



United Cook Inlet Drift Association

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Cook Inlet FMP and litigation update April, 2021

In UCIDA's last legal update, sent to our members and posted on our website last month, we reviewed the history of our legal action against the National Marine Fisheries Service (NMFS). There have been some interesting developments since then.

The North Pacific Fishery Management Council, the regional advisory body to NMFS, was required by the Federal Court to produce a Fishery Management Plan (FMP) for the Cook Inlet salmon fishery by December 31, 2020. At their December meeting, following a motion by the State of Alaska ADFG Deputy Commissioner, the Council took final action and voted to recommend Alternative 4 as their preferred alternative, which would close the federal waters in Cook Inlet (the EEZ) to commercial salmon fishing and ignore the rest of the fishery. The Council seemed to think that, by closing the federal waters in Cook Inlet, their job was done. Their action was also completely contrary to the ruling from the Ninth Circuit Court.

The Council and NMFS have been telling us for years that they only had jurisdiction in federal waters and nothing they did would affect how the State managed the fishery in State waters. On the contrary, that is not what the federal law says, but that is what the Council and NMFS have been saying.

The UCIDA directors understood that simply closing a large part of Cook Inlet to commercial fishing did not qualify as an FMP. We have been watching and waiting to see how NMFS would handle the situation. The Magnuson-Stevens Act (MSA) requires that NMFS put the draft FMP language out for public comment within 5 days of final action by the Council. That never happened. On March 25th, more than 3 months after the Council took final action, Jim Balsiger, Administrator for NMFS Alaska Region, sent a letter to the Council asking for clarification and informing the Council that their action in December to close a portion of the fishery did not satisfy the federal requirements for an FMP.

His letter went on to say that, even though the Council had voted to close the federal waters, the proposed FMP amendment must also specify a distinct annual catch limit (ACL), maximum sustainable yield (MSY), or Optimum Yield (OY) in the rest of the fishery, in State waters. This is a complete reversal of what NMFS and the Council have been saying for years. This is what UCIDA's position has been from the start. We have always said that the MSA applies to the entire salmon fishery in Cook Inlet and the Ninth Circuit Court agreed with us. Once again though, NMFS is trying to subvert what the federal law requires.

Balsiger's letter contains draft language for the new Amendment 14 to the Salmon FMP. His proposed language says that "MSY is established for the upper Cook Inlet salmon fishery based on State of Alaska escapement goals in Cook Inlet." However, the problem with his statement is the undisputable documentation that there is not a single escapement goal in Cook Inlet that produces MSY, and that MSY has not been achieved in this fishery in decades. Also, the MSA requires that the State's escapement goals be reviewed by the Council and the Science and Statistical Committee (SSC) for consistency with federal requirements, NMFS cannot simply accept what the State of Alaska produces as a goal. Balsiger's letter also states that "OY is fully achieved in State waters of Cook Inlet by State salmon fisheries." This statement is nothing but a lie. Just think about the millions of surplus sockeye, pinks, chums and coho that have gone unharvested in the last twenty years due to mismanagement by ADFG. The science is clear, Maximum Sustainable Yield (MSY), or Optimum Yield (OY), cannot be achieved on a continuing basis on salmon stocks, if either underfishing or overfishing occurs repeatedly.

Balsiger then completely changes the Council's action from the December meeting and fabricates the following statement: "NMFS understands the Council intent is for Amendment 14 to establish MSY and OY for Cook Inlet following the concepts developed under Alternative 2....". In fact, the Council did not vote in favor of any part of Alternative 2. They voted to close part of the fishery and ignore the rest. Balsiger's shell game here, and his lack of veracity in his letter to the NPFMC, are stunning.

The NPFMC had Balsiger's letter on the agenda at their recent meeting of April 12-17. On the morning of April 12, when this agenda item came up, Glen Merrill (NMFS) spoke a few words about the letter, said the letter was self-explanatory and unless someone had other ideas they would proceed. No one on the Council said a word. Not a single word.

UCIDA, CIFF and ASA had all submitted letters and documents to the NPFMC for that April meeting regarding the Cook Inlet Salmon FMP and Balsiger's letter. The Council completely disregarded all of these comments from the stakeholders. The letters and supporting documents can all be found on the UCIDA website and on the NPFMC website.

UCIDA is sending a letter to the Federal District Court in Anchorage to inform the Judge of the recent activities of the Council and NMFS. We will continue to monitor these developments and attempt to keep you informed. For the moment, all we can do is wait until NMFS takes further action and then puts the draft FMP language out for public comment. It will be very important for all of us to submit public comments when that opportunity comes up. They will likely try and time that comment period to coincide with salmon season, because that's just who they are.