



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

February 5, 2013

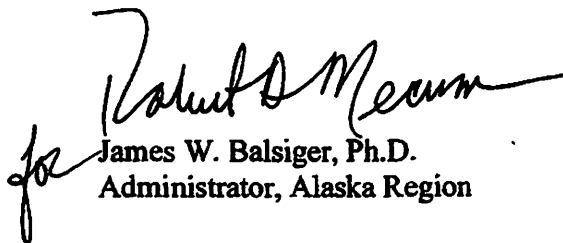
Eric Olson, Chairman
North Pacific Fishery Management Council
605 W. 4th Avenue, Suite 306
Anchorage, AK 99501-2252

Dear Chairman Olson:

Congress recently enacted the Coast Guard and Maritime Transportation Act of 2012 (Public Law No. 112-213) (Coast Guard Act). Section 307 of the Coast Guard Act amended 46 U.S.C. section 12113(d)(2). Section 12113(d)(2) of title 46 addresses fishery endorsement eligibility requirements for vessels of a certain length, tonnage, or horsepower. Specifically, section 307 addresses the participation of trawl catcher/processor vessels listed in paragraphs (1) through (20) of section 208(e) of the American Fisheries Act (AFA) (title II of division C of Public Law 105-277; 112 Stat.2681-625 et seq.) in the Amendment 80 sector, also known as the non-AFA trawl catcher/processor subsector as defined in section 219(a)(7) of the Department of Commerce and Related Agencies Appropriations Act, 2005 (Public Law 108-447; 118 Stat.2887). The Maritime Administration within the Department of Transportation has direct management authority over the issuance of fishery endorsements affected by the legislation.

NMFS implemented a regulation that prohibits the use of these AFA vessels in the Amendment 80 sector in the final rule implementing Amendment 97 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (77 FR 59852, October 1, 2012). Given Congressional intent, the regulatory prohibition, and NMFS's lack of management authority over the issuance of fishery endorsements, we believe that no action is necessary by NMFS or the Council relative to section 307 of the Coast Guard Act. No further analysis of allowing AFA catcher/processors to serve as Amendment 80 replacement vessels is necessary. Any questions the Council may have concerning section 307 of the Coast Guard Act should be addressed to the Maritime Administration.

Sincerely,


for James W. Balsiger, Ph.D.
Administrator, Alaska Region



**Status of FMP Amendments
Timeline for Current Actions**

February 2013
Agenda B-2

FMP Amendment Status: <u>Actions Since December 2012</u>	Date of Council Action	Start Regional Review	Transmittal Date of Action to NMFS HQ for Review	Proposed FMP Amendment Notice of Availability Published in <i>Federal Register</i>	Proposed Rule Published in <i>Federal Register</i>	Final Rule or Notice of Approval Published in <i>Federal Register</i>
Amendments 10, 11, and 12 to the Salmon FMP Approved June 29, 2012	10/09 (A 10) 4/11 (A 11) 12/11 (A 12)	PR: 2/22/12 FR: 8/31/12	PR: 3/27/12 FR: 11/27/12	April 2, 2012 77 FR 19605 EOC: 6/1/12	April 11, 2012 77 FR 21716 EOC: 5/29/12	December 21, 2012 77 FR 75570 Effective: 1/22/2013
Amendment 31 (KTC) – C-Share Active Participation/application deadline modification	April 2008	PR: 8/22/11				
Amendment 41 (KTC) – Crab regional emergency relief	December 2010	PR: 4/13/12	PR: 12/4/12	December 13, 2012 77 FR 74161 EOC: 2/11/13	January 30, 2013 77 FR 6279 EOC: 3/1/13	
Amendment 42 (KTC) – Crab EDR revisions	February 2012	PR: 9/4/12				
Amendment 43 (KTC) and Amendment 103 (BSAI) Pribilof Island Blue King Crab Rebuilding	June 2012					
Amendment 89 (GOA) Tanner crab protection and trawl sweep revisions	October 2010 April 2012	PR: 9/10/12				

