



United Cook Inlet Drift Association

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UCIDA legal update December 2021

There was a flurry of legal activity in our Magnuson-Stevens Act (MSA) litigation recently. We are posting this to keep everyone informed of the latest developments.

On November 3rd the National Marine Fisheries Service (NMFS) posted the final regulations for Amendment 14 to the Alaska Salmon Fisheries Management Plan (FMP), in the Federal Register, marking the agency's final action. That action started the clock on a 30-day window for us to respond.

The UCIDA board and our attorney were prepared for this. On November 5th, we filed a motion to supplement and amend our current litigation and petition for judicial review. This was a motion requesting to continue our existing lawsuit. At the same time, we filed a motion to expedite the previous motion with several supporting documents. We could not take these steps until NMFS had taken final action.

In response, Judge Burgess scheduled a video status conference on the case for Monday, November 8th. As a result of that conference the judge requested that our attorney produce a proposed supplemented/amended complaint by Wednesday, November 10th, with additional briefs by all parties filed the next day and response briefs by all parties filed on Friday the 12th.

We understood that the continuation of our legal action had two possible routes, continuing the existing lawsuit, or filing a new one. In preparation, our attorney filed a new lawsuit on November 17, while the judge was reviewing the filings from the previous week. The new complaint was almost identical to our previous motion to supplement and amend our previous complaint. Our new complaint deliberately kept all the previous arguments from our old case alive, because we still have not received the relief we were granted by the Ninth Circuit Court back in 2016.

On November 18th, Judge Burgess ruled that we needed to file a new complaint instead of amending our previous complaint and, of course, our attorney had already done so. The Judge stated that "Plaintiffs' claims would be better brought as a new, separate action, and the Court can identify no technical obstacles preventing that course of action. Plaintiffs' newly filed case appears to be an appropriate action for this purpose."

Judge Burgess then removed himself from the litigation and assigned our case to a different judge. Our new complaint is now before Judge Joshua Kindred.

Judge Burgess had previously announced that he was planning to retire at the end of this year and, even though he will continue to handle some cases in his retired status, he passed this one on.

On December 2nd we filed an additional motion (with supporting documents) to expedite our new complaint with Judge Kindred. Under the rules for litigation for the MSA, the court must expedite to the fullest extent possible. Even with that, the courts move at a glacial pace. We will make every attempt to get the court to take affirmative action ASAP, but don't expect much for the next few months. Even with an accelerated briefing schedule, it may take until mid-April before we can have oral arguments in front of the judge and possibly several more weeks before any decision is reached.

NMFS will now have 45 days to answer our complaint and produce the administrative record. We can also expect them to try and delay that, and the briefing schedule, as much as possible. They will use any excuse in their attempt to delay; they will argue that Covid, the holidays or some contrived technical legal issue will make it impossible for them to meet the schedule. We will have to make arguments to the court to prevent that, otherwise they will drag this phase out for months or years if they can. It's a dirty legal trick but we have come to expect that from NMFS because their arguments on the actual merits of the case are so weak. We won the case in 2016 and they are still trying every way possible to avoid complying with the court order.

It's important to note that in our new lawsuit, just like our previous one, we are not suing the State of Alaska. If the State wants to be involved, they will have to file a motion to intervene.

All of these court filings are available from the UCIDA office if anyone would like to read them.

This has not been an unexpected step in the process. We have had to wait for several years, until NMFS took final action, to get back into court. But, as you can see from all this recent activity by our attorney, our legal bills are continuing to pile up. In anticipation, we have been asking for your support and contributions to UCIDA's legal fund and we really need everyone's help to fight this battle.

The Pacific States Marine Fisheries Commission (PSMFC) recently announced that the CARES Act Fisheries Relief, Round 1 checks will be mailed on or before December 10th, 2021. For Round 2, an additional \$39 million has been designated for Alaska to assist commercial harvest, sport charter, seafood processing, and subsistence sectors. The application period for the second round of relief will open soon and be open for at least 60 days. You must receive your Round 1 check before you can apply for Round 2. Please consider sending an additional contribution to UCIDA when you receive your Round 1 check.

Call the UCIDA office if you have any questions. The office number is 907-260-9436.

Thank you,

The UCIDA Board of Directors