DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 120330244–2673–02]

RIN 0648–BB77

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Salmon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement Amendment 12 to the Fishery Management Plan for Salmon Fisheries in the EEZ off the Coast of Alaska (FMP). Amendment 12 comprehensively revises and updates the FMP to reflect the North Pacific Fishery Management Council's (Council) salmon management policy and to comply with Federal law. This action is necessary to revise specific regulations and remove obsolete regulations in accordance with the modifications in Amendment 12. This action promotes the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

DATES: Effective January 22, 2013.

ADDRESSES: Electronic copies of the Fishery Management Plan for the Salmon Fisheries in the EEZ off Alaska and the Environmental Assessment/Regulatory Impact Review (EA/RIR) and Finding of No Significant Impact (FONSI) prepared for this action may be obtained from *http://www.regulations.gov* or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington, 907–586–7228.

SUPPLEMENTARY INFORMATION: This final rule implements Amendment 12 to the FMP. NMFS published a Notice of Availability for Amendments 10, 11, and 12 in the **Federal Register** on April 2, 2012 (77 FR 19605) with comments invited through June 1, 2012. NMFS published a proposed rule to implement Amendment 12 on April 11, 2012 (77 FR 21716) with comments invited through May 29, 2012. No implementing regulations are necessary to implement Amendments 10 and 11. NMFS approved Amendments 10, 11, and 12 on June 29, 2012.

The Council prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR part 679. NMFS approved the original FMP in 1979. Since then, the FMP was comprehensively revised by Amendment 3 in 1990, and again by Amendment 12 in 2012. The FMP conserves and manages the Pacific salmon that occur in the vast majority of the exclusive economic zone (EEZ) off Alaska. The FMP establishes the Salmon Management Area, which is divided into two management areas: the East Area is the EEZ in the Gulf of Alaska east of Cape Suckling (143°53.6' West Longitude), and the West Area is most of the EEZ off Alaska west of Cape Suckling. The FMP manages commercial fishing for salmon in the West Area and delegates to the State of Alaska (Alaska) management of commercial and sport fishing for salmon in the East Area. The following paragraphs provide a summary description of the changes made to the FMP by Amendment 12 and the regulatory changes made by this final rule.

Amendment 12

In December 2011, the Council voted unanimously to recommend Amendment 12 to the FMP. Amendment 12 comprehensively revises the FMP to reflect the Council's salmon management policy, which is to facilitate State of Alaska (State) salmon management in accordance with the Magnuson-Stevens Act, Pacific Salmon Treaty, and applicable Federal law. Under this policy, the Council identified six management objectives to guide salmon management under the FMP and achieve the management policy: (1) Prevent overfishing and achieve optimum yield; (2) manage salmon as a unit throughout their range; (3) minimize bycatch and bycatch mortality; (4) maximize economic and social benefits to the Nation over time; (5) protect wild stocks and fully utilize hatchery production; and (6) promote safety. The Council, NMFS, and the State of Alaska will consider these management objectives in developing future FMP amendments and associated fishery management measures.

To reflect the Council's policy and objectives, Amendment 12 redefines the FMP's management area to remove three small pockets of Federal waters adjacent to Cook Inlet, Prince William Sound, and the Alaska Peninsula from the West Area. Figure 23 to part 679 provided in this final rule defines the specific net fishing areas excluded from the West Area. (For the remainder of the preamble, these areas are referred to collectively as the net fishing areas and individually as the Cook Inlet Area, the Prince William Sound Area, or the Alaska Peninsula Area.) The salmon fisheries in these areas are managed by the State. Amendment 12 also removes the sport fishery in the West Area from the FMP. The Council determined and NMFS agreed that State management of the stocks and fisheries occurring in the net fishing areas and the sport fishery in the West Area is consistent with the policies and standards of the Magnuson-Stevens Act, and that Federal management of the net fishing areas and the sport fishery in the West Area would serve no useful purpose or provide present or future benefits that justified the costs of Federal management. The Council and NMFS determined that removing the net fishing areas and the sport fishery from the West Area allows the State to manage Alaska salmon stocks and directed fishing for those stocks as seamlessly as practicable throughout their range. Additional information on the Council's and NMFS' rationale for removing the net fishing areas and the sport fishery is provided in the Responses to Comments below. The FMP continues to apply to the vast majority of the EEZ west of Cape Suckling and maintains the prohibition on commercial salmon fishing in the redefined West Area.

In the East Area, Amendment 12 maintains the current scope of the FMP and reaffirms that management of the commercial and sport salmon fisheries in the East Area is delegated to the State. The FMP relies on a combination of State management and management under the Pacific Salmon Treaty to ensure that salmon stocks, including trans-boundary stocks, are managed as a unit throughout their ranges and that interrelated stocks are managed in close coordination. Maintaining the FMP in the East Area leaves existing management structures in place, recognizing that the FMP is the nexus for the application of the Pacific Salmon Treaty and other applicable Federal law.

Amendment 12 contains a number of provisions to update the FMP and bring it into compliance with the Magnuson-Stevens Act and other applicable Federal law. Amendment 12 includes these changes in a reorganized FMP with a more concise title, ''Fishery Management Plan for the Salmon Fisheries in the EEZ off Alaska.'' The Notice of Availability prepared for Amendment 12 (77 FR 19605, April 2, 2012) provides detailed information on the provisions of Amendment 12, as

well as additional explanation of the Council's rationale for Amendment 12.

The primary new FMP provision is a mechanism to establish annual catch limits (ACLs) and accountability measures (AMs) for the salmon stocks caught in the East Area commercial troll fishery, the only commercial fishery authorized under the FMP. Amendment 12 does not establish ACLs or AMs in the West Area, because no commercial salmon fisheries are authorized in the West Area.

The mechanism to establish ACLs and AMs for the East Area commercial troll fishery builds on the FMP's existing framework for establishing status determination criteria. Amendment 12 does not establish a mechanism for specifying ACLs and AMs for Chinook salmon because the Magnuson-Stevens Act exempts stocks managed under an international fisheries agreement in which the United States participates from the ACL requirement (16 U.S.C. 1853). Under Amendment 12, the mechanisms for specifying ACLs for Tier 2 (coho salmon) and Tier 3 (coho, pink, chum, and sockeye salmon stocks managed as mixed-species complexes) salmon stocks are established using the State's scientifically-based management measures to control catch and prevent overfishing. This approach represents an alternative approach to the methods prescribed in NMFS' National Standard 1 Guidelines (50 CFR 600.310) for specifying ACLs. The Council recommended and NMFS approved an alternative approach because the State's escapement-based management system is a more effective management system for preventing overfishing of Alaska salmon than a system that places rigid numeric limits on the number of fish that may be caught. Escapement is defined as the annual estimated size of the spawning salmon stock in a given river, stream, or watershed.

Amendment 12 also revises the definition of optimum yield (OY). For Chinook salmon stocks in Tier 1, an all-gear maximum sustainable yield (MSY) is prescribed in terms of catch by the Pacific Salmon Treaty and takes into account the biological productivity of Chinook salmon and ecological factors in setting this limit. Under Amendment 12, the portion of the all-gear catch limit allocated to troll gear represents the OY for that fishery and takes into account the economic and social factors considered by the State in making allocation decisions. For stocks in Tiers 2 and 3, MSY currently is defined in terms of escapement. MSY escapement goals account for biological productivity and ecological factors, including the consumption of salmon by a variety of marine predators. Under Amendment 12, the OY for the troll fishery is that fishery's annual catch, which, when combined with the catch from all other salmon fisheries, results in a post-harvest run size equal to the MSY escapement goal for each indicator stock. The portion of the annual catch harvested by the troll fishery reflects the biological, economic, and social factors considered by the State in determining when to open and close the coho salmon harvest by the troll fishery. For the redefined West Area under Amendment 12, commercial fishing is prohibited; therefore the directed harvest OY is zero. The redefined West Area has been closed to commercial net fishing since 1952 and commercial troll fishing since 1973, and there has not been any commercial yield from this area. This OY recognizes that salmon are fully utilized by state-managed fisheries, and that the State manages fisheries based on the best available information using the State's escapement goal management system. This OY also recognizes that non-Alaska salmon are fully utilized and managed by their respective management authorities when they return to their natal regions.

Finally, Amendment 12 adds a fishery impact statement to the FMP, revises the current FMP process for Federal review of State management measures to more fully describe the process and bring it into compliance with Magnuson-Stevens Act requirements (16 U.S.C. 1856(a)(3)(B)), and removes existing FMP language governing the issuance of Federal salmon permits. The Council recommended removing FMP language related to Federal salmon permits because all current participants have State of Alaska limited entry permits and Federal permits are no longer necessary. According to language included in the original 1979 FMP, provisions for Federal salmon permits were established to complement the State limited entry permit, in order to limit capacity in the EEZ so that persons who did not receive a State limited entry permit would not simply shift their fishing efforts into Federal waters.

Final Rule

While many of the provisions of Amendment 12 do not require implementing regulations, several provisions require modifications to the regulations implementing the FMP. To implement Amendment 12, this final rule:

- Revises § 679.1(i) to reflect the new FMP title and clarify that the FMP governs commercial salmon fishing in the West Area and commercial and sport salmon fishing in the East Area.
- Revises the definition of Salmon Management Area, at § 679.2, to explicitly exclude the Cook Inlet Area, the Prince William Sound Area, and the Alaska Peninsula Area from the West Area.
- Revises § 679.3(f) to remove references to laws that are no longer applicable or current, such as references to the North Pacific Fisheries Act of 1954.
- Removes and reserves § 679.4(a)(1)(v) and (h), which required Federal salmon permits.
- Revises § 679.7(h) to explicitly prohibit commercial fishing for salmon using any gear except troll gear in the East Area, and to explicitly prohibit commercial fishing for salmon in the West Area.
- Replaces Figure 23 with a new map to show the newly defined Salmon Management Area and the three net fishing areas excluded from the West Area.

Additional information is provided in the proposed rule for Amendment 12 (77 FR 21716, April 11, 2012).

Response to Comments

NMFS received 12 letters of public comment during the public comment periods for Amendments 10, 11, and 12 and the proposed rule to implement Amendment 12. NMFS summarized these letters into 47 separate comments, and responds to them below. All of the comments received addressed various provisions of Amendment 12; NMFS received no comments on Amendments 10 or 11, or on the specific wording of the regulatory text contained in the proposed rule.

Comment 1: The redefined scope of the FMP serves to facilitate State management of salmon fisheries by avoiding the creation of duplicative Federal and State management structure in the West Area and reaffims that management of the commercial and sport salmon fisheries in the East Area is delegated to the State, in accordance with the Pacific Salmon Treaty and other Federal law.

Response: NMFS acknowledges the comment.

Comment 2: Excluding the sport fishery and three traditional commercial net fishing areas from the West Area and prohibiting commercial salmon fishing in the West Area more clearly reflects the Council's policy regarding State management authority over these fisheries and acknowledges that salmon warrant an alternative approach, per the National Standard 1 Guidelines, to control catch and prevent overfishing.

Response: NMFS acknowledges the comment.

Comment 3: The FMP revisions maintain the current management structure, whereby salmon fisheries are managed as a unit throughout their range in both the East and West Areas through the State's escapement-based system. Real-time monitoring and inseason management actions by the State help ensure that escapement goals are met and optimum production is achieved. The FMP revisions recognize the necessity of maintaining this effective and flexible management system for salmon.

Response: NMFS acknowledges the comment.

Comment 4: Reject Amendment 12 and the proposed rule because removing the EEZ waters of Cook Inlet from the FMP is arbitrary, capricious, and contrary to the Magnuson-Steven Act. This rule should be rejected because (1) The Magnuson-Steven Act, at 16 U.S.C. 1801(b)(1), specifically states that anadromous species need immediate protection; (2) the Cook Inlet salmon fishery is currently facing significant management concerns; and (3) the regulated community in Cook Inlet has unanimously asked the Council to take action to address these concerns.

Response: Amendment 12 and this final rule are consistent with the Magnuson-Stevens Act and are not arbitrary or capricious. NMFS does not agree with the comment's interpretation of this statutory provision as requiring immediate protection for salmon or any other fishery resources. The Salmon FMP is consistent with the purpose of the Congress in the Magnuson-Stevens Act, at 16 U.S.C. 1801(b)(1), in that it exercises sovereign rights for the purposes of conserving and managing salmon, among other fisheries, within the EEZ. The Salmon FMP exercises sovereign rights in managing salmon within the EEZ by closing the majority of the EEZ to commercial salmon fishing. In addition, removing the EEZ waters adjacent to Cook Inlet from the FMP to facilitate State management of the salmon fisheries does not interfere with these sovereign rights.

Management concerns in Cook Inlet were one of the primary issues discussed by the Council during the development of Amendment 12 and analyzed in the EA prepared for this action (see **ADDRESSES**). The Council took action with full consideration of the situation in Cook Inlet and decided that Federal conservation and management are not required for the commercial salmon fishery in the Cook Inlet Area.

