

productivity of naturally spawning Chinook salmon in this ESU.

### Conservation Efforts

When considering the listing of a species, section 4(b)(1)(A) of the ESA (16 U.S.C. 1533(b)(1)(A)) requires consideration of efforts by any State, foreign nation, or political subdivision of a State or foreign nation to protect the species. On March 28, 2003, NMFS and the USFWS published the final Policy for Evaluating Conservation Efforts When Making Listing Decisions (68 FR 15100), that provides guidance on evaluating current protective efforts identified in conservation agreements, conservation plans, management plans, or similar documents (developed by Federal agencies, State and local governments, Tribal governments, businesses, organizations, and individuals) that have not yet been implemented, or that have been implemented but have not yet demonstrated effectiveness.

There is a wide range of conservation efforts focused on salmonids, including Chinook salmon, in the UKTR ESU. One important effort is the Trinity River Restoration Program. This ongoing program established restoration goals for spring-run and fall-run Chinook salmon, identified actions that must be taken to restore Trinity River Chinook salmon populations, established quantifiable performance measures, and incorporated the principles of adaptive management (TRRP 2012). Removing Iron Gate Dam and three other dams upstream of Iron Gate Dam on the Klamath River (if the Secretary of the Interior makes an affirmative determination under the Klamath Hydroelectric Settlement Agreement) or adding fish passage facilities around these and other upper basin dams on the Klamath River (if the Secretary of the Interior does not make an affirmative determination under the Klamath Hydroelectric Settlement Agreement) and associated restoration efforts will likely improve the viability of UKTR Chinook salmon (CDFG and DOI 2011), but there are uncertainties regarding which of these efforts will be implemented. Several other efforts are ongoing in the Klamath Basin; in particular, improved forest practices, land management, and purchase of private land for conservation. Ongoing research on diseases that afflict UKTR Chinook salmon is expected to provide greater understanding of the factors that contribute to disease infection and management efforts that can ameliorate disease impacts in the UKTR ESU.

### 12-Month Finding

We have reviewed the status of the UKTR Chinook salmon ESU and considered the best scientific and commercial data available, and we conclude that the petitioned action is not warranted. In reaching this conclusion, we conclude that spring-run and fall-run Chinook salmon in the UKTR Basin constitute a single ESU. We have considered the conservation efforts for the ESU. In addition, we have considered the ESA section 4(a)(1) (16 U.S.C. 1533(a)(1)) factors in the context of the biological status of the species, the assessment of the risks posed by those threats, the possible cumulative impacts, and the associated uncertainties. Despite the issues discussed under those factors, consistent with the 1998 status review and listing determination for the UKTR Chinook salmon ESU, and based on a comprehensive review of the best scientific and commercial data currently available, NMFS concludes the overall extinction risk of the ESU is considered to be low over the next 100 years.

Based on these considerations and others described in this notice, we conclude that the UKTR Chinook salmon ESU is not in danger of extinction throughout all or a significant portion of its range, nor is it likely to become so in the foreseeable future. Therefore, the UKTR Chinook salmon ESU does not meet the ESA definition of an endangered or threatened species, and listing the UKTR Chinook salmon ESU under the ESA is not warranted at this time.

### References

A complete list of references cited herein is available upon request (see **ADDRESSES** section).

### Authority

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

Dated: March 27, 2012.

### Alan D. Risenhoover,

*Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

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:** Notice of availability of fishery management plan amendments; request for comments.

**SUMMARY:** The North Pacific Fishery Management Council (Council) submitted Amendments 10, 11, and 12 to the Fishery Management Plan for the Salmon Fisheries in the EEZ off the Coast of Alaska (FMP) to NMFS for review. If approved, Amendment 10 would provide authority for NMFS to recover the administrative costs of processing applications for any future permits that may be required under this FMP, except for exempted fishing permits and prohibited species donation permits. If approved, Amendment 11 would revise the timeline associated with the Council's process to identify Habitat Areas of Particular Concern so that the process coincides with the Essential Fish Habitat (EFH) 5-year review, revise habitat research priority objectives, and update EFH conservation recommendations for, and the analysis of the impacts of, non-fishing activities. If approved, Amendment 12 would comprehensively revise and update the FMP to reflect the Council's salmon management policy and Federal law. Amendments 10, 11, and 12 are intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

**DATES:** Written comments on the amendment must be received on or before 5 p.m., Alaska local time, on June 1, 2012.

**ADDRESSES:** You may submit comments, identified by FDMS Docket Number NOAA-NMFS-2011-0295, by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>. To submit comments via the e-Rulemaking Portal, first click the "submit a comment" icon, then enter NOAA-NMFS-2011-0295 in the keyword search. Locate the

document you wish to comment on from the resulting list and click on the "Submit a Comment" icon on that line.

