In the last 5 years, an estimated average of approximately 42.7 percent of gross revenue (\$5.8 million) was generated in the EEZ for the fishery. While UCI drift gillnet vessels could relocate their

current EEZ salmon fishing effort to State waters under existing State regulations, their overall harvests may be reduced due to less productive fishing areas, increased travel costs, increased fishery congestion, and potentially less overall productive fishing time available in State waters. Conversely, catch rates in State waters may improve without commercial fishery catch in the EEZ. In addition, State management measures could be adjusted to allow more harvest in state waters to account for the Cook Inlet EEZ closure.

It is not possible to estimate the magnitude of potential harvest reductions to the UCI drift gillnet fleet because of the complexities of Cook Inlet mixed-stock salmon fisheries and intertwined State management plans. If the UCI drift gillnet fleet cannot offset reductions in harvest within State waters due to the closure of the Cook Inlet EEZ Subarea, it is likely that the UCI drift gillnet fleet's revenues and participation in the fishery would decrease. Reductions in harvest by the affected drift gillnet vessels are expected to provide additional harvest opportunity for other commercial and non-commercial salmon users in Cook Inlet. This is expected to offset forgone salmon harvest in the event the drift gillnet fleet is unable to make up its historical EEZ harvest amounts in State waters (Section 4.7.1.4 of the Analysis).

This action would not prohibit or otherwise modify management of salmon fishing in State waters. The UCI drift gillnet fleet is expected to continue to operate in State waters under Amendment 14. It is important to note that State salmon management plans for Cook Inlet have been predicated on the Cook Inlet EEZ Subarea being open to commercial salmon fishing by the drift gillnet fleet. The State would be able to modify management of all Cook Inlet salmon fisheries within State waters to account for the Cook Inlet EEZ Subarea closure.

This action is not expected to have significant impacts to salmon stocks or other affected parts of the environment. The State would continue to manage Cook Inlet salmon stocks within State waters consistent with current practices, and as described above, the State has consistently achieved conservation objectives. As described in Section 3.1.4 of the Analysis, harvest of Cook Inlet salmon stocks is expected to remain near or marginally below existing levels resulting in salmon escapements near or marginally above existing levels.

While no significant impacts to Cook Inlet salmon stocks are expected, a closure of the Cook Inlet EEZ Subarea

would have conservation and management benefits resulting from decreased management uncertainty. Importantly, commercial catch of Cook Inlet salmon stocks in the Cook Inlet EEZ Subarea would be prohibited as a result of this action. This could improve management precision and better avoid overfishing as these stocks would be harvested nearer to natal streams where improved escapement data and better information about realized run strength is more likely to be available. This is particularly important given the life history of salmon that only allows for harvest in a single season for terminal fisheries. In the event of lower than expected salmon returns, the State has additional escapement data and can more rapidly take action to avoid a conservation concern using their Emergency Order authority when compared to the Federal rulemaking process because of the challenges described in Sections 2.5.3 and 2.5.10. Similarly, if realized run strength is better than expected, the State can better maximize utilization of surplus production by issuing an Emergency Order to allow for additional harvest opportunities, avoiding uncertainties from unpredictable EEZ closure timing identified in Section 4.7.1.3 of the Analysis.

Additionally, increased passage of salmon stocks into Northern Cook Inlet may have other benefits. Prohibiting commercial catch in the Cook Inlet EEZ Subarea could improve the density of salmon prey available to endangered Cook Inlet belugas present in northern Cook Inlet during the summer months as noted in Section 3.3.1.1 of the Analysis. If there is insufficient harvest capacity operating only in State waters, the escapement of some Cook Inlet salmon stocks could increase. While increased escapement may not be desirable for all stocks in all years, a closure of the Cook Inlet EEZ Subarea to commercial harvest minimizes the possibility of overfishing and would be expected to allow utilization to be maximized over the long term as State management measures are refined to account for a predictable closure of the Cook Inlet EEZ Subarea (Section 4.7.1.4 of the Analysis).