NMFS and the Council received extensive public testimony during the development of Amendment 12 concerning dissatisfaction with State salmon management in Cook Inlet and the desire for a specific type of Federal involvement. The Council, in their deliberations on this issue, explained in detail why the Council determined that Federal conservation and management are not necessary for the commercial salmon fisheries that occur in the Cook Inlet Area. Further, the Council explained why the type of Federal involvement envisioned by some members of the public was not realistic or consistent with the Magnuson-Steven Act.

The Council determined that (1) The State is the governmental entity best suited to manage salmon fisheries; (2) the salmon fisheries are adequately managed by the State consistent with the policies and standards of the Magnuson-Steven Act; and (3) Federal management of salmon fisheries should only occur in those areas and for those fisheries where Federal management serves a useful purpose. The State has managed the salmon fisheries since statehood in 1959, and the Council has relied on State management of the salmon fisheries in the EEZ since 1979. State salmon management is consistent with the policies and standards of the Magnuson-Stevens Act, as explained in EA Chapter 2 and throughout the EA (see **ADDRESSES**). The State actively manages Alaska salmon stocks in every region of the State through its use of escapement-based management. Escapement-based management takes into consideration the unique life history of Pacific salmon and escapement goals maintain spawning levels that provide for maximum surplus production. The State has the expertise and infrastructure to manage Alaska salmon as a unit in consideration of all fishery removals and to meet escapement goals.

The Council recognized that FMP management of directed salmon fisheries would only apply to the portion of the fisheries conducted in the EEZ, and that directed fisheries for salmon are more appropriately managed as a unit in consideration of all fishery removals to meet in-river escapement goals. Under the Magnuson-Stevens Act, an FMP only has authority to manage the fisheries that occur in the EEZ. The Magnuson-Stevens Act, at 16 U.S.C. 1856(a) is clear that nothing in it shall be construed as extending or diminishing the jurisdiction or authority of any state within its boundaries. Absent formal preemption in accordance with the Magnuson-Stevens Act (16 U.S.C. 1856(b)), the Magnuson-Stevens Act does not provide authority for the Council to manage fisheries in state waters, which would be required for the Council to change escapement goals or to allocate more salmon to a specific gear group or to direct the Alaska Board of Fisheries (Board) to make these types of changes.

The Council determined that continuing to include these areas and the sport fishery in the FMP would not serve a useful purpose or result in present or future benefits that would justify the costs of overlapping Federal management when the State is adequately managing the sport fishery and the salmon fisheries that occur in the areas removed. The Council determined that the redefined management area in the West Area asserts Federal management in those areas and for those fisheries in which Federal management serves a useful purpose by allowing the State to manage Alaska salmon stocks as seamlessly as practicable throughout their range. Under Amendment 12, the FMP continues to manage the vast majority of the EEZ, and maintains the prohibition on commercial salmon fishing in the redefined West Area.

Comment 5: Amend the Salmon FMP to (1) Produce management goals and objectives for salmon in Cook Inlet consistent with the Magnuson-Steven Act and the national standards; (2) delegate day-to-day management and implementation of those goals and objectives to the State; and (3) provide oversight to ensure that the State complies with those management goals and objectives.

Response: The Council and NMFS declined to amend the FMP as requested by the comment. While a primary function of a fishery management plan is to specify the Council's goals and objectives for the fishery being managed by the plan, each plan must also include provisions that address all of the Magnuson-Stevens Act requirements for fishery management plans. The Magnuson-Stevens Act, at 16 U.S.C. 1856(a), provides councils with the authority to establish a fishery management plan for a fishery that delegates management of that fishery to a state, but it does not exempt such a fishery management plan from including provisions required by the Magnuson-Stevens Act for fishery management plans. No North Pacific fishery management plan that delegates management of a fishery to the State contains only goals and objectives with an oversight process. See response to comment 6.

Comment 6: The Council's concerns over dual Federal/State management for the Cook Inlet Area are irrational. There are a number of other fishery management plans whereby the Council sets management goals and objectives for the fishery and then delegates management to the State.

Response: NMFS and the Council have determined that Federal management of the commercial salmon fisheries that occur in the Cook Inlet Area is not necessary, would serve no useful purpose, and would be costly and burdensome for managers and participants. The response to comment 4 provides the Council's and NMFS' reasons for this decision.

The comment incorrectly states that there are other fishery management plans that only set goals and objectives and delegate management to the State. As explained in EA section 2.2, the Council has two FMPs that cooperatively manage the subject fisheries with the State—the Fishery Management Plan for the Bering Sea/Aleutian Islands King and Tanner Crabs and the Fishery Management Plan for the Scallop Fisheries off Alaska.

These two fishery management plans contain much more than just management goals and objectives. Both plans implement Federal management measures, delegate specific categories of management measures to the State, and establish a process for delineating roles and responsibilities between State and Federal managers. These fishery management plans have provisions, either implemented by NMFS or the State, that address each requirement in Magnuson-Steven Act (16 U.S.C. 1853(a)). Examples of Federal management measures included in these plans are Federal limited access programs, on-board observer coverage requirements, and mandatory vessel monitoring systems. These fishery management plans require extensive coordination among NMFS, Council, and State staffs and between the Council, NMFS, and the Alaska Board of Fisheries.

Joint Federal and State management of the net fishing areas would also add burdens to fishery participants as management measures would be implemented by both Federal and State managers. This change would require fishery participants to attend or follow Board and Council processes as decisions regarding different aspects of management are made by these different bodies.

Comment 7: The Council failed to consider the lack of meaningful opportunity for salmon industry participants and stakeholders to share concerns and experience in a substantive manner during the FMP review process.

Response: NMFS disagrees. Under the Magnuson-Steven Act, the Council is responsible for developing fishery management plans, and stakeholders have an opportunity to express their opinions on the action being considered through oral and written testimony at public meetings that are noticed in the **Federal Register**. The public can also review and comment on analytical documents being developed by the Council prior to, or during, these regularly scheduled Council meetings. Salmon industry participants had the same meaningful opportunity for participation as all members of the public do for Council actions.

The Council considered revisions to the FMP at five separate meetings that occurred over more than a year, starting with a Council and Board Joint Protocol Committee meeting in October 2010 (75 FR 55743, September 14, 2010). At each regularly scheduled and noticed public meeting, the Council took public testimony and considered written and oral public comments, providing stakeholders with opportunities for involvement on this issue. Additionally, the Council conducted a special open workshop for stakeholders in September 2011 (76 FR 52942, August 24, 2011). More than 20 members of the public, three Council members, Council staff, and State and Federal agency staff attended this workshop. Council staff presented a report from this workshop at the October 2011 Council meeting. The Council considered the comments and suggestions made during that workshop in developing Amendment 12.

Comment 8: The EA fails to discuss the status or trends of the Cook Inlet salmon fisheries or adequately describe the population status and trends of the salmon stocks in Cook Inlet. The EA does not evaluate whether these stocks are increasing, stable, or decreasing. Without such a baseline, the Council cannot properly evaluate the impacts of its decision to completely turn over management to the State.

Response: Contrary to the comment's assertions concerning the contents of the EA, the EA prepared for Amendment 12 provides detailed information on, and analysis of, the commercial and sport salmon fisheries that occur in the Cook Inlet Area and the status and trends of Cook Inlet salmon (see **ADDRESSES**).

EA Chapter 4 contains a comprehensive discussion of how the State manages the Cook Inlet commercial and sport salmon fisheries that occur in the EEZ along with harvest and economic information. EA Chapter 4 also contains a table showing the trends in the Cook Inlet drift gillnet salmon harvests compared to total Cook Inlet salmon harvests associated with directed commercial fisheries from 1991 through 2010.

EA Chapter 5 contains a comprehensive discussion of the status of the salmon stocks in Cook Inlet, including an overview of salmon stocks in Cook Inlet for which escapement goals exist, a numerical description of the goal, type of goal, year the current goal was first implemented, and recent years' escapement data for each stock. It also includes summary statistics documenting performance in achieving escapement goals. In EA Chapter 5, escapements from 2002 through 2010 are compared against escapement goals in place at the time of enumeration to assess outcomes in achieving goals. Escapements for a particular stock were classified as ''below'' if escapement for a given year was less than the lower bound of the escapement goal. If escapement fell within the escapement goal range or was greater than a lower-bound goal, escapements were classified as ''met.'' Where escapements exceeded the upper bound of an escapement goal range, they were classified as ''above.'' Additionally, where escapement goals or enumeration methods changed between 2002 and 2010 for a stock, EA Chapter 5 assesses outcomes by comparing escapement estimates with the escapement goals and methods in place at the time of the fishery.

The Council considered this information and analysis to evaluate the impacts of the various alternatives under consideration by the Council, including Amendment 12. Based on this information, as well as other information in the EA and public comments received, the Council and NMFS concluded that Federal conservation and management are not necessary for the salmon fisheries in the Cook Inlet Area and approved Amendment 12, which maintains exclusive State management of the Cook Inlet Area salmon fisheries.

Comment 9: The State is not properly managing salmon escapement in Cook Inlet and the EA fails to address the impacts of over-escapement. State management decisions allow significant harvestable surplus to go unutilized resulting in over-escapement. Over-escapement is particularly damaging to sockeye, which utilize lakes as part of their life cycle. Every over-escapement event results in (1) lost yield in the year of over-escapement (because the harvestable surplus escaped), and (2)

additional lost yields three to five years later, when the impacted juveniles return in diminished numbers. Given the State's current track record of escapement exceeding the high end of the escapement goals as much as 35 percent of the time, and its practice of setting escapement goals that are already well above MSY, the impact of continuing to defer to the State must be considered.

Response: The Council and NMFS determined, based on the information and analysis provided in the EA, that the State is properly managing salmon escapement in Cook Inlet. First, the EA does assess the impacts of continuing State salmon management, which includes the escapement goals established by the State, instances when escapement goals are exceeded, and the effects of over-escapement on salmon stocks. As detailed in EA sections 3.2, 4.1, and 5.1, where possible, the State sets salmon escapement goals in Cook Inlet based on MSY. For instance, the current escapement goals for sockeye salmon in the Kenai and Kasilof rivers are set at approximately 90 to 100 percent of MSY.

It is not possible to manage mixed stock salmon fisheries for MSY on all stocks and species in circumstances where the composition, abundance, and productivity of stocks and species in those fisheries varies substantially. Over-escapement is a common occurrence in areas with salmon fisheries in the EEZ, as shown in the EA section 5.1.2. Over-escapement means that the number of spawning salmon exceeds the upper bound of the escapement goal range established for any particular system. Over-escapement usually results from (1) A lack of fishing effort, (2) unexpectedly large salmon runs, or (3) management or economic constraints on the fishery. Management constraints result, in part, from State management of salmon fisheries for maximum harvest of the largest, most productive salmon stocks, while protecting less abundant salmon stocks and species. Currently, the State considers a number of salmon stocks in Upper Cook Inlet as stocks of concern. The State has established clearly-defined goals to manage salmon to provide for escapement of identified stocks of concern within mixed-stock fisheries (see the description of the State's Policy for the Management of Mixed Stock Salmon Fisheries (5AAC 39.220) in EA section 4.1). Layering Federal management on top of State management for the commercial fisheries in the Cook Inlet Area would not reduce the potential for over-escapement or address any of the factors that cause over-escapement. As discussed in EA section 2.2, Federal management of the fishery in the Cook Inlet Area would be responsive to State management decisions. In response to this comment, NMFS has revised the EA section 5.1 to expand the discussion on over-escapement to better explain the issue.

Comment 10: The State has no escapement goals or estimates of MSY for many salmon runs in Cook Inlet. Without escapement goals, the State has no idea of the health of the salmon returns or whether they are being managed in a manner consistent with either the Magnuson-Stevens Act or the State's sustainable salmon policy.

Response: According to the State, they do not have the necessary resources to monitor all the salmon runs in Cook Inlet. Therefore, the State does not have the information necessary to set escapement goals or estimate MSY for many of the salmon runs. However, the State (in conjunction with salmon resource users) has identified the most important species and runs, and has tried to monitor those salmon runs. Currently, the State monitors the largest runs of sockeye and Chinook salmon in Cook Inlet. Even though the State does not monitor some of the smaller stocks of sockeye, Chinook, pink, chum, and coho, the State has other information (catch and test fish indices) to indirectly monitor the abundance on some of these species. The State manages all the salmon stocks in Upper Cook Inlet based on the information it collects from indicator stocks (stocks that can be assessed) and the performance of salmon fisheries in Upper Cook Inlet. In the absence of specific stock information, the State has managed these stocks conservatively following the precautionary principle, similar to the National Standard 1 Guidelines for dealing with data poor stocks (50 CFR 600.10). Therefore, in the absence of information, the State is managing the data-poor salmon runs consistently with the Magnuson-Steven Act and consistently with the way NMFS manages data-poor fish stocks.