- *Fax:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907-586-7557.

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

- *Hand delivery to the Federal Building:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address) voluntarily submitted by the commenter will be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Electronic copies of the proposed Fishery Management Plan for the Salmon Fisheries in the EEZ off Alaska that incorporates Amendments 10, 11, and 12, and the draft Environmental Assessment/Regulatory Impact Review prepared for Amendment 12 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:** The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any fishery management

plan or fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce. The Magnuson-Stevens Act also requires that NMFS, upon receiving a fishery management plan amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment.

This notice announces that proposed Amendments 10, 11, and 12 to the FMP are available for public review and comment. The salmon fisheries in the exclusive economic zone (EEZ, 3 to 200 nautical miles) off Alaska are managed under the FMP. The FMP was prepared by the Council under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* The following paragraphs provide information on Amendments 10, 11, and 12. Because Amendment 12 would comprehensively amend the FMP and incorporates FMP language for Amendments 10 and 11, it is described first in this NOA. Descriptions of Amendments 10 and 11 follow the description of Amendment 12.

#### **Fishery Management Plan for the Salmon Fisheries in the EEZ off the Coast of Alaska**

The FMP originally was approved in 1979 and last comprehensively revised in 1990. The FMP conserves and manages the Pacific salmon commercial and sport fisheries that occur in the EEZ off Alaska. The FMP establishes 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 the EEZ off the coast of Alaska west of Cape Suckling. The FMP manages commercial salmon fisheries differently in each area. In the East Area, the FMP delegates management of the commercial troll salmon fishery to the State of Alaska (State) to manage in compliance with the Pacific Salmon Treaty, Magnuson-Stevens Act, and FMP. The FMP prohibits commercial salmon fishing with net gear in the East Area. In the West Area, the FMP prohibits commercial salmon fishing, except for commercial salmon fishing with net gear in three defined areas of the EEZ adjacent to Cook Inlet, Prince William Sound, and the Alaska Peninsula. The FMP delegates management of the sport fishery to the State in both areas.

Although the FMP has been amended nine times in the last two decades, no comprehensive consideration of management strategy or scope of Federal management has occurred since 1990. State fisheries regulations and Federal and international laws affecting Alaska

salmon have changed since 1990, and the reauthorized Magnuson-Stevens Act expanded the requirements for FMPs. Additionally, the current FMP is vague with respect to management authority for commercial salmon fishing in the three defined areas that occur in the West Area.

Therefore, the Council determined that the FMP must be updated, in order to comply with the current Magnuson-Stevens Act requirements, and amended, to more clearly reflect the Council's policy with regard to the State's continued management authority over commercial fisheries in the West Area, the Southeast Alaska commercial troll fishery, and the sport fishery.

#### **Amendment 12**

In December 2011, the Council voted unanimously to recommend Amendment 12 to the FMP. The Council considered revisions to the FMP at five separate meetings that occurred over more than a year. 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, which was attended by more than 20 members of the public, three Council members, Council staff, and State and Federal agency staff. The Council considered the comments and suggestions made during that workshop in developing Amendment 12.

Amendment 12 would comprehensively revise the FMP to reflect the Council's salmon management policy, which is to facilitate State of Alaska 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 FMP amendments and associated management measures.

To reflect the Council's policy and objectives, Amendment 12 would redefine the FMP's management area to

exclude the Cook Inlet, Prince William Sound, and the Alaska Peninsula net fishing areas and the sport fishery from the West Area. In removing these three areas and the sport fishery from the FMP, the Council provided a rationale for why Federal conservation and management are not necessary, consistent with the Magnuson-Stevens Act. The Council recognized that FMP management would only apply to the portion of the fisheries in the EEZ, and that salmon are more appropriately managed as a unit in consideration of all fishery removals to meet in-river escapement goals. The Council determined that excluding these areas and the sport fishery from the West Area and the FMP would allow the State to manage Alaska salmon stocks as seamlessly as practicable throughout their range, rather than imposing dual State and Federal management. Under Amendment 12, the FMP would continue to apply to the vast majority of the EEZ west of Cape Suckling and would maintain the prohibition on commercial salmon fishing in the redefined West Area.