This action would not directly regulate salmon processors, but may affect them. To the extent that this action would decrease catches by the drift gillnet fleet in Cook Inlet that are not offset by increased catch in State waters by the drift gillnet fleet or by other commercial salmon fishing sectors, deliveries of Cook Inlet salmon and associated revenues to processors would be reduced. The impacts to

individual processors would be influenced by the dependency on Cook Inlet salmon harvested in the EEZ as described in Section 4.5.4 of the Analysis. The later entry of salmon stocks into the State waters of Cook Inlet may also lead to a later and shorter period of Cook Inlet salmon processing activity. Depending on the business models of individual processors, this could reduce processing efficiency.

The previously mentioned impacts to Cook Inlet salmon harvesters and processors would also have impacts to associated communities in Cook Inlet and elsewhere as described in Section 4.7.1.4 of the Analysis. Decreases in the harvest levels of the UCI drift gillnet fleet under this action would have the potential to differentially affect communities, including communities associated with the UCI drift gillnet fleet and other salmon user groups. For communities engaged in or dependent on harvests by the UCI drift gillnet fleet, the potential adverse impacts to businesses connected to the harvest, processing, or support service sectors could result in greater or lesser localized impacts, depending on the specific nature and magnitude of community engagement in or dependency on the fishery in combination with the varying demographic and socioeconomic attributes of the relevant communities. However, reductions in salmon harvest by the UCI drift gillnet fleet are expected to be offset over the long term by increases to other salmon fishery sectors in these communities. Communities associated with these other salmon fishery sectors (e.g., the commercial set net, sport, and personal use salmon fisheries), may experience localized benefits based on the specific nature and magnitude of community engagement in or dependency on those other sectors but, as previously noted, it is not possible to estimate the magnitude of potential harvest benefits to these communities. Community level distributive impacts under this action are not anticipated to substantially affect net benefits to the nation (Section 4.10 of the Analysis).

As this action would prohibit commercial salmon fishing in the Cook Inlet EEZ Subarea consistent with existing management in adjacent West Area waters, no additional Federal fishery management measures are required. The West Area prohibition on commercial salmon fishing would continue to be enforced by State and Federal authorities under the revised boundaries resulting from this proposed action.

## Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Salmon FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed 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 proposes 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 Initial Regulatory Flexibility Analysis section.

### Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis (IRFA) was prepared for this proposed rule, as required by Section 603 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 603), to describe the economic impact this proposed rule, if adopted, would have on small entities. The IRFA describes the action; the reasons why this proposed rule is proposed; the objectives and legal basis for this proposed rule; the number and description of directly regulated small entities to which this proposed rule would apply; the recordkeeping, reporting, and other compliance requirements of this proposed rule; and the relevant Federal rules that may duplicate, overlap, or conflict with this proposed rule. The IRFA also describes significant alternatives to this proposed rule that would accomplish the stated objectives of the Magnuson-Stevens Act, and any other applicable statutes, and that would minimize any significant economic impact of this proposed rule on small entities. The description of the action, its purpose, and the legal basis are explained in the preamble and are not repeated here.

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess

of \$11 million for all its affiliated operations worldwide.

### Number and Description of Small Entities Regulated by This Proposed Rule

This action would directly regulate 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 proposed rule (see **ADDRESSES**).

### Description of Significant Alternatives 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 Cook Inlet EEZ drift gillnet salmon fishery managed directly 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 while at the same time is not expected to result in consistent commercial salmon fishing opportunities in the Cook Inlet EEZ. Alternative 4 would close the Cook Inlet EEZ but not impose any additional direct regulatory costs on participants and would 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 proposed 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 proposed rule on small entities. After public process, the Council concluded that Alternative 4, the proposed Amendment 14, would best accomplish the stated objectives articulated in the preamble for this proposed rule, and in applicable statutes, and would minimize to the extent practicable adverse economic impacts on the universe of directly regulated small entities.

### Duplicate, Overlapping, or Conflicting Federal Rules

NMFS has not identified any duplication, overlap, or conflict between this proposed rule and existing Federal rules.

### Recordkeeping, Reporting, and Other Compliance Requirements

This proposed 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: May 28, 2021.

