

**MARCH 3, 2021  
CITY COUNCIL MEETING  
ADDITIONAL MATERIAL/REVISIONS**

**REQUESTED REVISIONS TO THE AGENDA/PACKET:**

<b><u>ACTION</u></b>	<b><u>ITEM</u></b>	<b><u>REQUESTED BY</u></b>
Add to item G.7.	<b>Resolution No. 2021-13</b> <ul style="list-style-type: none"><li>• Public Comment</li></ul>	City Clerk



## United Cook Inlet Drift Association

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### Cook Inlet Salmon Legal Update – March, 2021

In January of 2013, after years of increasing concerns with the State of Alaska’s management of salmon resources in Cook Inlet, the United Cook Inlet Drift Association (UCIDA) filed a lawsuit against the National Marine Fisheries Service (NMFS). The suit was in response to NMFS’ approval of an action, “Amendment 12,” to remove federal waters in Cook Inlet from the scope of the federal salmon fishery management plan in Alaska. In 1976, all anadromous fish, like salmon, among other species of fish and shellfish that live in both federal and state waters, came under the authority of the Magnuson-Stevens Act (MSA). Amendment 12 essentially abdicated NMFS’ duty and responsibility for administration of the MSA in Cook Inlet.

There have been many misstatements made about the lawsuit, as to the purpose and scope of the case, and even as to the parties in the case. We hope that this statement provides clarification on this litigation.

UCIDA does not want federal management of the Cook Inlet fishery. We want an Amendment to the Salmon Fishery Management Plan for Alaska (FMP) that includes Cook Inlet, complies with the 10 National Standards and then delegates authority to the State to manage the fishery. This is the same method currently used in Southeast Alaska for salmon management and in other fisheries across the state, including crab, cod and rockfish. We are not asking for anything out of the ordinary, we are only asking that the State be held to the same management standards in Cook Inlet that they must follow in other areas.

#### **Who are the parties to this case?**

The plaintiffs in this case are UCIDA and the Cook Inlet Fishermen’s Fund (CIFF). The suit was filed against the Secretary of Commerce and NMFS. NMFS is part of NOAA, an agency within the U.S. Department of Commerce. The State of Alaska was not sued. The State of Alaska decided to intervene and participate as an intervenor-defendant.

The North Pacific Fisheries Management Council (Council) is the regional advisory body to NMFS. The Council is responsible for developing specific fishery management plans in Alaska. Their plans are subject to a review and approval process within NMFS and finally, approval by the Secretary of Commerce.

#### **Why did UCIDA file this lawsuit?**

UCIDA’s principal concern is the long-term health of the salmon resources in Cook Inlet, and the ability to maintain a viable commercial fishery in the Inlet for generations to come. The Magnuson-Stevens Act (MSA) is the primary federal law that governs marine fishery management and provides for optimal exploitation of coastal fishery resources. The MSA has been in existence for over forty years and is the “gold standard” in sustainable fishery management for the entire nation. The MSA requires the development of specific fishery management plans, based on the best science available, to ensure that fisheries are both sustainably managed and managed to ensure the maximum sustainable yield from that fishery. The MSA expressly allows these plans

to incorporate state management measures and allows NMFS to delegate management of the fishery to a state under the guidance provided in that plan.

After the passage of the MSA in 1976, the State of Alaska agreed, in a Memorandum of Understanding (MOU) with NMFS, that it would manage fisheries in Alaska in a manner consistent with the MSA. The immediate turnaround in fisheries in Alaska following the passage of the MSA was remarkable, and the overall harvest of wild salmon on a statewide basis increased over 200% (see Figure 1 on last page).

By the late 1990s that trend began to reverse in Cook Inlet. The State stopped following its MOU with NMFS and took the position that it need not consider the MSA or the national standards in making salmon fishery management decisions. Since then, harvests of salmon in Cook Inlet, and some other areas, have significantly declined. Salmon harvests in some areas are still robust, largely due to major hatchery production of salmon, healthy salmon habitat and/or lack of political pressures.

The salmon declines in Cook Inlet, in large part, are attributable to mismanagement by both ADFG and the Board of Fisheries (BOF). Invasive pike and other habitat problems in the Mat-Su basin have eliminated 100% of the sockeye production in eight lakes and have reduced the total salmon production in that watershed by 50%. Rather than address the in-river problems, the ADFG and the BOF responded by progressively restricting commercial fishing that targeted healthy stocks heading to the Kenai and Kasilof Rivers, even though commercial fisheries only catch a fraction of the stocks headed north to the Mat-Su basin. Those restrictions, in turn, lead to repeated over-escapements of sockeye on the Kenai and Kasilof Rivers, which in turn lead to smaller returns to those rivers in subsequent years.

