

Cook Inlet Salmon Management

UCIDA vs. National Marine Fisheries Service

In January of 2013, the United Cook Inlet Drift Association (UCIDA) filed a lawsuit against the National Marine Fisheries Service (NMFS) and the Secretary of Commerce, challenging the approval of a decision by the North Pacific Fishery Management Council (the Council) to remove federal waters in Cook Inlet from the scope of the federal salmon fishery management plan. This case is currently pending before the Ninth Circuit Court of Appeals, as case number 14-35928, and is under assessment by the mediation program for settlement potential.

There have been a lot of misstatements made about this case, including statements by some Alaska legislators and in several op-ed pieces by Howard Delo, Les Palmer and by Karl Johnstone (recently removed as Board of Fisheries Chairman), as to the purpose and scope of this case, and even as to the parties in this case. We hope that this brief statement provides clarification on the nature of this litigation.

UCIDA does not want federal management of the Cook Inlet fishery. We want the Council, in conjunction with the State and stakeholder groups, to write a Fisheries Management Plan (FMP) for Cook Inlet that complies with the 10 National Standards in the Magnuson Stevens Act, then delegate authority to the State to manage the fishery. This is the same method currently used in SE Alaska for salmon management and in other fisheries across the state, Bering Sea crab for example. 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 have to 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. The suit was filed against the Secretary of Commerce, and the National Marine Fisheries Service. The Secretary is the person charged by Congress with protecting the nation's fishery resources and fishing communities under the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The Secretary has delegated that responsibility to NMFS. The State of Alaska was not sued. The State of Alaska decided to intervene in support of the NMFS and participate as an intervenor-defendant.

Why did UCIDA file this lawsuit?

UCIDA's principal concern is the long term health of the salmon fisheries in Cook Inlet, and the ability to maintain a viable commercial fishery in the Inlet for generations to come. The MSA is our national charter and model for sound, science-based management of commercial fisheries. The MSA includes ten national standards, and requires the development of a fishery management plan based 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 Cook Inlet 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 below).

By the late 1990's that trend began to reverse in Cook Inlet (see figure 2 below). The State stopped following its MOU with NMFS, and actively took the position that it need not consider the MSA or the national standards in making fishery management decisions. Instead the Board of Fisheries in 2000 wrote a new management scheme called the Policy for the Management of Sustainable Salmon Fisheries (SSFP). As figure 2 shows, since the passage of the SSFP, harvests of salmon in Cook Inlet have significantly declined.

These declines, in large part, are attributable to mismanagement by the State. Invasive pike and other habitat problems in the Mat-Su basin have eliminated 100% of the sockeye production in six lakes, and have reduced total production in that watershed by 50%. Rather than address the in-river problems, the State 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. Compounding these problems, returns of some king salmon stocks have crashed in the Inlet, resulting in a 2012 disaster declaration. The State has no explanation as to the reasons for the decline in these stocks, but predictably (and illogically) responded by further restricting harvest on healthy Kenai and Kasilof sockeye stocks, thereby further compounding rampant over escapement problems on those systems and ensuring continued diminished returns.

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, developed with the State's cooperation and direct involvement that meets the MSA's 10 national standards.

What is the lawsuit about?

A portion of the historical Cook Inlet salmon fishery occurs outside of state waters in the exclusive Economic Zone (EEZ) subject to exclusive federal control. The lawsuit arose from the Council's proposals to amend its Salmon Fishery Management Plan. The existing plan (last updated in 1990) largely neglected Cook Inlet. UCIDA asked the Council to update the plan to provide management goals and objectives for Cook Inlet, as required by the MSA, and then delegate management of that plan to the State. The Council rejected that proposal, and instead simply removed Cook Inlet

altogether from the plan. The Council believed that the State was best suited to manage the fishery, accepted the State's position that it was managing the fishery in a manner consistent with the MSA, and effectively defaulted to State management.

UCIDA filed suit challenging NMFS's decision to approve the Council's decision. UCIDA's position is that the procedure utilized by the Council is improper. If the Council believes that the state is the best entity to implement the management of salmon fisheries in Cook Inlet, then it was required to develop a plan meeting the 10 national standards that properly delegates management to the State with appropriate management goals and objectives for the fishery.

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 efforts by the Board to address the problems facing the fishery have either been politically motivated, without a scientific or factual basis, or both. The development of a fishery management plan for the 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 the mechanism by which the MSA operates. The driving force behind the development of any fishery management plan is the Council, and the State has a majority voting block on the Council. Federal oversight through NMFS is limited to ensuring that the plan complies with the MSA's national standards, and that the State complies with the plan. This is something that is sorely needed in light of current management practices in Cook Inlet.

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 Kings 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's lawsuit was an effort to prevent this from occurring.

Figure 1.

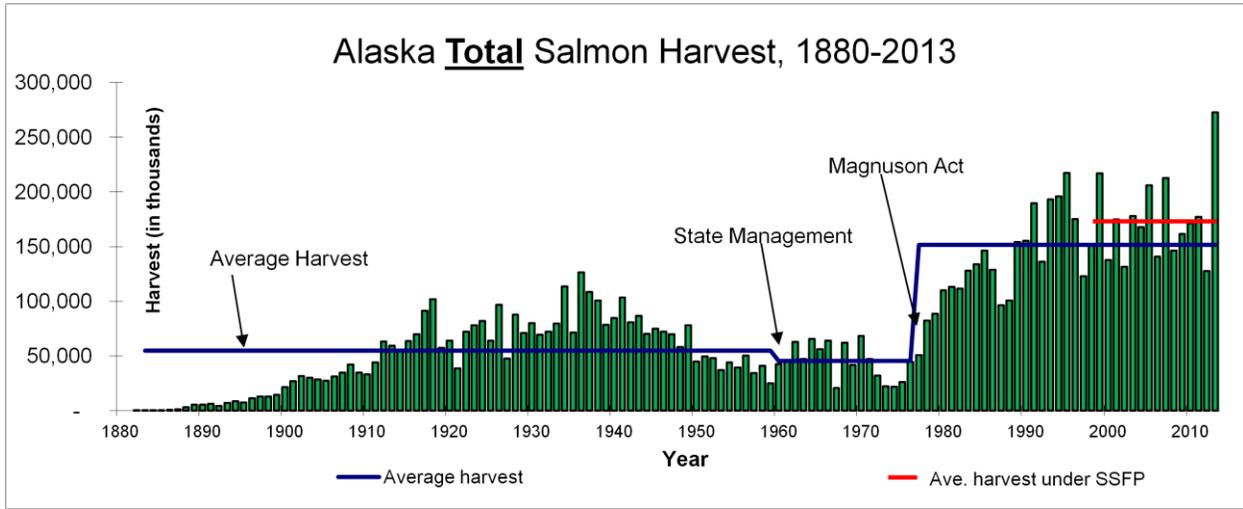


Figure 2.