Continuing to include the Cook Inlet Area in the FMP would not necessarily improve the scientific information available for individual salmon runs. NMFS does not independently monitor returns of Cook Inlet salmon stocks or assess Cook Inlet salmon abundance. The biology of salmon is such that escapement is the point in the species life history best suited to routine assessment and long-term monitoring. The State collects information on Cook Inlet salmon escapement—returns of specific salmon stocks to specific river systems—from sampling sites (e.g., weirs, sonar stations, counting towers) that are located within State waters and NMFS relies on this information. It is not possible to collect information on escapement or run strength from sampling in the EEZ. Given that the Magnuson-Stevens Act does not provide NMFS with the authority to manage salmon resources within State waters, absent preemption in accordance with the Magnuson-Stevens Act (16 U.S.C. 1856(b)), and extensive information is already collected by the State on numerous salmon stocks, NMFS would have limited ability to independently collect escapement information.

Additionally, NMFS, like the State, has limited funds for stocks assessment research. NMFS allocates research funds based on national and regional priorities, and would need to eliminate or reduce an existing project to start a new project to gather the scientific information necessary to conduct a stock assessment for any given salmon run.

Comment 11: The State's sustained yield principle is not the same as the Magnuson-Stevens Act's OY; therefore it is not consistent with National Standard 1.

Response: For the following reasons, the Council and NMFS determined that the State's sustained yield principle is equivalent to the Magnuson-Stevens Act's OY and that it achieves the objectives of National Standard 1 (16 U.S.C. 1851(a)(1)). The Magnuson-Stevens Act defines OY as the amount of fish which:

(A) 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;

(B) is prescribed as such on the basis of the maximum sustainable yield from the fishery, as reduced by any relevant economic, social, or ecological factor; and

(C) in the case of an overfished fishery, provides for rebuilding to a level consistent with producing the maximum sustainable yield in such fishery.

The Magnuson-Stevens Act does not prescribe the method for determining OY and NMFS uses various methods to determine OY throughout the Nation, depending on the information available and the unique characteristics of specific fisheries. For Alaska salmon, the Council and NMFS determined that the State's sustained yield principle is equivalent to OY because it represents MSY as reduced by relevant economic, social, and ecological factors.

The Council determined that the State's salmon escapement goal management is the appropriate approach for satisfying the National Standard 1 requirements of the Magnuson-Stevens Act. The biology of salmon is such that escapement is the point in the species life history best suited to routine assessment and long-term monitoring and is the metric most commonly used for assessing the status of salmon stocks. The State establishes escapement goals intended to maximize surplus productivity of future runs, estimates run strength in advance, monitors actual run strength and escapement during the fishery, and utilizes in-season management measures, including fishery closures, to ensure that minimum escapement goals are achieved.

The State sets salmon escapement goals based on the Policy for the Management of Sustainable Salmon Fisheries (SSFP; 5 AAC 39222) and the Policy for Statewide Salmon Escapement Goals (5 AAC 39.223). These policies ensure that the State's salmon stocks are conserved, managed, and developed using the sustained yield principle. These policies require the State to set escapement goals based on the sustained yield principle. The SSFP goes on to identify escapement goals based on MSY as biological escapement goals and those based on sustained yield as sustainable escapement goals. The State set sustainable escapement goals in the absence of adequate escapement and/or stock specific catch information to set a biological escapement goals and when the State is unable to determine what level of escapement would produce MSY.

Comment 12: The State is not managing the Cook Inlet salmon fishery in a manner consistent with the Magnuson-Stevens Act's National Standards. Therefore, the Council and NMFS cannot facilitate State salmon management in accordance with the Magnuson-Stevens Act and should not remove the Cook Inlet Area from the FMP. The Council failed to consider the consequences of removing the ten National Standards from Cook Inlet Area salmon management and how that will impact sustainability of salmon returns over time.

Response: As explained in EA sections 4.3.1 and 5.1, the Council and NMFS assessed the State's current salmon management and the sustainability of salmon returns under the current management procedures, and determined that current management, as codified in the Alaska constitution, laws, regulations, and policies, is consistent with the Magnuson-Stevens Act's national standards. For this and other reasons explained in this preamble and the EA, the Council and NMFS concluded that Federal conservation and management are not required and would not serve a useful purpose.

Comment 13: The State fails to meet National Standard 2 (best available science) because the Alaska Board of Fisheries (Board) process is based on the ''best available politics,'' is ad hoc, and fails to consider the scientific, economic, and social ramifications of the Board's actions. The Council failed to consider that the current State regulatory system allows for in-season salmon management decisions to be regularly influenced by a few politically connected individuals despite professional biologists recommendations or direction.

Response: NMFS disagrees. The Board decision-making process achieves the objectives of National Standard 2. The Board is responsible for (1) Considering and adopting regulations through a public process to conserve and allocate fisheries resources to various user groups, (2) establishing fish reserves and conservation areas, fishing seasons, quotas, bag limits and size restrictions, (3) protecting habitat, (4) recommending stock enhancement, and (5) developing commercial, subsistence, sport and personal use fisheries. The Board consists of seven members who are appointed by the Alaska Governor and confirmed by the State Legislature. Members are appointed on the basis of interest in public affairs, good judgment, knowledge, and ability in the field of action of the Board, with a view to providing diversity of interest and points of view in the membership (see Alaska Statute 16.05.221).

As with the Federal regional management council system, the Board considers and weighs all of the information available to it in making its decisions. In fulfilling its responsibilities, the Board process utilizes the best science available to it—primarily provided by ADF&G—and considers the economic and social ramifications of the Board's actions. Through its process, the Board considers and applies allocative criteria (AS 16.05.251(e), 5 AA 39.205, 5 AAC 75.017, 5 AAC 77.007, and Board Finding #91–129–FB), the Policy for the Management of Sustainable Salmon Fisheries (5 AAC 39.222), the Policy for the Management of Mixed Stock Salmon Fisheries (5 AAC 39.220), and information provided to it by the Alaska Commercial Fisheries Entry Commission and Alaska Department of Commerce, Community, and Economic Development, ADF&G's economic research, and any information provided by members of the public.

The Council and NMFS considered the State's inseason salmon management process and decisions, as described in EA Chapter 4. The comment did not provide any evidence to support the assertion that the State's inseason management decisions are influenced by a few politically connected individuals despite professional biologists' recommendations or direction.

Comment 14: The Council's analysis under National Standard 7 is legally and factually flawed. Each factor of the National Standard 7 Guidelines weighs heavily in favor of developing an FMP for Cook Inlet.

Response: Amendment 12 is consistent with National Standard 7, as explained in EA section 2.5.1. While the commenter may not agree with the Council's and NMFS' decision, the analysis is not legally or factually flawed. National Standard 7 states that conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication. NMFS' National Standard 7 Guidelines provide the criteria for deciding whether a fishery needs management under an FMP (50 CFR 600.340). The Guidelines state that the principle that not every fishery needs management through regulations implementing an FMP is implicit in National Standard 7. The Guidelines also state that Councils should prepare FMPs only for overfished fisheries and for other fisheries where regulation would serve some useful purpose and where the present or future benefits of regulation would justify the costs.

The National Standard 7 Guidelines provide seven general factors that should be considered, among others, in deciding whether a fishery needs management through regulations implementing an FMP. EA section 2.5.1 compares how each alternative addresses each National Standard 7 factor. Each factor and the Council's and NMFS' determinations for Amendment 12 are summarized as follows—

(1) The importance of the fishery to the Nation and to the regional economy. The Council and NMFS determined that Amendment 12 will not change the importance of the salmon fishery in the regional economy of Cook Inlet or for the Nation because the State will remain as the primary manager of the fishery, and the vast majority of the EEZ will remain closed to commercial salmon fishing. EA section 4.5.2 provides detailed information on the economic

importance of the Cook Inlet salmon fishery in the EEZ.

(2) The condition of the stock or stocks of fish and whether an FMP can improve or maintain that condition. The Council and NMFS determined an FMP would not improve or maintain the condition of the salmon stocks in the Cook Inlet Area. Including the Cook Inlet Area in the FMP would not improve the condition of salmon stocks since the FMP could not control harvests in state waters or ensure escapement goals are met. The Council and NMFS recognized that the State is in a unique position to manage Alaska salmon as a unit in consideration of all fishery removals and to meet escapement goals. The condition of each salmon stock is a result of many factors, including harvest by a number of fisheries that target salmon throughout their range. EA section 5.1 describes the condition of the Cook Inlet salmon stocks.

(3) The extent to which the fishery could be or is already adequately managed by states, by state/federal programs, by federal regulations pursuant to FMPs or international commissions, or by industry self-regulation, consistent with the policies and standards of the Magnuson-Stevens Act. The State has managed the salmon fisheries since statehood in 1959 and the Council and NMFS have relied on State management of the salmon fisheries in the EEZ since 1979. As such, the Council and NMFS have determined that salmon fisheries are adequately managed by the State; therefore, the Council and NMFS only considered the role of federal management given existing State management. The Council and NMFS have determined that State salmon management is consistent with the policies and standards of the Magnuson-Stevens Act, as explained throughout the EA.

(4) The need to resolve competing interests and conflicts among user groups and whether an FMP can further that resolution. Competing interests and conflicts exist among user groups that harvest salmon throughout its range, as explained in EA Chapter 4. The Council and NMFS determined that including the Cook Inlet Area in the FMP would not further the resolution of the State's difficult task of allocating salmon to the multiple user groups—subsistence, sport, personal use, and different commercial gear types—that harvest salmon from EEZ waters through to headwaters of Alaska streams and rivers. Amendment 12 actually minimizes potential conflicts by prohibiting commercial salmon fishing in the vast majority of the EEZ to allow salmon to return to their natal region and be available for harvest by various user groups in those areas.

(5) The economic condition of a fishery and whether an FMP can produce more efficient utilization. The Council and NMFS recognized that the economic conditions of the fishery and the efficiency of the utilization are closely tied to State salmon management. The Council and NMFS determined that including the Cook Inlet Area in the FMP would not change the economic conditions of these fisheries or change the efficiency of the utilization of salmon resources. EA section 4.5.2 describes the economic conditions of the FMP salmon fisheries in the Cook Inlet Area.

(6) The needs of a developing fishery, and whether an FMP can foster orderly growth. The Council and NMFS determined that Amendment 12 fosters orderly growth of salmon fishing in the Cook Inlet Area and other natal regions, by predominantly closing EEZ waters.

(7) The costs associated with an FMP, balanced against the benefits. Neither the Council nor NMFS identified any benefits of an additional layer of federal management on top of State salmon management for the fisheries in the Cook Inlet Area. The Council and NMFS determined that applying federal management would be costly, redundant, and not provide any conservation or management benefits. As discussed in EA Chapter 5, an FMP in the Cook Inlet Area would not further NMFS' obligations under the Marine Mammal Protection Act or Endangered Species Act, or to Essential Fish Habitat, and therefore is not beneficial from the perspective of other marine resources. An FMP would not benefit the condition of salmon stocks in these areas, as discussed above. While there is the perception that an FMP could benefit certain salmon fishermen in the Cook Inlet Area relative to other salmon user groups, that perception is not supported by current federal management practices.

The Council and NMFS determined that the EA's analysis of the factors to be considered in the National Standard 7 guidelines support the decision to redefine the FMP's fishery management unit to exclude the net fishing areas where salmon fisheries are already adequately managed by the State. This decision minimizes the costs associated with creating Federal management and layering Federal management on top of existing State management and avoids unnecessary duplication with existing State management.

Comment 15: Amendment 12 is directly contrary to National Standard 3. Federal abdication of salmon fishery management in those areas of the EEZ that are removed from the FMP under Amendment 12 does not create seamless management. Vessels registered with the State would be subject to State regulations when fishing in those areas; vessels not registered with the State would be unregulated when fishing in those areas. Additionally, the Federal government would still have management authority over salmon subsistence harvest in Federal inland waters and for managing salmon subject to international treaties.

Response: The Council and NMFS determined that Amendment 12 is consistent with National Standard 3, as explained in EA section 2.5.1. 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 (16 U.S.C. 1851(a)(3)). National Standard 3 guidelines explain how to structure appropriate management units for stocks and stock complexes (§ 600.320). The Guidelines state that the purpose of the standard is to induce a comprehensive approach to fishery management (§ 600.320(b)). The guidelines define ''management unit'' as ''a fishery or that portion of a fishery identified in an FMP as relevant to the FMP's management objectives,'' and state that the choice of a management unit ''depends on the focus of the FMP's objectives and may be organized around biological, geographic, economic, technical, social, or ecological perspectives'' (§ 600.320(d)).

