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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED COOK INLET DRIFT
ASSOCIATION and COOK INLET
FISHERMEN'S FUND,

Plaintiffs,

v.

NATIONAL MARINE FISHERIES
SERVICE; et al.,

Defendants.

and

STATE OF ALASKA,

Intervenor-Defendant.

UNITED COOK INLET DRIFT
ASSOCIATION, et al.,

Plaintiffs,

v.

NATIONAL MARINE FISHERIES
SERVICE, et al.,

Defendants.

DECLARATION OF DAVID MARTIN

Civil Action No.: 3:24-cv-00116-SLG
LEAD CASE

Case No. 3:24-cv-00154-SLG
CONSOLIDATED

United Cook Inlet Drift Association, et al. v. NMFS, et al.
Case No. 3:24-cv-00116-SLG

I, David Martin, hereby declare and state:

1. I am over the age of 18 and not a party to this action. I know these facts of my own personal knowledge and would competently testify to them if called as a witness.

2. I am a commercial fisherman and live near the town of Ninilchik, Alaska, a small fishing community on the east coast of Cook Inlet. I own and operate a drift gillnet fishing boat and a limited entry permit that allows me to participate in the Cook Inlet drift gillnet salmon fishery. I also participated in NMFS's "Cook Inlet EEZ Area fishery" during the summer of 2024. I fish predominately in Cook Inlet and have done so since 1971. The federal waters in Cook Inlet, in the Exclusive Economic Zone (EEZ), have been opened to commercial salmon fishing since commercial fishing started in the inlet more than 135 years ago. Prior to 2024, the majority of my salmon fishing occurred within the federal waters in Cook Inlet in the EEZ. Commercial fishing in Cook Inlet provides my income and allows me to live a seasonal lifestyle around which I have organized my life.

3. I am a member of and currently serve on the Board of Directors and as the President for the United Cook Inlet Drift Association ("UCIDA"), one of the plaintiffs in the above-captioned litigation. I am a member and serve on the Board of Directors of the Cook Inlet Fishermen's Fund ("CIFF"), the other plaintiff in the above-captioned litigation. CIFF is a non-profit corporation registered under the laws of the State of Alaska. CIFF represents approximately 446 members, including commercial fishermen of all gear types (including more than 200 driftnet fishermen and more than 200 set net fishermen), seafood processors, and community members. The majority of CIFF's members are from Alaska,

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but CIFF also has members from approximately 21 other states, including Washington, Oregon, Utah, California, Minnesota, Iowa, Wisconsin, New York, Arizona, Delaware, Texas, Colorado, Florida, Indiana, New Mexico, Oklahoma, South Dakota, Virginia, Vermont, and Wyoming.

4. CIFF's mission is to advocate on behalf of all commercial fishermen of Cook Inlet and for the coastal community more generally. CIFF's members and volunteers are fueled by the desire to save the commercial fishing industry in Cook Inlet as well as all of Alaska, and to protect the habitat and ecosystems that those species depend on. When necessary, CIFF has filed suit in court to protect its member's interests.

5. CIFF's members have long been concerned with the State of Alaska's mismanagement of salmon fisheries in Cook Inlet. When the Magnuson Stevens Fishery Conservation and Management Act (MSA) was first passed, the State initially managed the Cook Inlet salmon fishery in a manner consistent with the MSA by setting escapement goals that were scientifically sound and intended to achieve the maximum sustainable harvestable surplus. The results were highly productive with the sockeye salmon returns as high as 12 million in the mid 1980's and 1990's and averaging between four to nine million. But things changed after that as the State moved away from MSA based management and started applying its own Sustainable Salmon Policy. Ever since that time, yields have been lower, sporadic, unpredictable, and more salmon were wasted because of allocative restrictions preventing the commercial harvest of the surplus salmon.

6. The 10-year average annual commercial catch from 2008 to 2017 was 2.7 million sockeye. The commercial sockeye harvest was about 1.8 million in 2017 and 2019, and the commercial sockeye harvest in 2018 was only 814,516—the worst harvest in over 40 years. In 2020, the commercial salmon harvest in Cook Inlet reached a new low, below 2018, with 669,751 sockeye harvested and 1.2 million total commercial harvest of all five salmon species. These low harvests have continued in recent years. The low commercial harvest was not because of a lack of salmon but because of the State’s management plans that have severely restricted the commercial fishery in time and area resulting in millions of surplus salmon going unharvested each year and grossly over-escaping the salmon systems.¹ Until the summer of 2024, these declines have all occurred under the exclusive management, control, and direction of the State of Alaska.