In the East Area, Amendment 12 would maintain the current scope of the FMP and would reaffirm 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 interrelated stocks are managed in close coordination. Maintaining the FMP in the East Area would leave 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.

The Council also recommended a number of FMP provisions to update the FMP and bring it into compliance with the Magnuson-Stevens Act and other applicable Federal law. Amendment 12 would include these changes in a reorganized FMP with a more concise title, "Fishery Management Plan for the Salmon Fisheries in the EEZ off Alaska."

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 would 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 commercial troll fishery builds on the FMP's existing framework for establishing status determination criteria. The commercial troll fishery harvests primarily Chinook and coho salmon; though chum, sockeye, and pink salmon are also harvested occasionally. The FMP currently separates these salmon stocks into three tiers for the purposes of status determination criteria.

Tier 1 stocks are Chinook salmon stocks covered by the Pacific Salmon Treaty. Amendment 12 would 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 would be 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's National Standard 1 Guidelines (50 CFR 600.310) for specifying ACLs. The National Standard 1 Guidelines contemplate limited circumstances where the standard approaches to specification of reference points, including ACLs, and management measures detailed in the guidelines may not be appropriate. The National Standard 1 Guidelines specifically cite Pacific salmon as an example of stocks that may require an alternative approach. Under this flexibility within the guidelines, the Council may propose an alternative approach for satisfying the requirements of National Standard 1, other than those set forth in the guidelines. The guidelines require that the Council document its rationale for proposing an alternative approach in an FMP amendment and document its consistency with the Magnuson-Stevens Act. Amendment 12 would modify the FMP to include the rationale for this alternative approach as the mechanism for specifying ACLs.

The Council proposes 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. Given salmon's particular life history attributes, the Council's preferred method to annually ensure that surviving spawners will maximize present and future yields is a system that 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. Further, escapement-based management, with real-time monitoring of run strength, inherently accounts for total catch and all sources of natural mortality. As part of the alternative approach the Council recommends that Amendment 12 establish 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 State's escapement-based management system includes the added features of in-season monitoring to confirm actual run strength and in-season management measures that adjust fishing pressure, or close a fishery, to ensure that escapement goals are met if pre-season predictions of run strength prove inaccurate. Under Amendment 12, these features would be the AMs to prevent ACLs from being exceeded and to correct overages of the ACL if they do occur.

Amendment 12 also would revise the definition of optimum yield. For the East Area, several economic, social, and ecological factors are involved in the definition of 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 would represent the OY for that fishery and takes into account the economic and social factors considered by the State of Alaska 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 would be 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 of Alaska 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 would be 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 proposed 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.

Amendment 12 would add a fishery impact statement to the FMP that includes fishery information required by the Magnuson-Stevens Act (16 U.S.C. 1853(a)(2), (3), (5), (9), (11), and (13)). The fishery impact statement contained in Amendment 12 analyzes the effects of the conservation and management measures on participants in the fisheries, fishing communities affected by the FMP, and safety of human life at sea. The fishery impact statement also describes the salmon fishery, specifies the present and probable future condition of the fishery, and describes the commercial, recreational, and charter fishing sectors which participate in the salmon fishery. Additionally, the fishery impact statement assesses the economic impacts of the salmon fishery by sector.

Amendment 12 also would revise the current FMP process for Federal review of State management measures to more fully describe the process and bring the process into compliance with Magnuson-Stevens Act requirements (16 U.S.C. 1856(a)(3)(B)). With the delegation of management authority of the East Area commercial troll salmon fishery and the East Area sport fishery to the State of Alaska, the Council and NMFS must stay apprised of State management measures governing commercial and sport salmon fishing in the East Area and, if necessary, review those measures for consistency with the FMP, the Magnuson-Stevens Act, and other applicable Federal law. Also, members of the public may request that the Secretary review State salmon management measures in the East Area for consistency with the FMP, the

Magnuson-Stevens Act and other applicable Federal law. Under Amendment 12, the FMP would describe (1) how the Council and NMFS fulfill this oversight role, (2) the ways in which the Council and NMFS will monitor State management measures that regulate salmon fishing in the East Area, (3) the process by which NMFS will review State management measures governing salmon fisheries in the East Area for consistency with the FMP, the Magnuson-Stevens Act, and other applicable Federal law, (4) the process by which a member of the public can petition NMFS to review State management measures in the East Area for consistency with the FMP, the Magnuson-Stevens Act, and other applicable Federal law, and (5) the process NMFS will follow if NMFS determines that State management measures in the East Area are inconsistent with the FMP, the Magnuson-Stevens Act, or other applicable Federal laws.