The Council and NMFS determined that prohibiting commercial fishing in the redefined West Area and removing the net fishing areas and the sport fishery in the West Area from the scope of the FMP would best enable the State to manage salmon as a unit throughout their range. This approach recognizes that the biology of salmon is such that escapement is the point in the species' life history that is most appropriate for assessing stock status, and that escapement happens in the river systems, not in the EEZ waters. The State manages for all sources of fishing mortality, from the commercial fisheries in the EEZ to the in-river subsistence fisheries. The State monitors actual run strength and escapement during the fishery, and utilizes in-season management measures, including fishery closures, to ensure that minimum escapement goals are achieved. National Standard 3 guidelines provide councils and NMFS with discretion to determine the appropriate management unit for a stock

or stock complex under an FMP and clearly contemplate that the selected management unit may not encompass all Federal waters if, such as here, complementary management exists for a separate geographic area (§ 600.320(e)(2)).

Additionally, managing a stock as a unit, consistent with National Standard 3, does not require exclusive management by a single governmental entity throughout the stock's entire range. The fact that the U.S. Fish and Wildlife Service manages subsistence salmon fishing on Federal lands, or that the Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean defines management authority for salmon in international waters beyond the U.S. EEZ, does not constrain or otherwise limit the Council's and NMFS' ability to determine if Federal conservation and management are necessary for the commercial and sport salmon fisheries that occur in Federal waters adjacent to Cook Inlet.

The Council, NMFS, and the State recognized that removing the net fishing areas from the FMP could create an opportunity for unregulated commercial salmon fishing activity by U.S. vessels in those areas. The Council and NMFS assessed this risk and concluded that unregulated fishing is unlikely due to the risk and limitations associated with a business plan dependent on fishing relatively small pockets of salmon fishing grounds separated by substantial distance, avoiding entry into state waters under any circumstance, and shedding all state permits and licenses. Responses to comments 16 through 20 address this point with additional detail. The Council and NMFS determined that removing the net fishing areas from the FMP does not pose a risk to the overall conservation or management of salmon resources within these areas.

Comment 16: Amendment 12 has the ability to change the importance of the commercial fisheries in their regional economies or for the Nation because it (a) opens the EEZ to unregulated fishing that will draw resources away from permit holders, local processors, and the regional community, and (b) the current problems associated with State management in Cook Inlet will continue to erode the importance of these fisheries.

Response: NMFS disagrees. Amendment 12 does not open the EEZ to unregulated fishing. Fishing for salmon in the vast majority of the EEZ will continue to be regulated under the FMP. The Council and NMFS expect that all vessels fishing for salmon in the net fishing areas will be regulated by the State. In recommending and approving Amendment 12, the Council and NMFS considered the risks associated with removing the net fishing areas from the FMP and determined that the risk of unregulated fishing in these areas is negligible. As explained in EA section 2.5.2, a vessel not registered with the State may be able to circumvent the application of State regulations within the net fishing areas if the vessel never enters State waters and has no contacts with the State. While this scenario is possible, the practical constraints on such a scenario make it unlikely to occur. First, the net fishing areas are in remote locations, far from any port other than an Alaskan port. A large vessel would likely be required for such fishing because it would have to carry onboard everything it would need for the entire fishing trip to avoid entry into State waters under any circumstance. According to the State, if a vessel involved in unregulated fishing entered State waters for fuel, supplies, or a mechanical or medical emergency, the vessel would be subject to State enforcement—greatly increasing the risk of failure for such a business plan. Additionally, a large vessel that had to prepare for any contingency would have high operating costs, but the net fishing areas are relatively small pockets of salmon fishing grounds that may not provide the return needed to cover such costs. Finally, such a vessel would have to shed all State permits and licenses.

As explained in EA section 2.5.2, inherent in the Council's recommendation and NMFS' approval of Amendment 12 is the conclusion that commercial and sport salmon fishermen will be registered with the State when fishing for salmon in these areas, and subject to the laws of the State governing commercial and sport salmon fishing. Based on the logistical complications and business risks identified in the EA and summarized above, it is reasonable to expect that salmon fishing occurring in the net fishing areas will be by vessels registered with the State and that fishing in these areas will be regulated by the State. Removal of these areas from the FMP does not indicate the Council's or NMFS' intent for unregulated salmon fishing to occur in these areas.

Based on available information, NMFS does not agree with the conclusion that current State management erodes the importance of the salmon fisheries in regional economies or for the Nation. See response to comment 23 on the performance of the 2011 commercial fishery in the Cook Inlet Area.

Comment 17: Amendment 12 creates a jurisdictional loophole for unregulated fishing in the EEZ. Neither the State nor NMFS has any mechanism in place to deal with this unregulated fishing by vessels not registered with the State, instead relying on hope that no one will exploit this attractive option. The EA underestimates the potential harm that could result from unregulated fishing in the EEZ. The only available solution, closing the EEZ waters, would further harm existing permit holders.

Response: The response to comment 16 explains why the Council and NMFS determined that unregulated fishing in the net fishing areas is unlikely to occur. Given the significant risks and practical limitations associated with any attempt to conduct unregulated fishing in the net fishing areas, the Council and NMFS reasonably concluded that such activity is unlikely to occur and the EA adequately analyzes the potential harm.

If unregulated fishing does occur, the Council and NMFS could take action under the Magnuson-Stevens Act to regulate salmon fishing in the net fishing areas. While it is difficult to predict what action would be taken, it is likely that the action taken would be tailored to the extent and severity of the problem identified. One action could be to assert Federal management over the net fishing areas and close the areas to fishing while the Council develops a long-term solution. As both the commenter and EA section 2.5.2 note, closing the net fishing areas would impose costs on all operations utilizing these salmon fishing areas, including the State-regulated participants operating in these areas.

Comment 18: The Council should not rely on the State's assurances that they can prosecute a vessel not registered with the State for salmon fishing in the EEZ to understand the risks of removing Cook Inlet waters from the FMP.

Response: The Council and NMFS did not rely on assurances of successful prosecutions by the State as their basis for assessing the risk of unregulated fishing in the net fishing areas. The Council and NMFS relied on information that demonstrates the significant challenges associated with any attempt to successfully conduct unregulated fishing in the net fishing areas. The practical limitations identified in the EA indicate that unregulated fishing in the net fishing areas is unlikely to occur. The EA does not indicate that unregulated fishing is likely to occur, but can be successfully prosecuted by the State.

As explained in the response to comment 16, EA section 2.5.2 contained information on the risk of unregulated

fishing in the net fishing areas if they are removed from the FMP. The Council and NMFS reviewed this information, considered the geographic scope of the EEZ accessible by vessels not registered by the State, the inherent risks of fishing countered by the inability of such vessels to enter Alaskan ports, the potential amount of salmon fishery resources that may be accessible to make such an endeavor profitable, and the need to shed all State permits and licenses. Based on this information, the Council and NMFS concluded that there was a negligible risk that unregistered vessels would prosecute a directed salmon fishery within this limited area, and that this negligible level of risk did not warrant retaining the net fishing areas in the FMP.

Comment 19: Removing these areas from the FMP opens the door to unregulated fishing by vessels not registered in the State of Alaska. Should unregulated fishing occur, NMFS will be unable to implement emergency measures to regulate commercial fishing in these areas, because this scenario has been publicly debated and considered by the Council. Likely, any amendment that opens the door to unregulated fishing would be found inconsistent with the Magnuson-Stevens Act, and would be sent back for review by a Federal court.

Response: The response to comment 16 explains why the Council and NMFS determined that unregulated fishing in the net fishing areas is unlikely to occur and why Amendment 12 does not open the door to unregulated fishing in the net fishing areas.

As explained in the response to comment 17, in the unlikely event that unregulated fishing does occur in the net fishing areas, the Council and NMFS could take action under the Magnuson-Stevens Act to regulate salmon fishing in these areas. However, in order to take emergency action under the Magnuson-Stevens Act (16 U.S.C. 1855(c)), the Council must find that an emergency exists. NMFS guidelines provide that an emergency is a situation that: (1) Results from recent, unforeseen events or recently discovered circumstances; (2) presents serious conservation or management problems in the fishery; and (3) can be addressed through emergency regulations for which the immediate benefits outweigh the value of advanced notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process (62 FR 44421, August 21, 1997).

The commenter concludes that because the risk of unregulated fishing in the net fishing areas has been publicly debated and considered by the Council, unregulated fishing would not meet the emergency criterion that an event be unforeseen. It is premature to determine whether unregulated fishing in the net fishing areas would or would not meet the emergency criteria. However, as explained in the response to comment 18, the Council and NMFS have determined, based on the best information available, that unregulated fishing is unlikely to occur. If unregulated fishing does occur, an argument may exist that it was unforeseen. If the best information available had indicated that unregulated fishing in the net fishing areas was likely and the Council still chose to remove these areas from the FMP, it would be more difficult to conclude that future unregulated fishing in the net fishing areas is an unforeseen event.

Comment 20: The Council has no legal authority to carve out part of the EEZ from the scope of its jurisdiction or to develop an FMP for only a certain geographic range of a stock.

Response: Amendment 12 does not remove the net fishing areas from the Council's jurisdiction under the Magnuson-Stevens Act. The Council continues to have authority over the fisheries in the Arctic Ocean, Bering Sea, and Pacific Ocean seaward of Alaska (16 U.S.C. 1852(a)(1)(G)). In adopting Amendment 12, the Council chose not to exercise this authority for salmon fisheries occurring in the net fishing areas. The Magnuson-Stevens Act provides the Council with broad discretion in determining whether a fishery is in need of conservation and management. As explained in the response to comment 15, National Standard 3 guidelines provide councils and NMFS with discretion to determine the appropriate management unit for a stock or stock complex under an FMP and clearly contemplate that the selected management unit may not encompass all Federal waters if complementary management exists for a separate geographic area (50 CFR 600.320). Additionally, National Standard 7 guidelines provide the criteria for determining whether a fishery needs management and state that councils should prepare FMPs only for fisheries where regulation would serve some useful purpose and where present or future benefits of regulation would justify the costs (50 CFR 600.340). Under the Magnuson-Stevens Act and National Standards 3 and 7, the Council has the authority to develop an FMP that includes a geographic management unit for a fishery that is less than the entire EEZ if the Council can provide a reasonable explanation as to why that management unit is the appropriate management unit. The Council's rationale for Amendment 12 is provided throughout this preamble and in the EA prepared for Amendment 12.

Comment 21: Having an FMP with clearly defined management objectives, operating in a transparent process with Secretarial oversight of the Board, would lessen the user group conflicts in Cook Inlet. While the FMP would only apply to EEZ waters, it would have to consider all salmon removals and would provide a forum to ensure that the State manages salmon resources in a manner consistent with the Magnuson-Stevens Act.

Response: NMFS does not share the commenter's opinion that FMP management of the Cook Inlet Area would reduce the user group conflicts in Cook Inlet. Conflicts among different user groups exist in federally managed fisheries, as well. Federal management may change the forum for user group conflicts in Cook Inlet from the Board to the Council, but would not, in and of itself, lessen the conflicts inherent in the difficult task of allocating salmon, a finite resource, to the multiple user groups—subsistence, sport, personal use, and different commercial gear types—that harvest Cook Inlet salmon from EEZ waters through to the headwaters of Alaska streams and rivers. Amendment 12 limits user group conflicts by prohibiting commercial salmon fishing in the West Area, which encompasses the vast majority of the EEZ. The prohibition enables salmon from different regions to return to their natal region and be available for harvest by various user groups in those areas. Again, this position recognizes that salmon are best harvested relatively nearshore, where competing interests and conflicts among user groups can be resolved by the government entity with management authority to regulate harvest by all the user groups. The Fishery Impact Statement in EA Chapter 4 describes the multiple salmon fisheries managed by the State. Federal fishery management under the FMP would only apply in the EEZ, where the commercial fishery is the predominant user group. The FMP would have no authority over the harvest of salmon within State waters by various other user groups, but would have to account for removals within State waters in determining the appropriate level of harvest in Federal waters.

The Council and NMFS determined that the State has clearly defined management objectives for Cook Inlet salmon and that its management process is transparent. In approving

Amendment 12, the Council and NMFS determined that Secretarial oversight of the Board is not necessary for the conservation and management of salmon in the net fishing areas.

Comment 22: The EA fails to address the impacts on salmon resources caused by the unrestricted growth of personal use fisheries on the Kenai River. A significant percentage of salmon released by personal use fishermen do not survive to spawn and represent unaccounted-for removals. This practice is reasonably likely to continue and must be considered in the EA.

Response: Contrary to the commenter's assertion, the EA does examine the impacts on salmon caused by all salmon fisheries, including the personal use fishery in Cook Inlet. The personal use fishery is a consumptive use fishery, which means people harvest salmon for food and not for recreation or sport. It occurs entirely within State waters and is managed by the State. Generally, fish may be taken for personal use purposes only under the authority of a permit issued by ADF&G. ADF&G limits the amount and type of gear that can be used to reduce the likelihood that Chinook salmon will be gilled and sustain mortal injuries. Given that the personal use fishery is for food, it is unlikely that any Chinook salmon caught are released in the Kenai River personal use fishery. The contention that personal use fishermen release Chinook salmon that have been gilled is unfounded.

