

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

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

Plaintiffs,

vs.

NATIONAL MARINE FISHERIES
SERVICE ET AL.,

Defendants.

Case. No. 3:13-cv-00104-TMB

**DECLARATION OF TRAVIS
ANNATOYN**

1. I am a trial attorney with the Environment and Natural Resources Division of the United States Department of Justice and am counsel of record in this matter.

2. As explained in Federal Defendants' Opposition to Plaintiffs' Motion, attorneys' fees are compensable only if they reflect a reasonable number of hours billed at a reasonable rate for appropriate legal tasks. Through a detailed inspection of Plaintiffs' exhibits in support of their Motion, I identified unreasonable billing entries that warrant reduction or elimination. This declaration shows that the reductions proposed in the Opposition are supported by accurate calculations derived from the numbers provided in Plaintiffs' filing.

3. Federal Defendants' Opposition addresses Plaintiff's lack of entitlement to fees under the Equal Access to Justice Act and limited success on the merits of their claims, considerations unaddressed by this declaration. Thus, this declaration does not identify the full extent of appropriate reductions to Plaintiffs' lodestar calculation (*i.e.*, a complete denial of Plaintiffs' Motion). Furthermore, this declaration does not concede that billing entries not referenced herein are reasonable or compensable.

4. As an initial matter, Plaintiffs are not entitled to fees for work on their unsuccessful opposition to Federal Defendants’ motion to transfer. We have therefore deducted the following hours from Plaintiffs’ bill.

Date	Attorney	Hours	Task
2/19/2013	B-G	0.50	Review motion to transfer
2/19/2013	JTM	0.40	Review motion to transfer filed by NMFS
2/20/2013	B-G	0.30	Review motion to transfer and confer with Jason Morgan on response
2/20/2013	JTM	0.80	Review motion to transfer; internal conferences re responses and research tasks
2/21/2013	SAL	0.50	Research re change of venue standard
2/21/2013	JTM	1.30	Review materials related to response to motion for transfer; begin drafting same
2/22/2013	SAL	2.20	Research re change of venue standard in Washington D.C.
2/22/2013	JTM	0.50	Internal correspondence re research for response to motion to transfer
2/24/2013	SAL	3.10	Research re transfer of venue case law in D.C. Circuit
2/24/2013	SAL	1.30	Research pacer datasystem to determine how many Magnuson cases have been brought in D.C.
2/24/2013	JTM	2.60	Continue drafting response brief to motion to transfer
2/25/2013	SAL	3.20	Draft rule paragraph re transfer of venue standard; research re same
2/25/2013	JTM	7.30	Continue drafting response brief to motion to transfer
2/26/2013	SAL	9.10	Review and edit plaintiff's motion in response to defendant's motion to transfer venue
2/26/2013	JTM	4.20	Edit and revise response brief; internal conference re same
2/27/2013	SAL	1.50	Edit motion in response to defendants' motion to transfer; research re same
2/27/2013	B-G	0.70	Review and revise draft opposition to motion to transfer; confer with Jason Morgan on same
2/27/2013	JTM	4.30	Additional revisions and edits to motion to transfer
2/28/2013	JTM	0.90	Additional edits to brief in opposition to transfer
3/3/2013	JTM	0.90	Additional edits and revisions to response brief on transfer
3/4/2013	SAL	0.60	Edit Motion in Opposition to Motion to Transfer
3/4/2013	B-G	0.20	Review latest changes to introduction and draft brief from Jason Morgan
3/5/2013	SAL	1.20	Edit and assist in filing motion in opposition to motion to transfer
3/15/2013	SAL	0.20	Review reply to motion in opposition to transfer venue
3/15/2013	JTM	0.50	Review reply re motion to transfer and answer to complaint; internal correspondence re same
3/18/2013	B-G	0.50	Review reply to motion to transfer and answer
4/22/2013	JTM	0.50	Draft and file response to motion to transfer
Total		49.30	

5. Likewise, Plaintiffs are not entitled to time expended opposing the State of Alaska with respect the State’s petitions for further review of the Ninth Circuit’s decision. These hours are as follows:

