

Gov. Dunleavy says state will appeal Southeast killer whale lawsuit to Supreme Court if necessary

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A Southern Resident killer whale preys on salmon in the Salish Sea near Seattle. (Su Kim/NOAA Fisheries)

Alaska's governor says he'll appeal a pending federal court ruling that threatens to shut down the Southeast king salmon season.

Gov. Mike Dunleavy was unequivocal when answering a question from a listener during Alaska Public Media's "Talk of Alaska" on Tuesday.

The Duvall, Washington-based Wild Fish Conservancy filed suit against the National Marine Fisheries Service in 2019, arguing that a flaw in the agency's environmental analysis left a small population of endangered killer whales in Puget Sound exposed to further harm due to the interception of their primary food source: king salmon, also known as chinook.

In barest terms, the proposed remedy to correct this alleged oversight by the NMFS involves shutting down the Southeast Alaska salmon troll fishery until the full impact of the chinook harvest on Southern Resident killer whales can be assessed.

The Alaska Department of Fish & Game intervened in support of the National Marine Fisheries Service; so did the Alaska Trollers Association. It hasn't gone well. Although a federal judge in 2020 declined to impose an injunction against the Southeast troll fishery, the latest "Report and Recommendation" in the U.S. District Court of Western Washington, by U.S. Magistrate Judge Michelle Peterson, leaves open the possibility that the Wild Fish Conservancy could prevail.

The ruling includes a proposed order vacating the Incidental Take Permit, or "ITS," issued by NMFS that allows the Southeast troll fishery to harvest chinook year-round. If a judge signs off on the recommendation, trolling for king salmon in Southeast might be off-limits for ten months of the year, making the fishery uneconomic and unviable for many trollers.

Although the state joined the lawsuit, it's been relatively quiet about the case. That changed on Tuesday morning when Juneau troller Tom Fisher posed the question directly to Gov. Dunleavy on Alaska Public Media's "Talk of Alaska."

“My question is, will the state commit all resources necessary to take this court case to Ninth Circuit Court of Appeals? And if necessary, the Supreme Court?” Fisher asked.

“Yes. The answer is yes,” Dunleavy responded. “Because this is another example of opportunities being curtailed in Alaska. And again, I think we do fisheries better than the Feds did when we were territory. So the answer to that is yes.”

“We very much appreciate the governor’s conviction on pursuing this lawsuit to the end,” said Amy Daugherty, director of the Alaska Trollers Association. “You know, it’s just so frivolous, and so harmful to all of Southeast and our way of life here. So it’s such good news.”

Daugherty says her job has changed dramatically since the Wild Fish Conservancy [filed suit three years ago](#). The existential threat to Southeast trolling — which is somewhere between 700 and 800 small businesses across the region — has grown, as the suit has progressed. She says the issue has not been overhyped.

“I think, it’s extremely valid,” Daugherty said. “The Wild Fish Conservancy has a lot more means certainly than the Alaska Trollers Association. And they seem to be applying it with absolute conviction. So we’re just doing everything we can: [We’re getting a lot of resolutions](#), we’re getting new money every day, a lot from fishermen, a lot from organizations, processors, stores even. And we’re just hopeful that there will be some common sense, you know, brought forward through this process.”

It’s unclear what the immediate impact of a ruling in favor of the Wild Fish Conservancy would have on Southeast trolling, given the this newly reelected governor’s interest in fighting the suit to the bitter end. During the same “Talk of Alaska,” Gov. Dunleavy

didn't just go to bat for trollers, he reaffirmed a commitment to the industry as a whole, and to subsistence harvesters on Alaska's interior river systems whose way of life is threatened by [a still- unexplained collapse of king salmon and chum runs.](#)

“I would say that this is priority number one when it comes to resources for this administration for the next four years,” Dunleavy said, in response to another caller. “And you know, missing a fishing season — two or three fishing seasons — has a detrimental effect not just as you said on food, but also on the fact that it's difficult to pass down the ways of life and the culture if you can't bring the kids out the fish camp.”

A final decision by the US District Court of Western Washington on the Dec. 13 “Report and Recommendation” in the case of the Wild Fish Conservancy versus the National Marine Fisheries Service (NOAA), et. al., is pending.