The Kenai River personal use fishery has grown as the population of Anchorage, the Matanuska-Susitna Valley, and surrounding areas has grown. ADF&G estimates that the annual average harvest of Chinook salmon in the Kenai River dip net fishery was 816 for the years 1996 through 2011, and 1,200 for the more recent years 2006 through 2011. The annual average number of Upper Cook Inlet personal use salmon fishery permits fished was 17,748 permits for the years 1996 through 2011, and 22,423 permits for the more recent years 2006 through 2011. Each holder of an Upper Cook Inlet personal use salmon fishery permit is allowed to harvest one Chinook salmon, so the potential harvest is much greater than what is actually being taken.

The EA considers the harvest of salmon that occurs in all salmon fisheries, including commercial, personal use, sport, and subsistence fisheries. In the cumulative effects analysis, the EA explains that the State's first priority for management is to meet spawning escapement goals to sustain salmon resources for future generations. The State carefully monitors the status of salmon stocks returning to Alaska streams and controls fishing pressure on these stocks. Subsistence use is the highest priority use under both State and Federal law. Surplus fish, or fish in excess of the fish needed for escapement and subsistence use, are made available for other uses, such as commercial and sport harvests. The Board allocates surplus fish among user groups according to Board policy and applicable State law, as described in the Fishery Impact Statement (EA Chapter 4). The EA recognizes that other salmon fisheries have the most substantial impacts on the salmon fisheries that occur in the EEZ because the State comprehensively manages salmon stocks and considers each fishery that targets specific stocks or stock groupings.

Comment 23: Having an FMP for the Cook Inlet Area would help assess and halt current trends towards diminishing harvests by providing clear management goals and objectives and restoring science-based management to the fishery.

Response: Salmon returns are cyclical and harvest data do not support the conclusion that there is a trend towards diminishing harvests. Salmon that return to Cook Inlet are subject to harvest by numerous commercial and non-commercial fisheries in marine waters and harvest by subsistence, sport, and personal use fishermen in rivers and streams. While the non-commercial fisheries have grown over time as the population of southcentral Alaska has grown, the claim that this growth has disadvantaged the commercial sector is not supported by available information. The 2010 estimate for commercial salmon fishery gross earnings was well above average, and only exceeded by the earnings reported in 1992, 1993, and 1994. The 2011 commercial harvest of 5.3 million salmon ranks as the fourth largest overall harvest in the past 20 years. The commercial ex-vessel value of approximately $51.6 million was the fifth highest value since 1960, and represented the highest ex-vessel value since 1992.

In 2011, the bulk of the sockeye salmon run came in compacted and above forecast. Compact runs are, in general, very difficult to manage. The 2011 sockeye salmon run was dynamic in that the run materialized in days, not weeks. Catch per unit effort went from a near historic low on July 9 to just below a near record high in 5 days, and the record harvests soon after. Processors limited deliveries for a period of time until they were able to catch up with processing all of the salmon harvested.

Even if the FMP included the Cook Inlet Area, the FMP would be limited to allocating the harvestable surplus of salmon among users within the EEZ. As explained in EA section 2.2, under the Magnuson-Stevens Act, an FMP only has authority to manage the fisheries that occur in the EEZ. The Magnuson-Stevens Act is clear that nothing in it shall be construed as extending or diminishing the jurisdiction or authority of any state within its boundaries. Absent formal preemption in accordance with Magnuson-Stevens Act (16 U.S.C. 1856(b)), the Magnuson-Stevens Act does not provide authority for the Council to manage fisheries in state waters, which would be required for the Council to change escapement goals or to allocate more salmon to a specific user group, or to direct the Board to make these types of changes.

In other instances where a fishery occurs in both state and Federal waters, Federal management of the Federal portion of the fishery is responsive to state management of the portion in state waters. An example of this occurs in the Pacific cod fisheries in the Gulf of Alaska and Aleutian Islands. The Federal Pacific cod total allowable catch is reduced to account for the State guideline harvest level so that total catch does not exceed the Pacific cod annual catch limit.

Comment 24: The State's erratic management decisions in Cook Inlet have made Cook Inlet a difficult commercial environment. Federal oversight with a stable FMP and management objectives could return a sense of order and predictability to the fishery.

Response: The Council and NMFS are aware of user group conflicts in the Cook Inlet salmon fisheries. However, NMFS does not share the commenter's opinion that FMP management of the Cook Inlet Area would reduce the user group conflicts or create the order and predictability the commenter seeks. The comment provides no examples for the type of Federal oversight that would change the commercial environment. As explained in the response to comment 23, the Council's and NMFS' authority to change State management of salmon fisheries within State waters is limited. While the complexities associated with salmon management and fluctuations in salmon abundance can make it difficult to create a stable and predictable commercial environment, the response to comment 23 demonstrates that commercial salmon fisheries in Cook Inlet continue to have successful seasons.

Comment 25: The Council claims the salmon fisheries in the EEZ are fully developed. However, there is a hugely underutilized chum and pink fishery in Cook Inlet. The State has been largely unwilling to allow the harvest of these fish. An FMP could help develop these fisheries in a manner consistent with the national standards.

Response: As explained in EA section 5.1, the State does not fully utilize pink and chum salmon in Upper Cook Inlet, in part, due to the State's efforts to conserve coho salmon and to provide for sport fisheries on coho salmon. Coho salmon are caught in the commercial fisheries directed at pink and chum salmon. Coho salmon are important to sport fishermen in Cook Inlet. Consideration of sport fishing opportunities is consistent with National Standard 1. It would be difficult to harvest additional pink and chum salmon without harvesting additional coho salmon that have been allocated to sport fisheries by the Board.

Comment 26: NMFS agrees that Cook Inlet salmon need Federal management, as supported by the critical habitat designation for Cook Inlet beluga whales under the authority of the Endangered Species Act (ESA) and the Cook Inlet Habitat Conservation Strategy. The Council failed to consider the impacts of State management decisions on salmon essential fish habitat (EFH). The EA fails to address the impacts of current and reasonably foreseeable projects in Cook Inlet affecting salmon habitat, including those identified by the Cook Inlet Habitat Conservation Strategy.

Response: NMFS does not agree with the assertions made in the comment. The commenter is concerned that by removing the Cook Inlet Area from the FMP, NMFS will neglect impacts to Cook Inlet salmon and salmon habitat even though NMFS has acknowledged the importance of Cook Inlet salmon and salmon habitat in the documents identified by the commenter. While the commenter brings up a number of habitat-related issues, none of them are germane to the Council's and NMFS' decision on the appropriate scope of the management unit within the FMP. Under the Magnuson-Stevens Act, fishery management plans manage fisheries in Federal waters. NMFS protection or management of Cook Inlet beluga whales and habitat under the ESA occurs regardless of the FMP's scope.

As explained in EA Chapter 5, NMFS manages specific marine mammal species under the ESA, and that management is not contingent on the existence of a fishery management plan. NMFS has identified more than one third of Cook Inlet as critical habitat for the Cook Inlet beluga whale (76 FR 20180, April 11, 2011). Pacific salmon constitute one of the primary constituent elements for the Cook Inlet beluga whale's critical habitat. When designating critical habitat under the ESA, NMFS is required to identify specific areas, within the geographical area occupied by the species, on which are found those physical or biological features (1) essential to the conservation of the species, and (2) which may require special management considerations or protection. As a primary constituent element, NMFS concluded that salmon are essential to the conservation of the Cook Inlet beluga whale and may require special management considerations or protection in the future. The term ''special'' does not necessarily mean ''beyond existing.'' The conclusion that Cook Inlet salmon may require special management considerations or protection in the future does not mean that salmon are presently impaired or that existing laws and regulations managing salmon are not sufficient. NMFS continues to work with the State to ensure that Cook Inlet beluga whales are considered in salmon management planning for Cook Inlet.

EFH designations are done through a prescribed process, and EFH can be designated in both Federal and state waters depending on the habitat (water) needs for each life history stage of each FMP species. Because of habitat characteristics, Alaska salmon EFH is (1) all Federal and state waters (0–200nm) covering juvenile and adult maturing life history stages and ranges from Dixon Entrance to Demarcation Bay (Arctic), and (2) all freshwaters listed as anadromous for mature, juvenile, and egg stages of the five salmon species. Amendment 12 does not change the EFH designation for salmon or any of the current EFH provisions or NMFS' role in coordination and consultation on EFH. Amendment 11 updates the FMP's essential fish habitat provisions based upon the best scientific information available. A description of the changes made by Amendment 11 is provided in the Notice of Availability for Amendments 10, 11, and 12 (77 FR 19605, April 2, 2012) and is not repeated here.

As explained in EA Chapter 5, a number of ongoing and future actions impact salmon spawning habitat, including in-river fisheries, development, and pollution. A complete discussion of fishing and non-fishing impacts to salmon habitat is contained in FMP Appendix A. The FMP incorporates the new information from NMFS' report ''Impacts to Essential Fish Habitat from Non-fishing Activities in Alaska.'' The waters and substrates that comprise salmon EFH are susceptible to a wide array of human activities unrelated to fishing. Broad categories of such activities include mining, dredging, fill, impoundment, discharge, water diversions, thermal additions, actions that contribute to nonpoint source pollution and sedimentation, introduction of potentially hazardous materials, introduction of exotic species, and the conversion of aquatic habitat that may eliminate, diminish, or disrupt the functions of EFH. For each of these activity categories, known and potential adverse impacts to EFH are described in the NMFS report. Mechanisms or processes that may cause adverse effects and how these may affect habitat function also are described in the NMFS report.

Additionally, coordination and consultation on EFH is required by the Magnuson-Stevens Act (16 U.S.C. 1855(b)). However, this consultation does not supersede the regulations, rights, interests, or jurisdictions of other Federal or state agencies. The NMFS report also contains non-binding recommendations for reasonable steps that could be taken to avoid or minimize adverse effects of non-fishing activities on EFH.

As the EA points out, non-fishing activities discussed in the NMFS report are subject to a variety of regulations and restrictions designed to limit environmental impacts under Federal, state, and local laws. Any future activity that potentially impacts salmon spawning habitat would be subject to these regulations and the Magnuson-Stevens Act's EFH consultation requirements. Amendment 12 does not remove or in any way diminish these regulations and restrictions or the Magnuson-Stevens Act requirements for salmon EFH.

NMFS had proposed the Cook Inlet Habitat Conservation Strategy as part of NOAA's national habitat blueprint project. While the NOAA Habitat Blueprint starts with increasing efficiencies within NOAA and across its programs and offices, it is also designed to foster collaboration across Federal, state, and local levels. NMFS has determined that Cook Inlet is not the optimum focus area in the Alaska Region for this particular initiative at this time. NMFS is working cooperatively with the State to identify additional opportunities to partner on common actions in priority areas, improve delivery of habitat science, and

encourage complementary habitat conservation actions.

Comment 27: The State fails to make allowances for the safety of life at sea as required by National Standard 10.

Response: National Standard 10, which applies to Federal fisheries management under the Magnuson-Stevens Act, states that conservation and management measures shall, to the extent practicable, promote the safety of human life at sea (16 U.S.C. 1851(a)(10)).

Although the State is not required to be consistent with National Standard 10 when managing State fisheries within State waters, as discussed in EA section 4.6, the State promotes the safety of human life at sea. Through its public process, the Board addresses specific fishery safety issues as they arise and works to modify its regulations, as necessary, in order to increase safety and minimize risk of injury or death for all fishery participants. ADF&G promotes safety, whenever possible, in its salmon fisheries through management practices, support in the regulation formation process, and through assistance to enforcement agencies.

Examples of safety supported through management practices include: using emergency orders for daytime openings of salmon fisheries to allow fishermen to harvest and deliver fish during daylight hours; delaying the opening of weekly fishing periods when severe weather is forecasted; and extending fishing time after severe weather to encourage fishermen to seek shelter from severe weather because they will be able to fish when the weather moderates. An example of safety supported through regulation is a limit on the length and size of salmon nets that can be used, which moderates harvest levels to manageable quantities that fishermen are able to handle more safely. Additionally, ADF&G promotes safety through direct assistance to enforcement agencies. ADF&G provides information on harvest patterns and fishing effort as well as lists of registered vessels to the Alaska Wildlife Troopers, NMFS, and the United States Coast Guard. This information allows these enforcement agencies to focus efforts in areas where the fishing fleets are concentrated, providing on-scene presence of enforcement personnel, vessels, aircraft, and expedited reaction times when accidents occur.

Comment 28: The EEZ portion of Cook Inlet is essential to properly managing the sockeye fishery to provide an orderly fishery and prevent over-escapement.

Response: It is difficult to understand the point being made by the comment in relation to the provisions of Amendment 12. However, this point is repeated in comment 42 as one example of how the Cook Inlet Area salmon fisheries differ from the Prince William Sound Area and the Alaska Peninsula Area salmon fisheries. Because comment 42 provides further context for responding to this point, NMFS responds to this comment in its response to comment 42.