**Status of FMP Amendments
Timeline for Current Actions**

FMP Amendment Status: <u>Actions Since December 2012</u>	Date of Council Action	Start Regional Review	Transmittal Date of Action to NMFS HQ for Review	Proposed FMP Amendment Notice of Availability Published in <i>Federal Register</i>	Proposed Rule Published in <i>Federal Register</i>	Final Rule or Notice of Approval Published in <i>Federal Register</i>
Amendment 94 (GOA) Revise CQE vessel use caps and implement other CQE-related regulatory amds (CQE Omnibus) ^{1/}	October 2011	PR: 7/20/12				
Amendment 95 (GOA) Halibut PSC management	June 2012					
Amendment 99 (BSAI) Revise Freezer Longline LLP License Maximum Length Overall (Vessel Replacement)	October 2012					
Amendment 102 (BSAI) CQE Program in Area 4B (Adak) and Area 4B Fish-up	February 2012 April 2012					

^{1/}NMFS is consolidating three Council actions on the CQE Program into Amendment 94 and its associated proposed rule. In addition to the CQE vessel use caps, which are the subject of Amendment 94, this action will include the regulatory amendments to allow Area 3A CQEs to purchase D class halibut QS (Council final action in February 2011) and to add three new CQE communities (Council final action in December 2010).

**Status of Regulatory Amendments
Timeline for Current Actions**

Regulatory Amendment Status: <u>Actions Since December 2012</u>	Date of Council Action	Start Regional Review	Transmittal Date of Action to NMFS HQ for Review	Proposed Rule Published in <i>Federal Register</i>	Final Rule Published in <i>Federal Register</i>
Groundfish Regulatory Amendments					
Revisions to MRAs in the BSAI arrowtooth flounder fishery	October 2010	PR: 8/12/11	PR: 8/28/12	September 14, 2012 77 FR 56798 EOC: 10/15/12	
Remove GRS	February 2011	PR: 8/11/11 FR: 11/30/12	PR: 9/21/12 FR: 1/15/13	October 15, 2012 77 FR 62482 EOC: 11/14/12	
BSAI 2013/2014 Harvest Specifications	Proposed: October 2012	PR: 10/18/12	PR: 11/20/12 FR: 1/25/13	December 6, 2012 77 FR 72791 EOC: 1/7/2013	
GOA 2013/2014 Harvest Specifications	Proposed: October 2012	PR: 10/18/12	PR: 11/20/12 FR: 2/4/13	December 5, 2012 77 FR 77297 EOC: 1/4/2013	
Central GOA Trawl Control Date Notice (APRM)	October 2012	December 26, 2012 77 FR 75966			

Halibut Regulatory Amendments					
Establish new minimum vessel ownership criteria for using hired skipper of 12 months and 20% interest	December 2007	PR: 1/20/12	PR: 10/12/12	October 31, 2012 77 FR 65843 EOC: 11/30/12	
Revise IFQ hired skipper provisions	April 2011	PR: 9/27/12			
Revised Halibut Catch Sharing Plan for Areas 2C and 3A	October 2012				

**Bering Sea Aleutian Islands Catch Report
(includes CDQ)**

Through: 26-JAN-2013

National Marine Fisheries Service
Alaska Region, Sustainable Fisheries
Catch Accounting



Bering Sea

Seasons	Account	Total Catch	Quota	Remaining Quota	% Taken	Last Week Catch
	Other Rockfish (includes CDQ)	11	500	489	2%	6
	Pacific Ocean Perch (includes CDQ)	0	5,559	5,559	0%	0
	Sablefish (Hook-and-Line and Pot)	0	0	0	0%	0
	Sablefish CDQ (Hook-and-Line and Pot)	0	0	0	0%	0
	Sablefish (Trawl)	0	935	935	0%	0
	Sablefish CDQ (Trawl)	0	59	59	0%	0
	Greenland Turbot	7	5,109	5,102	0%	6
	Greenland Turbot CDQ	0	172	172	0%	0
X	Pollock, AFA Inshore	23,061	544,316	521,255	4%	23,061
X	Pollock, AFA Catcher Processor	9,484	435,452	425,968	2%	9,484
X	Pollock, AFA Mothership	3,068	108,863	105,795	3%	3,068
X	Pollock CDQ	3,257	124,700	121,443	3%	3,257
	Pollock, Incidental Catch, non-Bogoslof (includes CDQ)	2,413	33,669	31,256	7%	2,002
	Pollock, Incidental Catch, Bogoslof (includes CDQ)	0	150	150	0%	0