7. CIFF sought to turn the tide on the state mismanagement in 2010 by appealing to the National Marine Fisheries Service (NMFS) and the North Pacific Fishery Management Council (the “Council”) to manage the Cook Inlet Salmon fishery in a manner consistent with the MSA. NMFS refused, and instead issued Amendment 12 to the Fishery

¹ This is demonstrated in the administrative record at pages SPEC00180 (demonstrating that in every year except one from 1999–2023, Kenai River Late Run Sockeye Salmon exceeded their escapement goal and produced a significant “Potential Yield EEZ,” which are wasted fish and over-escapements) and SPEC00182 (approximately the same for Kasilof River Sockeye Salmon); SPEC00184 (approximately the same for Aggregate “Other” Sockeye Salmon); SPEC00192 (approximately the same for Aggregate Coho Salmon); NMFS00183; NMFS00184 (demonstrating that in 2021, 2,050,180 pink salmon above those needed to meet escapement goals went unharvested, i.e., wasted); NMFS00185 (demonstrating that in 2021, 573,650 chum salmon above those needed to meet escapement goals went unharvested, i.e., wasted).

Management Plan for Salmon Fisheries in the EEZ off the Coast of Alaska. CIFF initiated a lawsuit in 2013 to challenge Amendment 12, and ultimately prevailed before the Ninth Circuit Court of Appeals. In September 2016, the court ordered that NMFS and the Council were required to create a management plan for the EEZ off the Coast of Alaska, including for the Cook Inlet salmon fishery. The Ninth Circuit instructed that NMFS could not wriggle out of its duties or shirk the statutory command to produce a fishery management plan that is compliant with the MSA for the Cook Inlet salmon fishery.

8. The Ninth Circuit's decision prompted a five-year administrative process that completely failed to accomplish what the court had directed or to follow the required procedures. CIFF, UCIDA, and stakeholders continually, over the five-year period, tried to steer the Council, NMFS, and the State of Alaska into developing an FMP for the Cook Inlet salmon fishery that complied with MSA and the Ninth Circuit's decision but to no avail. In fact, the State's mismanagement became ever more restrictive and punitive, resulting in record low commercial harvest while wasting millions of surplus salmon and putting numerous fishermen and processors out of business. At the last minute and at the urging of the State of Alaska, the Council completely abandoned its efforts to create a fishery management program for the Cook Inlet salmon fishery. Instead, on November 3, 2021, NMFS finalized its approval of Amendment 14 to the Cook Inlet Fisheries Management Plan. Amendment 14 immediately and permanently closed all commercial salmon fishing in the EEZ in Cook Inlet and deferred all management for salmon in Cook Inlet to the State of Alaska.

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9. This closure was narrowly avoided because of a lawsuit CIFF and UCIDA were forced to file challenging Amendment 14. The cities of Homer, Kenai, Soldotna, and the Alaska Salmon Alliance all joined, as amici, in CIFF and UCIDA's efforts to vacate Amendment 14. On June 21, 2022, the District Court vacated Amendment 14, confirming what CIFF's members already knew from having participated in the Amendment 14 process: "Amendment 14 and the Final Rule improperly delegates management of the Cook Inlet fishery to the State of Alaska" and that it was "crafted as a thinly veiled attempt to ensure the absence of federal management." The District Court ordered NMFS to produce a lawful and compliant FMP amendment by May 1, 2024.

10. The District Court's decision prompted a nearly two-year administrative process that again completely failed to accomplish what the court directed. The first 11 months were spent before the Council, but when the Council was ready to recommend a preferred alternative, the State of Alaska declined to accept delegated management in a manner that would satisfy the requirements of the MSA. The motion before the Council did not even receive a second and failed. When this happened, NMFS pushed forward anyway through the Secretarial amendment process to create Amendment 16. This process, unfortunately, yielded the same result: no FMP amendment for the "fishery" and deferral to the State of Alaska for a third time.