Comment 29: The EA overlooks current problems with State management of the Cook Inlet salmon fisheries and the State's efforts to ''terminalize'' the Cook Inlet fisheries. Since 1990, the State has progressively shifted fishing efforts out of the EEZ in favor of nearshore, or terminal, fishing. This practice ignores the timing requirements of the Cook Inlet salmon fishery that occurs in the EEZ and results in the loss of quality and loss of harvest opportunities. This process has had negative impacts on (1) The health of the stocks, by fostering an environment for over-escapement and thus lost future yields; (2) the ability to manage the fishery to meet OY; and (3) the value of the fish harvested for the fishermen, the processors, and the community. These efforts to ''terminalize'' the fishery are ongoing and are reasonably likely to continue as a result of the Council's removal of the Cook Inlet Area from the Salmon FMP.

Response: According to information in EA sections 4.3.1 and 5.1, the majority of the commercial salmon fisheries in Cook Inlet are mixed stock fisheries, including the drift gillnet fishery, which is the only commercial salmon fishery currently allowed in the EEZ. Following its Mixed Stock Salmon Fisheries Policy, the State has discouraged the development or expansion of mixed stock fisheries when the fish that comprise those stocks can be harvested after they have separated into more discrete stocks. Mixed stocks separate into discrete stocks as they migrate towards their rivers of origin. Therefore, as a general principle, terminal fisheries harvest discrete stocks and off-shore fisheries harvest mixed stocks.

The State's policy for managing mixed stock salmon fisheries is consistent with sustained yield of wild fish stocks. As described in EA section 3.4, the Council and NMFS have determined that the State's sustained yield principle is equivalent to the Magnuson-Stevens Act's principle for OY. Salmon fisheries in Upper Cook Inlet are complex, mixed stock fisheries with many divergent users. It is difficult to manage salmon fisheries for MSY on all stocks and all salmon species in circumstances where the composition, abundance, and productivity of the salmon stocks and species in those fisheries vary substantially. The State has attempted to ensure the conservation of the resources and allocate the harvest of the resources in a manner consistent with the goal of maximizing the benefits.

Available information suggests that the Mixed Stock Salmon Fisheries Policy does not have negative impacts on the value of the fish harvested for the fishermen, the processors, and the community. It is difficult to assess the impacts of State management policy on the Cook Inlet commercial fishery due to shifting market demands, fluctuations in international currency exchange rates, and the inherent variability in salmon run strength. However, as shown in EA Chapter 4, the recent total Cook Inlet estimated gross earnings and the estimated gross earnings of the Cook Inlet drift gillnet fleet do not show a negative trend in earnings from 1991 to 2010. With the exception of the late 1980's, there has been a trend of increasing prices for sockeye salmon in recent years. In fact, the 2010 estimated gross earnings were the highest since 1994, and higher than the average annual earnings from 1991 to 2012. Additionally, in 2011 the average price per pound for Cook Inlet commercial fishermen was the second highest since 1992. The 2011 overall ex-vessel value was the highest since 1992. The ex-vessel value in 2011 was also the 5th highest since 1960 with the drift fleet harvesting 61 percent of those fish, 13 percent above average and the highest percent since 1992.

Comment 30: The strongest part of Amendment 12 is the provision for ACLs and AMs, because fishermen will be prevented from overfishing, and this provision will allow the salmon to maintain a steady population. The use of escapement as opposed to rigid numerical catch limits provides for the naturally occurring fluctuation in population.

Response: NMFS acknowledges the comment.

Comment 31: The Council did not comply with the ACL and AM requirement for Cook Inlet fisheries. Instead of setting ACLs and AMs, the Council removed the fisheries from the FMP, which is arbitrary and capricious.

Response: The decision to remove the net fishing areas from the FMP was made considering a number of factors. The predominant factors were the Council's salmon management policy, the recognition that the State is the appropriate authority for managing

salmon, and the determination that the State is adequately managing salmon in the net fishing areas consistent with the policies and standards of the Magnuson-Stevens Act. The FMP prohibits commercial fishing in the West Area so that the State can continue to manage the salmon fisheries in waters adjacent to the West Area, including the Cook Inlet Area, Prince William Sound Area, and the Alaska Peninsula Area. The Council determined that Federal conservation and management are not required for the fisheries that occur in the Cook Inlet Area because overfishing is prevented by the State's management program.

The Council and NMFS determined that the State manages Alaska salmon stocks according to the best scientific information available to achieve sustainable yield. Information provided in EA Chapter 4 and section 5.1 demonstrates that salmon are targeted throughout their adult life by a variety of fisheries from commercial mixed stock ocean fisheries to terminal net fisheries, sport fisheries, subsistence fisheries, and personal use fisheries. Escapement-based management, with real-time monitoring of run strength, inherently accounts for fishery catch and natural mortality. The State monitors catch in all of the salmon fisheries and manages salmon holistically by incorporating all the sources of fishing mortality on a particular stock or stock complex in calculating the escapement goal range. As explained in EA section 3.3, overfishing is prevented by in-season monitoring and data collection that indicates when an escapement goal is not being met. When the data indicate low run strength due to natural fluctuations in salmon abundance, ADF&G closes the fishery to ensure the escapement goal range is reached. This may result in low catches for the target fisheries, but it prevents overfishing and ensures sustained yield over the long term.

Comment 32: The Council should not adopt the State's escapement goals as a proxy for the ACL requirements, but should engage the Council's Scientific and Statistical Committee (SSC) and other experts including ADF&G to transparently develop statistically and scientifically defensible escapement goals for Alaska's salmon fisheries.

Response: The State's salmon management program is based on scientifically defensible escapement goals and inseason management measures to prevent overfishing. The State's process for establishing escapement goals is described in EA section 3.3 and in EA Appendix 1. During the development of Amendment 12, NMFS and the Council engaged the SSC and ADF&G in determining the best approach for addressing the ACL requirement for Alaska salmon. Through that process, and as documented in EA section 3.3, the Council and NMFS determined that Amendment 12 implements the best approach for addressing the ACL requirement for Alaska salmon.

Amendment 12 does not establish ACLs or AMs in the West Area because no commercial salmon fisheries are authorized in the West Area. The mechanism to establish ACLs and AMs for the East Area commercial troll fishery builds on the FMP's existing framework for establishing status determination criteria. Amendment 12 does not establish a mechanism for specifying ACLs and AMs for Chinook salmon because the Magnuson-Stevens Act exempts stocks managed under an international fisheries agreement in which the United States participates from the ACL requirement (16 U.S.C. 1853 note). Under Amendment 12, the mechanisms for specifying ACLs for Tier 2 (coho salmon) and Tier 3 (coho, pink, chum, and sockeye salmon stocks managed as mixed-species complexes) salmon stocks are established using the State's scientifically-based management measures to control catch and prevent overfishing. This approach represents an alternative approach to the methods prescribed in NMFS' National Standard 1 Guidelines (50 CFR 600.310) for specifying ACLs. The Council recommended and NMFS approved an alternative approach because the State's escapement-based management system is a more effective management system for preventing overfishing of Alaska salmon than a system that places rigid numeric limits on the number of fish that may be caught. Escapement is defined as the annual estimated size of the spawning salmon stock in a given river, stream, or watershed.

Comment 33: The Council should not replace the SSC with the State's peer review process because the State's process is subject to significant political influence.

Response: NMFS does not agree with the commenter's assertion that the State's process is subject to significant political influence.

As part of Amendment 12, the Council established a peer review process in the FMP that utilizes the State's existing salmon expertise and processes for developing escapement goals as fishing level recommendations. The Council and NMFS carefully reviewed the State's process for establishing escapement goals, as described in EA section 3.3 and in EA Appendix 1. They chose to establish a peer review process in the FMP that utilizes existing State salmon expertise and review processes for the scientific information used to advise the Council about the conservation and management of the salmon fisheries in the EEZ. Using the State's process as the peer-review process helps to recognize the limited role and expertise of NMFS and the Council in salmon fishery management, as well as the State's existing expertise and infrastructure. The State, as the peer review body, will work with the Council to implement the provisions of the Magnuson-Stevens Act for the fisheries managed under the FMP. This peer review process requires the State to annually prepare a stock assessment report, using the best available scientific information, for the salmon caught in the Southeast Alaska troll fishery and provide the stock assessment report to the Council. The peer review process is discussed in detail in section 3.5 of the EA (see **ADDRESSES**).

Comment 34: The EA states that its purpose is to decide whether there is a need to supplement the Environmental Impact Statement (EIS) for the proposed action, but it is not clear what this means or which EIS should be supplemented. The draft EA is rooted in the fundamentally false premise that NMFS need only review the previously issued ''Final Programmatic Environmental Impact Statement for the Pacific Salmon Fisheries Management off the Coasts of Alaska, Washington, Oregon, and California'' (Salmon PSEIS) and then decide whether it should be supplemented. Indeed, it is not clear that NMFS has ever addressed its decision to defer management in Cook Inlet to the State.

Response: The EA states that ''This environmental assessment (EA) analyzes the impacts of the proposed action to revise the Salmon FMP and the alternative management approaches considered.'' The EA summarizes previous National Environmental Policy Act (NEPA) documents for context and background. The EA considers whether the Salmon PEIS needs to be supplemented for the East Area because Amendment 12 maintains the action that was analyzed in that PEIS. It also analyzes the impacts of the alternatives on the resource components—salmon stocks, ESA-listed Pacific salmon, marine mammals, and seabirds—for all four salmon fisheries that occur in the EEZ. For the West Area, the EA examines the impacts of status quo management and the ongoing fisheries on the resources components. The EA

provides the best available information on these interactions between the salmon fisheries in the EEZ and these resources. See response to comment 35.

As explained in response to comment 36 and EA section 2.1, prior to approval of Amendment 12, the FMP was vague as to the deferral of management authority to the State in the Cook Inlet Area and included no explicit language that the Council and NMFS had delegated management in the net fishing areas to the State. As stated in the EA, the Council and NMFS' proposed action was to revise and update the FMP to reflect the Council's policy for managing salmon fisheries and to comply with the Magnuson-Stevens Act. The EA examined four alternatives for determining the future scope of the FMP and where Federal conservation and management is required: (1) No action; (2) maintain the existing geographic scope of the FMP and update the FMP; (3) maintain the FMP in the East Area and, in the West Area, modify the FMP to specifically exclude the net fishing areas and the sport fishery from the FMP and update the FMP; and (4) maintain the FMP in the East Area only and update the FMP. Applicable to Alternatives 2, 3 and 4 was the Council's position that in areas where the FMP applies, management would be delegated to the State. The EA presents the impacts that would occur under all the alternatives, including Alternative 2, which includes the Cook Inlet Area in the FMP and delegates management of the salmon fisheries that occur there to the State.

Amendment 12 does not delegate management of the salmon fisheries in the Cook Inlet Area to the State. Instead of imposing Federal management of the salmon fisheries in the West Area and delegating management to the State, Amendment 12 removes this area and the fisheries that occur within it from fishery management under the FMP. The Magnuson-Stevens Act, at 16 U.S.C. 1856(a)(3)(A)(i), provides that a state may regulate a fishing vessel outside the boundaries of the state if the fishing vessel is registered under the law of that state and there is no fishery management plan or other applicable Federal fishing regulations for the fishery in which the vessel is operating. Under Amendment 12, the State can manage vessels operating in the Cook Inlet Area when those vessels are registered with the State.

Comment 35: A supplemental EIS is required because the physical environment of Cook Inlet and the fisheries themselves are drastically different in 2012 than they were 22 or 34 years ago.

Response: While NMFS agrees that the Cook Inlet salmon fisheries differ today from when the FMP was originally implemented in 1979 or when the FMP was comprehensively amended in 1990 under Amendment 3, NMFS disagrees that these changes require the preparation of a supplemental EIS. A supplemental EIS would be required if NMFS makes substantial changes in the proposed action that are relevant to environmental concerns or significant new circumstances or information exist relevant to environmental concerns and bear on the proposed action or its impacts (40 CFR 1502.9(c)(1)).

NMFS determined that Amendment 12 is not a substantial change in the proposed action, as it maintains the existing salmon management structure. Amendment 12 updates the FMP to comply with the current Magnuson-Stevens Act requirements, and amends the FMP to more clearly reflect the Council's policy with regard to the State's continued management authority over commercial fisheries in the net fishing areas, the Southeast Alaska commercial troll fishery, and the sport fishery. These changes improve the FMP but they do not result in any substantive changes to the management of the salmon fisheries that occur in these areas.

NMFS prepared an EA to determine whether the proposed action had the potential to cause significant environmental effects. The EA analyzed whether there were significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. In addition, the EA addressed all beneficial and adverse impacts of the proposed action to reach the conclusion of no significant impacts. The information and analysis contained in the EA demonstrates that Amendment 12 will not significantly impact the quality of the human environment. Based on the EA, NMFS prepared a FONSI that describes in more detail why NMFS determined that the action will not significantly impact the quality of the human environment (see **ADDRESSES**). Based on this FONSI, NMFS determined that an EA is the appropriate NEPA analysis for this action and preparation of a supplemental EIS is not warranted.

