



United Cook Inlet Drift Association

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January 2021 Update to Members and Friends,

Background

The UCIDA office team, Board members, retired ADFG staff, UCIDA and CIFF members and many other volunteers have been working hard over the past 4 years to convince the North Pacific Fisheries Management Council (NPFMC or Council) to carry out the instructions from the Ninth Circuit Court to develop a Fishery Management Plan (FMP) for the Cook Inlet salmon fishery “throughout its range.” The Ninth Circuit Court order was clear that the Council and NMFS must produce an FMP for the entire **fishery** in Cook Inlet. In the Magnuson-Stevens Act, “fishery” is defined as:

- (A) one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; and
- (B) any fishing for such stocks.

Our goal was to have the Council develop an FMP that delegated authority to the State of Alaska to manage the fishery in compliance with the Magnuson-Stevens Act (MSA) and the 10 National Standards. These standards include requirements that the salmon stocks be managed on the basis of Maximum Sustainable Yield (MSY), that best science be used, that allocations are fair and equitable and that the economies of the local coastal fishing communities are sustained. [10 National Standards - <http://www.ucida.org/wp-content/uploads/2021/01/10-National-Standards-1.docx>.]

Over the last 4 years, the Council, the National Marine Fisheries Service (NMFS) and the State have insisted on pursuing a version of a FMP that did not comply with the Ninth Circuit Court’s order or the federal laws, and simply maintained status quo for the State’s non-compliant management practices. Last year, UCIDA appealed to the federal court. We asked the court to intervene and redirect the Council towards developing an FMP that met all the federal requirements. Our appeal included a request for expediency due to the continuing economic harm to the fishing industry and salmon resource from the State's mismanagement. The court declined some of our request and said we had to wait until NMFS took final action to appeal, but it did impose a deadline.

The Council and NMFS were required by the court to produce an FMP by December 31, 2020. At the final hour, Governor Dunleavy’s administration chose to blow up the entire process, in the interest of fulfilling his own, and Bob Penney’s, dream of finally eliminating the commercial salmon fishing industry in Cook Inlet.

The reason the Council voted to close the EEZ (Cook Inlet below Kalgin Island) is because the State of Alaska simply refused to accept a delegation of federal authority to manage the Cook Inlet salmon fishery. The State tried, but failed, to make the argument that this is a “state’s rights” issue. The State continues to participate in similar relationships with the federal government in numerous other fisheries around Alaska, including salmon, crab and groundfish which includes the P-Cod and rockfish fisheries.

The real problem for the State and ADFG was the fact that a proper process and delegation of authority under the Council’s scrutiny, or NMFS’s scrutiny, would expose the reality that none of ADF&G’s Upper Cook Inlet management plans, escapement goals and in-season management practices comply with the MSA or national standard requirements. None of these plans, goals or practices will meet the requirements of federal law, because they are so flawed, biased, and lacking any scientific basis.

Short Term Outlook

The decision from the Council has gone to the National Marine Fisheries Service for a review process which will not be completed rapidly. NMFS must decide whether to approve, reject or partially reject the recommendation of the Council. To accept the Council’s action, they must first determine if closing our fishery meets the requirements of the MSA and the 10 National Standards and other federal laws like the National Environmental Policy Act (NEPA) and the Administrative Procedures Act (APA). So, the EEZ will not be closed by the federal government in 2021. Here are the steps in the review process.

1. NOAA Fisheries will publish a Notice of Availability for the FMP amendment and a proposed rule in the Federal Register and request public comment.
2. Following the public comment period, NOAA Fisheries will review and consider those comments in its review of the FMP amendment and associated regulations.
3. NOAA Fisheries will review the FMP amendment and regulations to determine if they are consistent with requirements under the Magnuson-Stevens Fishery Conservation and Management Act and other applicable law.
4. Depending on the outcome of that determination, NOAA Fisheries will approve, disapprove, or partially disapprove the Council's recommended FMP amendment.
5. If NOAA Fisheries approves the FMP amendment, NOAA Fisheries will publish the final rule by December 11, 2021, consistent with the remand order. If NOAA Fisheries disapproves or partially disapproves it will need to reevaluate its schedule to ensure consistency with the Court's remand order. A final rule is typically effective 30 days after publication in the Federal Register.