//

//

Date	Attorney	Hours	Task
11/4/2016	JTM	0.20	Review petition for rehearing and correspondence re same
11/8/2016	JTM	0.20	Correspondence re rehearing
11/30/2016	JTM	1.20	Correspondence re denial of rehearing; correspondence re same; internal conference with Beth Ginsberg re remedy options
5/30/2017	JTM	0.50	Review materials re Order from Supreme Court and correspondence re same; internal phone conference re impacts of same
5/30/2017	B-G	0.40	Emails re settlement agreement in light of Cert Petition Response
5/31/2017	B-G	1.20	Call with Coby Howell and email regarding settlement in light of Supreme Court developments; begin review of Cert issues
5/31/2017	JTM	0.20	Correspondence re supreme court and settlement
6/2/2017	JTM	0.60	Phone conference re impact of Supreme Court order on settlement
6/4/2017	B-G	0.70	Continue reviewing petition for certiorari briefing
6/5/2017	B-G	0.80	Internal strategy session on response to petition for certiorari; emails to Coby Howell re settlement
6/5/2017	JTM	6.40	Draft petition for certiorari; internal conference with Beth Ginsberg re same
6/6/2017	JTM	6.80	Draft opposition to petition for certiorari
6/7/2017	JTM	7.60	Continue drafting supreme court response brief
6/7/2017	B-G	0.60	Internal discussions re settlement and response to petition for certiorari; emails with Coby Howell re same
6/8/2017	JTM	7.30	Continue drafting supreme court opposition brief
6/9/2017	JTM	2.20	Continue drafting opposition to certiorari
6/12/2017	JTM	1.30	Revise opposition to certiorari; internal conference with Beth Ginsberg re same
6/12/2017	B-G	1.80	Review and comment on draft response to Cert petition
6/14/2017	JTM	2.80	Continue drafting opposition to certiorari
6/15/2017	JTM	1.20	Draft and revise opposition brief
6/18/2017	B-G	4.80	Review and revise draft cert petition response; coordinate with Jason Morgan on same
6/19/2017	B-G	0.30	Conference re response to certiorari petition
6/21/2017	JTM	2.60	Revise and edit opposition to certiorari
6/22/2017	B-G	3.80	Continue reviewing and editing Supreme Court brief
6/22/2017	JTM	2.40	Additional revisions and edits to opposition brief
6/23/2017	JTM	2.30	Revise and edit opposition to petition for certiorari
6/23/2017	B-G	3.10	Continue revisions to certiorari opposition; discussions with Jason Morgan re same
6/24/2017	B-G	1.70	Continue editing and revising final response to petition for certiorari
6/26/2017	JTM	1.00	Additional revisions to opposition brief
6/27/2017	JTM	1.00	Finalize brief
6/29/2017	JTM	0.20	Correspondence re response to cert petition
10/2/2017	JTM	0.20	Review Supreme Court Order and correspondence to client re same
Total		67.40	

6. Nor are Plaintiffs entitled to compensation for time expended during pre-litigation administrative proceedings. Among these hours are the following entries, each associated with Plaintiffs' unnecessary retention of an expert.

//

//

Date	Attorney	Hours	Task
10/14/2010	B-G	0.20	Emails re expert interview
10/18/2010	B-G	0.80	Conference with Jim Butler re expert issues; follow up with potential expert on same; review recent council material
10/19/2010	B-G	1.50	Conference with potential expert witness and Jim Butler; follow up with Roland Maw on same
10/20/2010	B-G	0.70	Continued conversation with potential experts re assistance on MSA issues
10/25/2010	B-G	1.70	Series of calls with various potential experts re possible UCIDA representation; discussions with Jason Morgan re his research efforts to date re MSA amendments and challenges to FMPs
10/26/2010	B-G	0.60	Discussions with Jason Morgan on research and analysis of potential future FMP related challenges; continue discussions with various potential experts
10/27/2010	B-G	1.30	Review and edit memo to client on FMP revisions and challenges thereto; coordinate with Jason Morgan on same; call with potential experts
11/3/2010	B-G	0.40	Continue discussions with potential experts
11/3/2010	RPS	0.20	Internal conference re needed expert support; email re same
11/8/2010	RPS	0.10	Email correspondence re expert support
11/9/2010	B-G	1.00	Series of conversations re potential expert assistance
11/9/2010	RPS	2.00	Internal conference re issues for expert support; review memorandum re MSA options for FMP amendment; telephone call re potential expert support and expert referrals
11/9/2010	JTM	0.60	Internal conference re experts
11/10/2010	B-G	0.50	Internal conferences re experts
11/10/2010	RPS	2.20	Research potential experts; internal conference re same; email and telephone correspondence with potential experts
11/10/2010	JTM	1.20	Phone conference with potential experts
11/11/2010	B-G	0.30	Continued discussions re experts
11/11/2010	RPS	1.40	Continue research on potential experts; telephone conference with potential expert; telephone conference re experts; internal conference re same; email to Dana Schmidt re availability
11/11/2010	JTM	0.80	Phone conference with potential experts
11/12/2010	B-G	1.20	Conference with Roland Maw; follow up internally re expert
11/12/2010	RPS	1.30	Telephone conference re potential expert support and scheduling of meeting with client; telephone call with client re potential experts; email re Monday meeting
11/12/2010	JTM	0.90	Phone conference re experts
11/15/2010	B-G	0.70	Participate in call with expert
11/15/2010	RPS	1.10	Telephone conference re issues that need expert support
11/15/2010	JTM	1.00	Conference re experts
11/16/2010	JTM	0.30	Conference call re experts; follow up correspondence re same
12/2/2010	JTM	0.20	Review options paper by council
12/14/2010	JTM	0.50	Correspondence re expert meeting; collect materials re same
12/19/2010	B-G	1.10	Prepare for upcoming meeting
12/20/2010	B-G	3.00	Meeting with expert and Roland Maw; prepare for next steps
12/20/2010	JTM	5.30	Review materials for expert meeting; research issue related to EEZ boundaries in Cook Inlet; meeting with experts
12/30/2010	JTM	0.30	Phone call with experts
1/3/2011	JTM	0.60	Review and respond to correspondence from expert
1/11/2011	B-G	0.30	Internal briefing with Jason Morgan
1/19/2011	JTM	0.20	Review materials developed by consultant
6/17/2011	JTM	3.40	Phone conference with expert; additional research in support of white paper to council
6/20/2011	B-G	0.90	Series of calls with Jason Morgan re issues pertinent to White paper and potential legal claims; follow up re selection of economist
6/27/2011	B-G	4.70	Continue analysis of legal and evidentiary issues; meeting with Jason Morgan re same; conferences with fishing expert and McDowell Economics Group; review draft letter from Roland Maw to Commissioner Campbell
6/27/2011	JTM	3.80	Internal conference re white paper; phone conference with fishing expert and McDowell Group re economic report; follow up research re same
6/28/2011	B-G	3.30	Calls with McDowell Group; draft outline of issues to be covered by various experts; consult with Jason Morgan re same
Total		51.60	