Comment 36: The consequences of deferring Cook Inlet salmon management to the State and of removing the Cook Inlet Area from the FMP were not contemplated in the prior EIS and are not properly discussed in the current EA.

Response: NMFS assumes the commenter is referring to the EIS prepared in 1978 for the original FMP, because the 2003 EIS prepared for the Pacific salmon fisheries management off the coasts of Southeast Alaska, Washington, Oregon, and California, and in the Columbia River Basin does not apply to salmon fisheries occurring in Cook Inlet.

The impacts associated with State management of salmon fisheries occurring in the net fishing areas were examined in the 1978 EIS. When the 1978 EIS was prepared, the State had been managing the salmon fisheries in the Cook Inlet Area, Prince William Sound Area, and the Alaska Peninsula Area in accordance with the North Pacific Fisheries Act of 1954. Federal regulations at 50 CFR 210 set the outside fishing boundaries for salmon net fishing in Alaska as those set forth under State regulations and provided that any fishing conducted within these fishing boundaries shall be conducted under fishing regulations promulgated by the State.

When the Council comprehensively revised the FMP in 1990, the FMP continued to broadly define the fishery management unit as the entire EEZ, including the net fishing areas. However, the FMP continued to recognize Federal law that stated fishing conducted within the net fishing areas was governed by the State. The FMP did not explicitly delegate management of the salmon fisheries that occur in the net fishing areas to the State.

Federal law mandating State management of the net fishing areas changed with the repeal of the North Pacific Fisheries Act of 1954 and the enactment of the North Pacific Anadromous Stocks Act of 1992. In 1995, as a result of this change in Federal law, NMFS repealed the fishing boundary regulations at 50 CFR part 210 because they were without statutory basis. At that time, the Council and NMFS did not amend the FMP to specifically delegate salmon management to the State under the FMP; the State continued to manage the salmon fisheries in the net fishing areas.

Amendment 12 clarifies the FMP with respect to fishery management in light of these changes to Federal law, and does so in a way that does not change how the salmon fisheries occurring in the net fishing areas have been managed for decades. Amendment 12 maintains the authority and practice of State management of the salmon fisheries occurring in these areas. While Amendment 12 modifies the FMP, it does not modify the way in which the salmon fisheries within the net fishing areas have been managed for many years. The EA analyzes the impacts of removing the Cook Inlet Area, the

Prince William Sound Area, and the Alaska Peninsula Area from the FMP, and provides a detailed discussion of salmon management in EA Chapter 4 and the salmon resources in EA Chapter 5. As explained in the response to comment 35, the EA prepared for Amendment 12 thoroughly analyzes the impacts of the proposed action on the human environment, including the impacts resulting from the removal of the Cook Inlet Area from the FMP.

Comment 37: The EA fails to discuss the environmental impact of removing any requirement for the State to comply with the Magnuson-Stevens Act.

Response: NMFS disagrees. EA Chapter 5 analyzes the environmental impacts of current salmon fisheries management (status quo) and the impacts of the alternatives relative to status quo.

Comment 38: The Secretary of Commerce (Secretary) should send this proposed rule back to the Council and NMFS to properly include the three net fishing areas in the FMP. These net fishing areas were excluded from the FMP in order to prevent stakeholders in these fisheries from exercising Federal review of State management measures that discriminate against nonresidents of the State.

Response: NMFS, under authority delegated to it by the Secretary, approved Amendment 12 on June 29, 2012. NMFS determined that Amendment 12, including its removal of the net fishing areas from the FMP, is consistent with the FMP, the provisions of the Magnuson-Stevens Act, and other applicable Federal law.

The Council and NMFS did not remove the net fishing areas from the FMP to prevent stakeholders from exercising Federal review of State management measures. The Council recommended and NMFS approved removal of these areas from the FMP because Federal conservation and management is not necessary for the fisheries that occur in these areas. The Council's and NMFS' rationale for removing these areas from the FMP is explained in detail in EA section 2.5 and is summarized in the response to comment 4. The three net areas were excluded from the FMP because Federal conservation and management is not necessary for the fisheries that occur there. The Council determined that excluding these areas and the sport fishery from the FMP allows the State to manage Alaska salmon stocks as seamlessly as practicable throughout their range, rather than imposing dual State and Federal management.

The Council meets regularly throughout the year and stakeholders in the net fishing areas can present issues to the Council if the need arises. Whether the Council chooses to act depends on a number of factors, but stakeholders in the net fishing areas can participate in the Federal forum of the Council even though the net fishing areas are not part of the FMP.

State management of the commercial fisheries in the Cook Inlet Area does not discriminate against residents of other states. Alaska residency is not a requirement for holding the limited entry permit necessary to participate in the commercial fishery and is not a factor in any aspect of the management of the commercial fisheries in Federal waters.

Comment 39: The State's trajectory in Cook Inlet in recent years—with seven stocks of concern, the extirpation of several sockeye runs, and continued reduced returns—points to serious consequences of staying the course under State management. Not only are these concerns not properly addressed in the EA, but individually and collectively they raise substantial questions as to whether Amendment 12 will have significant environmental effects thereby warranting preparation of a full EIS.

Response: The conclusions in the comment concerning adverse impacts to Cook Inlet salmon stocks due to State management are not supported by available information. The EA section 5.1 analyzes the best available information on Cook Inlet salmon stocks. As shown in section 5.1, salmon abundance fluctuates dramatically between years. Exact causes for poor salmon returns are unknown, but may involve a variety of factors outside the control of fishery managers to mitigate, including unfavorable ocean conditions, freshwater environmental factors, disease, or other likely factors on which data are limited or nonexistent. The ocean and freshwater environments are changing, and the impacts of those changes on salmon abundance are difficult to forecast because they, in turn, depend on somewhat uncertain forecasts of global climate. Therefore, NMFS concludes that State salmon management does not cause low salmon returns.

Because the Council and NMFS determined that the State is adequately managing salmon stocks consistent with the policies and standards of the Magnuson-Stevens Act, the Council and NMFS determined that Amendment 12 will not significantly impact the quality of the human environment. In addition, the EA addressed all beneficial and adverse impacts of the proposed action to reach the finding of no significant impacts. Based on the EA, NMFS prepared a FONSI that describes in more detail why NMFS determined that the action will not significantly impact the quality of the human environment (see **ADDRESSES**). Based on this FONSI, an EA is the appropriate NEPA analysis for this action and preparation of an EIS is not warranted.

Comment 40: The EA fails to demonstrate any economic impacts or impacts to the fishery resource that have been occurring under State management and that are likely to continue or get worse in light of Amendment 12. The economic losses associated with the decline in Chinook, sockeye, chum, and pink harvests are in the hundreds of millions of dollars over the past half century. This type of economic analysis was glossed over by the rush to revise the Salmon FMP with Amendment 12.

Response: EA Chapter 4 provides detailed information and analysis of the economic impacts that have been occurring under State management and that are likely to continue under Amendment 12. The information and analysis represents the best economic information available. The conclusions in the comment about economic losses are not supported by the available information. See response to comment 23.

Comment 41: All the stakeholders testified that they wished to retain Federal oversight and remain under the FMP. Currently, the Cook Inlet stakeholders face pressures on their fishery that are not encountered in other areas of Alaska. Urbanization of the Cook Inlet basin and State regulations that permit resident-only dipnet fishing threaten the economic viability of the commercial fishery. Listing of the Cook Inlet beluga whale will have unknown consequences on the fishery. Also, Federal subsistence users in Cook Inlet rely on salmon for subsistence needs. Removing the Cook Inlet Area from the FMP will leave the stakeholders without a voice during interagency consultation regarding State management, habitat preservation, endangered species interactions, and subsistence needs.

Response: The Council and NMFS considered the public testimony received on Amendment 12, including testimony from Cook Inlet commercial salmon fishermen asking that the Cook Inlet Area remain in the FMP and that the Council and NMFS provide oversight of State management of salmon fisheries in Cook Inlet. As explained in the responses to comments 6 and 54, the Council and NMFS cannot adopt an FMP that only imposes Federal fishery management oversight over fisheries occurring in an area but that

does not include provisions that address all of the measures for fishery management plans required by the Magnuson-Stevens Act. The Council and NMFS explained that the limited type of oversight expressed in public comment is not possible under the Magnuson-Stevens Act.

Removal of the Cook Inlet Area from the FMP does not limit the public's ability to participate in NMFS' management of ESA-listed species and designated critical habitat, or the U.S. Fish and Wildlife Service's management of subsistence fisheries on Federal lands. The ESA and Federal laws administered by the U.S. Fish and Wildlife Service contain specific provisions for public participation that the FMP need not duplicate. See the response to comment 26.

Additionally, as explained in the response to comments 4 and 23, NMFS has limited ability to change any actions taken by the State within State waters.

Comment 42: The EA unreasonably fails to consider the alternative of treating Cook Inlet differently from other parts of the West Area. The EA rejects that alternative because there is no distinction between these areas relative to the National Standards and the criteria for determining where Federal conservation and management are required. This statement could not be further from the truth. Cook Inlet is different, and here are some of the ways:

- Some of the nation's largest wild runs of Chinook, sockeye, coho, pink, chum, and steelhead salmon return through the EEZ portion of Cook Inlet.
- Two-thirds of the State's population lives in the Cook Inlet area, creating habitat and resource competition issues unique in Alaska.
- NMFS has identified Cook Inlet as a priority for habitat issues in its Habitat Blueprint strategy.
- There are seven stocks of concern in Cook Inlet (versus none in the other two net fishing areas in the West Area).
- Total harvests in Cook Inlet have steadily declined in recent years, unlike other areas in Alaska.
- The EEZ portion of Cook Inlet is an ideal fishing location (it is the preferred location of the drift fleet) where significant portions of the run can be harvested and is an ideal target for unregulated fishing by out-of-state vessels.
- The EEZ portion of Cook Inlet is essential to properly managing the sockeye fishery to provide an orderly fishery and prevent over escapement.

None of these factors are necessarily present in the other EEZ fisheries in the West Area. In light of these clear differences, it was arbitrary for the EA to not consider an alternative that treats Cook Inlet differently.

Response: The Council considered whether to manage the three areas separately but found that there is no distinction between these areas relative to the National Standards and the criteria for determining where Federal conservation and management are required. The Council recognized that Cook Inlet is different from Prince William Sound and the Alaska Peninsula, as described in the EA. However, none of the differences highlighted in the comment or in the EA changes whether the areas require management under a fishery management plan. The primary factor in the Council's decision to address these three areas together was that the salmon fisheries in each area are managed by the State's salmon management program.

Comment 43: The petition process in the FMP is inadequate and makes no provisions for when (1) A third party proposes, and the Board adopts a proposal that is adverse; (2) the Board generates and adopts its own proposal, (3) the Board makes emergency or out of cycle changes impacting the fishery; or (4) ADF&G makes emergency in season changes.

Response: Section 9.3 of the FMP, as amended by Amendment 12, provides a member of the public with an opportunity to petition NMFS to conduct a consistency review of any State management measure that applies to salmon fishing in the East Area if that person believes the management measure is inconsistent with the provisions of the FMP, the Magnuson-Stevens Act, or other applicable federal law. Prior to submitting a petition requesting a consistency review to NMFS, section 9.3 requires a person to exhaust available administrative regulatory procedures with the State. Section 9.3 provides two ways in which persons can demonstrate exhaustion of State administrative regulatory procedures. First, NMFS will conclude that a person has exhausted available State administrative regulatory procedures if the person can demonstrate that he or she: (1) submitted one or more proposals for regulatory changes to the Board during a Call of Proposals consistent with 5 Alaska Administrative Code (AAC) 96.610, and (2) received an adverse decision from the Board on the proposal(s). Second, section 9.3 recognizes that there could be circumstances that may require regulatory changes outside the regular process set forth in 5 AAC 96.610, or circumstances when the process set forth in 5 AAC 96.610 is unavailable due to the timing of the action requested. Under these unusual circumstances, NMFS will conclude that a person has exhausted State administrative regulatory procedures if the person can demonstrate that he or she: (1) Could not have followed the regular Call of Proposals requirements at 5 AAC 96.610, (2) submitted an emergency petition to the Board or ADF&G consistent with 5 AAC 96.625 or submitted an agenda change request to the Board consistent with 5 AAC 39.999, and (3) received an adverse decision from the Board or ADF&G on the emergency petition or agenda change request.

The commenter appears to be concerned that a person would be unable to demonstrate exhaustion of State administrative regulatory procedures, and therefore unable to obtain NMFS review of his or her petition, even when the situations highlighted in the comment have occurred. However, these situations appear to be covered by the second method of exhaustion when unusual circumstances, such as the ones highlighted in the comment, have occurred.