11. Amendment 16 splits Cook Inlet into two fisheries for the first time in more than 135 years. It sets openings in state and federal waters at the same days and times, but only allows fishermen to fish in one jurisdiction or the other. This is not feasible. The EEZ

jurisdictional line is jagged and does not comport with or have any connection to the currents or tides and the way that the fish travel through Cook Inlet. If a fisherman chooses to make their first set of the day in federal waters when the opener starts, but it turns out the fish are in state waters, that fisherman has lost their whole day of fishing. Similarly, the weather in Cook Inlet can change dramatically during an opener, especially given that it has some of the biggest tides in the world.² In the past, I could fish in the EEZ waters (which are towards the middle of the inlet) but if the weather picked up, I could move to calmer state waters nearer to shore and continue fishing. Now, my choice is to either quit fishing all together because I am forbidden from moving to state waters, or to put my crew, vessel, and myself at risk in dangerous weather just to have a chance to make my livelihood. There is absolutely no reason the openers in federal waters need to be on identical days and times as the openers in state waters. There is also no meaningful justification for not allowing fishing in both jurisdictions during the same day. This has been going on for more than 135 years, and it is only NMFS's refusal to use anything other than a TAC to manage the federal waters that is driving this decision. The restrictions appear punitive; a reaction by NMFS to being forced to manage the fishery. Amendment 16 also requires fishermen to obtain expensive VMS tracking systems to fish in the federal waters. This is not an

² When the wind is blowing 15mph or more in the opposite direction of the tide, it can create very dangerous and life-threatening conditions in the EEZ. This happens routinely during the summer.

investment that many Cook Inlet drift fishermen can afford to make at this time. It is also not necessary to manage fishing in federal waters.

12. For these reasons among others, CIFF filed the above-captioned lawsuit to prevent the immediate and long-term harm that will occur if Amendment 16 is allowed to remain in place. While this is not CIFF's preferred strategy, it aligns with its organizational purpose and was the only available option to prevent the continuing irreparable harm to CIFF's membership and the fishery. Rather than address any of the problems created by state management and rather than manage Cook Inlet pursuant to the MSA, NMFS has cemented the last two decades of state management into federal law.

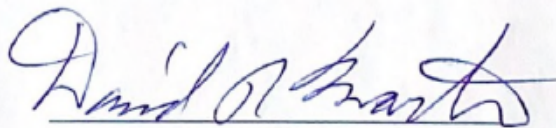
13. To the limited extent allowed by NMFS and the Council, CIFF participated, directly and through its members, in the proceedings predating the decisions challenged in the above-captioned lawsuit. CIFF submitted detailed written comments and testimony on Amendment 16 and its implementing regulations, including the harvest specifications, and the accompanying draft environmental assessment and SAFE report. The concerns, opinions, and wellbeing of CIFF members were not adequately considered by NMFS and the Council in creating Amendment 16. Other alternatives that did not so drastically impact the fishery and the lives of the stakeholders who rely on the fishery were cast aside in favor of allowing the State to have its way and to continue to manage the fishery. This is directly contrary to the Ninth Circuit's and District Court's decisions and the principles and procedures required by those decisions. Amendment 16 does not comport with the principles the Ninth Circuit and the District Court commanded NMFS to follow, including

considering and relying on the best scientific evidence, the economic impacts of the alternative, and other principles established by the MSA for the continued health and viability of the fishery. Amendment 16 further puts the future of the salmon fishery and of the salmon stocks in Cook Inlet at risk.

14. I have been and will be directly and adversely impacted by Amendment 16, its implementing regulations, and the harvest specifications all of which significantly impair my ability to continue commercial fishing in Cook Inlet. If the court grants CIFF's requested relief, vacating Amendment 16 and requiring an FMP amendment for the "fishery," and conservation and management measures for the "fishery," the harm to my ability to fish this coming summer will be minimized. Further, NMFS, the Council, and the State would be required to follow proper procedures in creating an alternative to Amendment 16, considering and relying on the best scientific evidence, the economic impacts of the alternative, and other principles established by the MSA for the continued health and viability of the fishery. If CIFF prevails in this lawsuit, and the court orders NMFS to manage the fishery in line with the principles set out in the MSA, the health of the fishery can be preserved. The relief UCIDA and CIFF seeks is vital to my ability to fish this coming summer and years to come, my way of life, and the continued viability and health of the fishery and my fishing community and future generations.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: November 6, 2024.



David Martin

CERTIFICATE OF SERVICE

I hereby certify that on November 6, 2024, I filed a true and correct copy of the foregoing document with the Clerk of the Court for the United States District Court, District of Alaska, by using the CM/ECF system. Participants in this Case No. 3:24-cv-00116-SLG, who are registered CM/ECF users, will be served by the CM/ECF system.

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