7. Likewise, Plaintiffs are not eligible for the following time attending or traveling to administrative hearings.

Date	Attorney	Hours	Task
2/2/2011	JTM	7.10	Attend Council meeting; provide comments to advisory panel
3/28/2011	JTM	7.10	Internal conference with Beth Ginsberg re FMP amendment process; review materials re same; travel to Anchorage for Council meeting
3/29/2011	JTM	11.00	Prepare comments for advisory panel; testify before advisory panel; attend advisory panel meetings and meet with council members; develop strategy for testimony at council meeting
3/30/2011	JTM	9.90	Draft and revise comment letter to Council; client conference re strategy for comment letter and member participation; attend portions of Council meeting; meet with staff member
3/31/2011	JTM	6.00	Finalize comment letter to Council; attend Council meeting
4/1/2011	JTM	8.50	Attend Council meeting; return travel to Seattle
6/21/2011	B-G	0.60	Prepare for trip to Alaska
Total		50.20	

8. Should the Court credit Plaintiffs with their pre-litigation fees, the following hours should be deducted as redundant in light of Plaintiffs' research during summary judgment briefing.

Date	Attorney	Hours	Task
10/18/2010	JTM	0.90	Research requirements related to repeal of FMP
5/25/2011	JTM	0.40	Research case law re MSA in support of white paper to council
6/9/2011	RHC	7.40	Perform research re background information on the application of the Magnuson-Stevens Fishery Conservation and Management Act to anadromous species to various national standards
6/29/2011	RHC	2.10	Research re Magnuson-Stevens Fishery Conservation and Management Act
6/30/2011	RHC	6.10	Review Magnuson-Stevens Fishery Conservation and Management Act; perform legal research for legislative history
7/1/2011	RHC	3.60	Research legislative history
7/5/2011	RHC	6.80	Research legislative history of the Magnuson-Stevens Fishery Conservation and Management Act
7/6/2011	RHC	4.90	Review legislative history for the Magnuson-Stevens Fishery Act
7/11/2011	RHC	5.60	Research legislative history; draft memo for Jason Morgan with research findings
7/13/2011	RHC	1.40	Draft memo re Magnuson Stevens Act legislative history
7/12/2012	JTM	0.50	Review case law associated with challenges to an FMP
Total		39.70	

9. After deducting Plaintiffs' hours for its unsuccessful opposition to Federal Defendants' motion to transfer, its opposition to the State of Alaska, and pre-litigation proceedings before January 7, 2013, Plaintiffs expended 735 hours in this litigation. Further reductions of first 15%, then 20%, to account for Plaintiffs' unsuccessful claims and overstaffing, respectively, produces a net expenditure of 412.36 hours. This figure, multiplied by Plaintiffs' rate of \$125.00/hour, produces a reasonable fee award of \$51,545.

10. As our opposition explains, any fee award should deduct all attorney time expended before January, 2013, when Plaintiffs began preparing this lawsuit. For the Court's convenience, we have not reproduced each of those entries, which collectively number in the hundreds.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed February 5, 2018, in Washington, DC.

/s/ Travis Annatoyn

Travis Annatoyn