The FMP requires exhaustion of available State administrative regulatory procedures before petitioning NMFS for a consistency review for several reasons. The Council and NMFS delegated regulation of the commercial and sport salmon fisheries in the East Area to the State in recognition of its expertise, and because the State is in the best position to consider challenges and make changes to its management measures. The Council and NMFS also recognize the importance of public participation during the development of State fishery management measures, and exhaustion encourages the public to actively participate in and try to effectuate fishery management change through the State process. Finally, by requiring a person to exhaust the State's administrative regulatory procedures before petitioning NMFS, the State is presented with an opportunity to hear the challenge and take corrective action if the State finds merit in the challenge before federal resources are expended. The Council and NMFS have determined that the petition process set forth in Chapter 9 of the FMP, as amended, is adequate and addresses the situations raised by the commenter.

Comment 44: The Council did not consider whether Federal loan and grant funds will remain available for investment in the Cook Inlet salmon industry, habitat restoration, and if necessary, failed run disaster assistance.

Response: The geographic scope of the FMP has no effect on the availability of Federal loans and grant funds for Cook Inlet salmon fishery participants, habitat restoration, or assistance in the case of a commercial fishery failure due to a natural resource disaster. Therefore, the Council did not need to consider the availability of funding in the areas identified by the commenter when it determined the appropriate scope of the FMP.

Several recent examples demonstrate the lack of any connection between the availability of Federal loans and grant funds and the Council and NMFS' decision to remove the Cook Inlet Area from the FMP. NMFS is implementing a buyback program for the participants in the Southeast Alaska purse seine salmon fishery, which includes a fishing capacity reduction loan of approximately $23.5 million to finance the purchase of State limited entry permits. This fishery occurs within State waters and is not managed by the FMP. NMFS' administration of this program is irrespective of the scope of the FMP. For more information on this program, please see NMFS Financial Services' Web site at *http://www.nmfs.noaa.gov/mb/financial_services/southeast_alaska_purse_seine_salmon_buyback.html.*

Additionally, under the Magnuson-Stevens Act, at 16 U.S.C. 1861a(a), the Secretary can determine a commercial fishery failure due to a fishery resource disaster for any commercial fishery regardless of whether the fishery occurs in Federal waters or is managed under a Federal fishery management plan. For example, in 2010 the Secretary determined that a commercial fishery failure due to a fishery resource disaster occurred for the Yukon River Chinook salmon fishery in 2008 and 2009. This fishery is managed by the State and is not under a Federal fishery management plan. In the summer of 2012, Alaska State Governor Sean Parnell requested that the Secretary determine a commercial fishery failure due to a fishery resource disaster for the Chinook salmon fisheries on the Yukon and Kuskokwim rivers and in Cook Inlet. The Secretary's review of this request, and the supporting information provided by the State, and the Secretary's subsequent determination, were irrespective of a Federal fishery management plan.

Comment 45: We support the revised regulations at § 679.7(h) to prohibit commercial fishing for salmon using any gear except troll gear in the East Area as it is consistent with State regulations.

Response: NMFS acknowledges the comment.

Comment 46: Unfairly limiting Alaska salmon trolling permits to fish only from the Canadian border to Cape Suckling is a political move initiated and perpetuated in the special interest of other gear groups. Trollers are small operations that are efficient at targeting specific species, unlike the vessels that are now allowed to operate west of Cape Suckling that have large bycatch wastage, decimating prime fisheries. Allowing smaller salmon troll vessels in State waters would create jobs, encourage small business, and efficiently use existing salmon resources.

Response: To the extent the commenter is referring to fishing for salmon with troll gear in the West Area, such fishing has been prohibited since 1973 under State management. The FMP has prohibited commercial fishing with all gear types in the West Area since 1979, and the Council continued this prohibition with Amendment 12. The Council and NMFS' rationale for continuing this prohibition is provided in EA section 2.5. To the extent the commenter is referring to fishing for salmon with troll gear in State waters, the Council and NMFS do not have the authority to open or close State waters to troll vessels. The commenter should direct this comment to the State, which has the authority to open or close State waters to troll vessels.

Comment 47: The State is doing little or nothing to address the introduction and spread of northern pike, a harmful invasive species, in Cook Inlet. The EA fails to discuss the critical problems related to northern pike in Cook Inlet. Given the State's failure to take action, further northern pike infestations are reasonably likely as a result of the Council's action.

Response: NMFS disagrees with the commenter's conclusion that the State is doing little to nothing to address the introduction and spread of northern pike in Cook Inlet. NMFS has no authority under the Magnuson-Stevens Act to manage northern pike in Alaska lakes under a Federal fishery management plan. The State has extensive projects and partnerships to control and eradicate northern pike in Southcentral Alaska. In 2007, ADF&G developed the Alaska Northern Pike Management Plan and identified northern pike as the highest invasive species threat in Southcentral Alaska. In the past five years, the State has eliminated northern pike populations from four lakes systems in Southcentral Alaska, and has initiated large-scale control efforts in Alexander Creek, a tributary of the Susitna River, where a reduction in salmon abundance has been observed. ADF&G plans to continue to investigate options to control or eradicate northern pike in lake and river systems that support valuable commercial, subsistence, and sport fisheries in the Cook Inlet watershed, and to implement options as feasible.

The State's past and ongoing efforts to eradicate or control northern pike in Southcentral Alaska are not connected to the FMP or the Council's and NMFS' action on Amendment 12, because the FMP was and is not the catalyst for the State's efforts. However, NMFS has added an analysis of the northern pike control and eradication projects to the cumulative effects analysis in EA section 5.7.6 because ADF&G's projects and partnerships to control and eradicate northern pike are a reasonably foreseeable future action that will mitigate the negative impacts of pike predation on salmon abundance in freshwater lakes and rivers. The analysis indicates that these actions will reduce the potential for pike to move into estuarine waters of Cook Inlet.

Classification

Pursuant to sections 304(b) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that Amendments 10, 11, and 12 and this final rule are consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration at the proposed stage that this final rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The Factual Basis for Certification was provided in the Classification section of the preamble to the proposed rule (77 FR 21716, April 11, 2012). NMFS received no comments on the Factual Basis for Certification.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: December 17, 2012.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, Performing the Functions and Duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 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.,* and Pub. L. 108–447.

■ 2. In § 679.1, revise paragraph (i) to read as follows:

§ 679.1 Purpose and scope.

* * * * *

(i) *Fishery Management Plan for the Salmon Fisheries in the EEZ Off Alaska (Salmon FMP)*—(1) Regulations in this part govern commercial fishing for salmon by fishing vessels of the United States in the West Area of the Salmon Management Area.

(2) State of Alaska laws and regulations that are consistent with the Salmon FMP and with the regulations in this part apply to vessels of the United States that are commercial and sport fishing for salmon in the East Area of the Salmon Management Area.

* * * * *

■ 3. In § 679.2, revise the definition for ''Salmon Management Area'' to read as follows:

§ 679.2 Definitions.

* * * * *

Salmon Management Area means those waters of the EEZ off Alaska (see Figure 23 to part 679) under the authority of the Salmon FMP. The Salmon Management Area is divided into a West Area and an East Area with the border between the two at the longitude of Cape Suckling (143° 53.6′ W):

(1) *The East Area* means the area of the EEZ in the Gulf of Alaska east of the longitude of Cape Suckling (143° 53.6′ W).

(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) but excludes the Cook Inlet Area, the Prince William Sound Area, and the Alaska Peninsula Area, shown in Figure 23 and described as:

(i) the Cook Inlet Area which means the EEZ waters north of a line at 59° 46.15′ N;

(ii) the Prince William Sound Area which means the EEZ waters shoreward of a line that starts at 60° 16.8′ N and 146° 15.24′ W and extends southeast to 59° 42.66′ N and 144° 36.20′ W and a line that starts at 59° 43.28′ N and 144° 31.50′ W and extends northeast to 59° 56.4′ N and 143° 53.6′ W.

(iii) the Alaska Peninsula Area which means the EEZ waters shoreward of a line at 54° 22.5′ N from 164° 27.1′ W to 163° 1.2′ W and a line at 162° 24.05′ W from 54° 30.1′ N to 54° 27.75′ N.

* * * * *

■ 4. In § 679.3, revise paragraph (f) to read as follows:

§ 679.3 Relation to other laws.

* * * * *

(f) *Domestic fishing for salmon.* Management of the salmon commercial troll fishery and sport fishery in the East Area of the Salmon Management Area, defined at § 679.2, is delegated to the State of Alaska.

* * * * *

§ 679.4 [Amended]

■ 5. In § 679.4, remove and reserve paragraphs (a)(1)(v) and (h).

■ 6. In § 679.7, revise paragraph (h) to read as follows:

§ 679.7 Prohibitions.

* * * * *

(h) *Salmon fisheries.* (1) Engage in commercial fishing for salmon using any gear except troll gear, defined at § 679.2, in the East Area of the Salmon Management Area, defined at § 679.2 and Figure 23 to this part.

(2) Engage in commercial fishing for salmon in the West Area of the Salmon Management Area, defined at § 679.2 and Figure 23 to this part.

* * * * *

■ 7. Revise Figure 23 to part 679 to read as follows:

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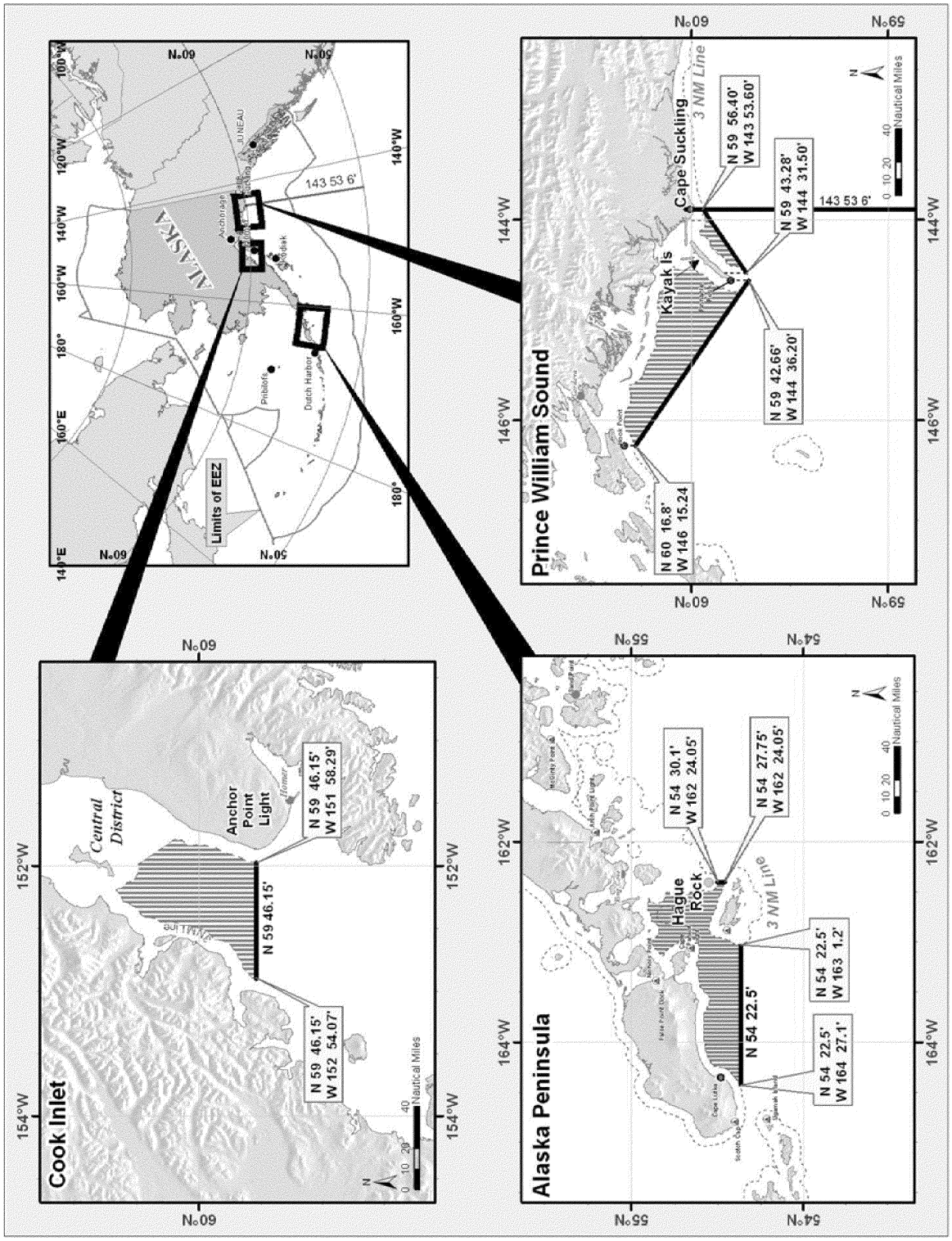
Figure 23 to part 679. Salmon Management Area



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