Unfortunately, the State could continue the attack on our industry by using the Board of Fisheries (BOF) to pre-emptively close the EEZ before the next fishing season begins. Or ADFG Commissioner Doug Vincent-Lang could arbitrarily restrict more openings to accomplish the same effect, just as he has done the last two years. We already know that the Kenai River Sportfishing

Association is planning to rewrite all the management plans in Cook Inlet and will work through the commissioner and the governor's office to ensure that the BOF does exactly what they want.

Next Steps

No matter what action the Council took at their last meeting in December, we would have ended up back in court because none of the alternatives that they had on their agenda met the requirements of the court order, of the MSA or the 10 National Standards.

UCIDA cannot appeal to the federal court until the NMFS process is complete, within the 30-day period at the end of step 5 above.

There will be an opportunity for written public comment during the NMFS review period. It is very important that the public and local governments are prepared to provide comments again; it may be the last opportunity. We will inform you when this public comment period is coming up, it may be soon, within a few weeks.

The UCIDA office team, board members and others are working every day to explore all legal options and to seek support from local governments and others that believe keeping a healthy commercial fishing industry operating in Cook Inlet is essential to the social and economic well-being of the entire Kenai Peninsula.

Now that Dunleavy's administration has made it clear that they intend to eliminate our industry in Cook Inlet, we can call them out on it. Local governments and legislative representatives stepped up when they learned the State was trying to force the Council to close the waters of Cook Inlet south of Kalgin Island. We need their continued support.

What each of us can do is communicate with our local political representatives (Borough, City, Legislative) to encourage them to take up the fight to save commercial fishing here in Cook Inlet; to push back against the Dunleavy administration's efforts to eliminate our valuable, sustainable industry. We can all use our influence to get other commercial fishing groups across the state to join with us.

We can support the Recall Dunleavy campaign with our signatures, and later, our votes.

Long Term Outlook

We won the lawsuit against NMFS in the fall of 2016. Since then, the UCIDA office team, board members and others have been working diligently to bring this issue to final action. During that same time the Council, NMFS and the State of Alaska have been working hard to obstruct, delay and prevent anything from getting done. Our position is strong and supported by the federal law, by the Ninth Circuit Courts decision and by similar actions and rulings by other courts and judges across the country.

There has been a backdoor initiative by some in Alaska to pursue a “legislative fix” by changing some language in the MSA that would remove the federal requirement to manage national resources, like salmon, in the national interest. This “fix” is not supported by those in the seafood industry who are seeking best management practices and long-term sustainability for the Cook Inlet fishery. It would simply allow the State of Alaska to continue its gross mismanagement of the salmon stocks that has led to multiple fishery disasters. This “fix” would mean sudden death for the seafood industry in Cook Inlet. It could also have huge impacts on numerous other fisheries around the state and the entire nation. It would simply allow any management council to walk away from their responsibility to manage fisheries and would effectively negate the entire purpose of the Magnuson-Stevens Act.

There is strong support for the Magnuson-Stevens Act from other fishing organizations and NGO’s across the state and across the entire nation. UCIDA will be reaching out to these groups and informing them about the attempt to subvert the MSA and enlist their support.

We would like to thank all those who have provided testimony, letters of support, financial support, phone calls with questions, advice and direction, attendance at the many Council meetings and Salmon Committee meetings, and attendance at all the UCIDA and CIFF meetings and work sessions over the past years. With your continued help, support, and patience, we will prevail, and we will have a sustainable commercial salmon fishery in Cook Inlet.

Sincerely,

The UCIDA Board