Amendment 12 would remove existing FMP language governing the issuance of Federal salmon permits. The Council recommended removing FMP language related to Federal salmon permits because Federal permits are no longer necessary. All current participants have State of Alaska limited entry permits. According to language included in the original 1979 FMP, provisions for Federal salmon permits were established as a complement to 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. Additionally, the 1979 FMP explains that there was an interest in ensuring that the few vessels that had fished in the EEZ but not landed their catch in Alaska could continue to have access to the EEZ, even if they were not eligible for a state limited entry permit. The problems identified in the 1979 FMP were addressed by this Federal permit system. In 1979 or 1980, NMFS issued 2 non-transferrable limited entry permits and these permits are no longer active in the fishery.

An Environmental Assessment/Regulatory Impact Review was prepared for Amendment 12 that describes the management background, the purpose and need for action, the management alternatives, and the environmental, social, and economic impacts of the alternatives (see **ADDRESSES**). Additional details on the basis of specific policy and management measures are provided in the analysis.

#### **Amendment 10**

In October 2009, the Council adopted a motion to revise all six of its fishery management plans to provide authority for recovering the administrative costs of processing applications for permits required under those plans, except for exempted fishing permits and prohibited species donation permits. Amendment 10 would amend the FMP to provide authority for NMFS to recover the administrative costs of processing applications for any future permits that may be required under this FMP, except for exempted fishing permits and prohibited species donation permits. Amendment 10 would implement the following FMP language: "NMFS may assess and collect fees to recover the administrative costs incurred by the Federal government in processing applications for permits required to participate in the fisheries managed under this FMP as authorized by the Magnuson-Stevens Act, 16 U.S.C. 1853(b)." If Amendments 10 and 12 are approved by NMFS, this language would be included at section 4.2 of the FMP. If Amendment 10 is approved but Amendment 12 is not, then this language would be included at section 5.2 of the FMP.

#### **Amendment 11**

In April 2011, the Council recommended Amendment 11 to (1) revise the timeline associated with the Council's process to identify Habitat Areas of Particular Concern so that the process coincides with the EFH 5-year review, (2) revise habitat research priority objectives, and (3) update EFH conservation recommendations for, and the analysis of the impacts of, non-fishing activities. If Amendments 11 and 12 are approved by NMFS, Amendment 11 would include the most recent scientific information resulting from the 5-year review in chapter 7 of the FMP and the FMP's Appendix A "Essential Fish Habitat and Habitat Areas of Particular Concern". If Amendment 11 is approved but Amendment 12 is not, then this language would be included in section 6.3 of the FMP and in the FMP's Appendix E. These changes are necessary to update the FMP based upon the best scientific information available and the guidelines articulated in the final rule to implement the EFH provisions of the Magnuson-Stevens Act (see 50 CFR part 600, subpart J).

NMFS is soliciting public comments on proposed Amendments 10, 11, and 12 through the end of the comment period (see **DATES**). NMFS will consider all comments received by the end of the comment period on Amendments 10,

11, and 12, in the FMP approval/disapproval decision. To be considered, comments must be received, not just postmarked or otherwise transmitted, by 5 p.m. Alaska local time on the last day of the comment period. Comments received after that date will not be considered in the approval/disapproval decision on the amendment.

NMFS intends to publish in the **Federal Register** a proposed rule that

would implement Amendment 12 and seek public comment on that proposed rule, following NMFS's evaluation of the proposed rule under the Magnuson-Stevens Act. Public comments on the proposed rule must be received by the end of the comment period for Amendment 12 to be considered in the approval/disapproval decision on Amendment 12. Implementing regulations are not needed for either

Amendment 10 or Amendment 11, and therefore no proposed rule for these amendments will be published.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: March 28, 2012.

**Carrie Selberg,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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