Other salmon species are not being managed any better. The best available science calls for harvest rates at 53-63% for maximum sustained yield of coho, chum and pink stocks. In Cook Inlet the actual commercial harvest rates are 10-15% for coho, 6% for chums and 2% for pink salmon, far below what the MSA requires. With salmon stocks, underharvesting or overharvesting will lead to the same result - fewer salmon returning in the future.

UCIDA filed this lawsuit because it wanted to end this downward spiral and bring science and reason back into the management of fisheries in Cook Inlet. UCIDA does not want federal management of the Cook Inlet fishery. UCIDA wants the State to manage the fishery through an approved fishery management plan, that meets the requirements of federal law and the 10 National Standards.

### **What is the lawsuit about?**

Prior to 2013 the Council and NMFS were ignoring Cook Inlet and its salmon fisheries that occur in both state and federal waters. After years of enduring the consequences of the state's mismanagement of salmon in Cook Inlet, UCIDA requested that the Council develop a fishery management plan as required by federal law. The intent was to have a plan that would bring the state back into compliance with the MSA. Instead, the Council came up with Amendment 12, which simply removed Cook Inlet from federal requirements. UCIDA then filed suit in federal court and challenged NMFS's decision to approve Amendment 12 to the Salmon FMP.

### **Current status of the lawsuit.**

In September of 2016, the Ninth Circuit Court found Amendment 12 to be contrary to law and ruled unanimously in favor of UCIDA. They remanded the case back to the federal district court with instructions to NMFS and the Council that they develop an amendment to the Salmon FMP that includes the entire Cook Inlet fishery.

UCIDA Board members, retired ADFG staff, UCIDA and CIFF members and many others have been working hard over the past 4 years to encourage the Council to carry out the instructions from the Court. 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.

Over the last 4 years, the Council, NMFS, and the State have insisted on creating an amendment to the 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 before appealing, but it did impose a deadline on the process.

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. The State of Alaska simply refused to accept a delegation of federal authority to manage the Cook Inlet salmon fishery. This forced the Council to vote to close the federal water portion of the fishery (otherwise known as the Exclusive Economic Zone or EEZ) which will effectively close the entire drift fishery, as the salmon harvested in those waters cannot be harvested anywhere else. The average percentage of drift fleet harvest that occurs in the EEZ currently is about half the total drift fleet harvest and in some years as much as 75% of the total.

The State tried, but failed, to make the argument that this is a “state’s rights” issue. The State continues to engage in similar relationships with the federal government in numerous other fisheries around Alaska, including salmon, crab and groundfish which includes the 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’ scrutiny, would expose the reality that none of the 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, unsustainable and scientifically invalid.

NMFS now has a year to review this action and determine if closing the fishery meets the intent and requirements of federal law and the instructions from the Ninth Circuit Court. There will be an opportunity for public comment at some point in this review process.

### **Why should you care?**

As the Cook Inlet region continues to develop, putting increased pressure on habitat and the resource itself, the need to comprehensively address these concerns continues to mount. The downward spiral in fishery management is affecting all resource users and having serious economic consequences for the entire region. The development of a federal fishery management plan for Cook Inlet creates a real and lasting opportunity to

bring all resource users together with scientific experts and state, federal and tribal managers to restore and preserve this important resource.

Concerns about “federal overreach” through a fishery management plan simply misunderstand how the MSA functions. The driving force behind the development of any fishery management plan is the Council, and the State has a majority voting block with six of the eleven seats on the Council. Federal oversight through NMFS is limited to ensuring that the FMP complies with the MSA and the National Standards, and that the State complies with the plan.

The complete extirpation of salmon from eight lakes in the Mat-Su Basin and the recent crash in Chinook returns greatly increase the probability that one or more of these stocks could decline to the point at which a listing as “threatened” or “endangered” is warranted under the Endangered Species Act. We have almost reached that tipping point with early run Chinook in the Kenai River. If the current rate of decline continues, we could face a real federal takeover of fishery management decisions in Cook Inlet. UCIDA believes that having an FMP in place would help prevent this from occurring.

Salmon are an extremely important resource to the people and the economy of Southcentral Alaska and have been for many decades. The 2015 McDowell Group report titled “The Economic Impact of the Seafood Industry in Southcentral Alaska”, documents a \$ 1.2 billion-dollar annual output for the seafood industry, which creates between 8-10,000 jobs in this region. Salmon is the basis for this industry, accounting for 85% of the first wholesale value. The seafood industry is the largest private sector employer in the state.

**Figure 1** – Contrary to the myth that Alaska salmon management is the best in the world, it was not State management of salmon that improved the stocks and harvest rates, it was the Magnuson-Stevens Act, which included eliminating foreign catcher vessels within 200 miles of shore.