**Samuel D. Rauch III,**  
*Deputy Assistant Administrator for  
Regulatory Programs, National Marine  
Fisheries Service.*

For the reasons set out in the  
preamble, NOAA proposes to amend 50  
CFR part 679 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, amend the definition  
“Salmon Management Area,” by  
revising the introductory text of  
paragraph (2) and removing and  
reserving paragraph (2)(i) to read as  
follows:

**§ 679.2 Definitions.**

\* \* \* \* \*

(2) *The West Area* means the area of  
the EEZ off Alaska in the Bering Sea,  
Chukchi Sea, Beaufort Sea, and the Gulf

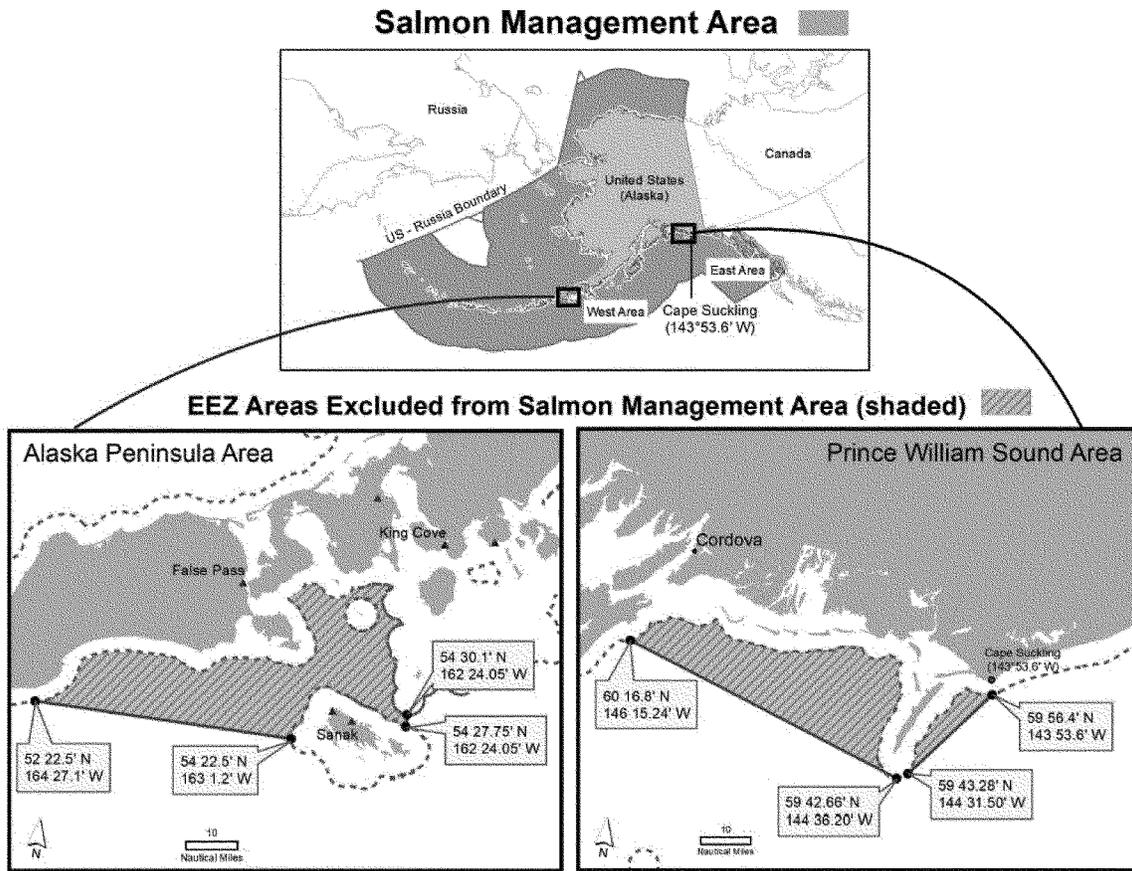
of Alaska west of the longitude of Cape  
Suckling (143°53.6' W), including the  
Cook Inlet EEZ Subarea, but excludes  
the Prince William Sound Area and the  
Alaska Peninsula Area. The Cook Inlet  
EEZ Subarea means the EEZ waters of  
Cook Inlet north of a line at 59°46.15' N.  
The Prince William Sound Area and the  
Alaska Peninsula Area are shown in  
Figure 23 and described as:

\* \* \* \* \*

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

**BILLING CODE 3510–22–P**

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



[FR Doc. 2021–11716 Filed 6–3–21; 8:45 am]

**BILLING CODE 3510–22–C**