**Bering Sea Aleutian Islands Catch Report
(includes CDQ)**

Through: 26-JAN-2013

**National Marine Fisheries Service
Alaska Region, Sustainable Fisheries
Catch Accounting**



Aleutian Islands

Seasons	Account	Total Catch	Quota	Remaining Quota	% Taken	Last Week Catch
	Other Rockfish (includes CDQ)	0	485	485	0%	0
	Pacific Ocean Perch, Eastern	0	5,751	5,751	0%	0
	Pacific Ocean Perch, Eastern CDQ	0	1,048	1,048	0%	0
	Pacific Ocean Perch, Central	0	5,099	5,099	0%	0
	Pacific Ocean Perch, Central CDQ	0	747	747	0%	0
	Pacific Ocean Perch, Western	0	8,582	8,582	0%	0
	Pacific Ocean Perch, Western CDQ	0	1,091	1,091	0%	0
	Rougheye Rockfish (includes CDQ) - BS + Eastern	0	241	241	0%	0
	Rougheye Rockfish (includes CDQ) - Central + Western	0	258	258	0%	0
	Atka Mackerel, Eastern (Jig)	0	70	70	0%	0
	Atka Mackerel, Eastern ICA	1	1,000	999	0%	0
X	Atka Mackerel, Eastern (Trawl)	0	14,021	14,021	0%	0
X	Atka Mackerel, Eastern CDQ	0	1,808	1,808	0%	0
	Atka Mackerel, Central ICA	0	75	75	0%	0
X	Atka Mackerel, Central (Trawl)	0	6,640	6,640	0%	0
X	Atka Mackerel, Central CDQ	0	805	805	0%	0
	Atka Mackerel, Western ICA	0	40	40	0%	0
X	Atka Mackerel, Western (Trawl)	0	1,300	1,300	0%	0
X	Atka Mackerel, Western CDQ	0	161	161	0%	0
	Sablefish (Hook-and-Line and Pot)	0	0	0	0%	0
	Sablefish CDQ (Hook-and-Line and Pot)	0	0	0	0%	0
	Sablefish (Trawl)	0	429	429	0%	0
	Sablefish CDQ (Trawl)	0	40	40	0%	0
	Greenland Turbot (includes CDQ)	0	1,717	1,717	0%	0
X	Pollock	0	15,500	15,500	0%	0
X	Pollock CDQ	0	1,900	1,900	0%	0
X	Pollock, Incidental Catch (includes CDQ)	0	1,600	1,600	0%	0

Bering Sea Aleutian Islands Catch Report (includes CDQ)

Through: 26-JAN-2013

National Marine Fisheries Service
Alaska Region, Sustainable Fisheries
Catch Accounting



Bering Sea Aleutian Islands

Seasons	Account	Total Catch	Quota	Remaining Quota	% Taken	Last Week Catch
	Alaska Plaice (includes CDQ)	1,978	20,400	18,422	10%	1,978
	Arrowtooth Flounder	428	21,250	20,822	2%	373
	Arrowtooth Flounder CDQ	8	2,675	2,667	0%	7
	Flathead Sole	1,431	30,482	29,051	5%	1,400
	Flathead Sole CDQ	13	2,429	2,416	1%	12
	Kamchatka Flounder (includes CDQ)	39	15,045	15,006	0%	35
	Northern Rockfish (includes CDQ)	1	4,700	4,699	0%	0
	Other Flatfish (includes CDQ)	115	2,720	2,605	4%	111
X	Pacific Cod, Catcher Processor (Amendment 80)	353	31,112	30,759	1%	353
X	Pacific Cod, Catcher Processor (AFA)	526	5,340	4,814	10%	526
X	Pacific Cod, Catcher Vessel (Trawl)	4,607	51,312	46,705	9%	4,607
X	Pacific Cod, Catcher Processor (Hook-and-Line)	16,013	112,671	96,658	14%	3,949
X	Pacific Cod, Catcher Vessel (Hook-and-Line >= 60 ft)	0	463	463	0%	0
X	Pacific Cod, Catcher Processor (Pot)	1,735	3,470	1,735	50%	563
X	Pacific Cod, Catcher Vessel (Pot >= 60 ft)	9,899	19,434	9,535	51%	171
X	Pacific Cod (Jig)	3	3,251	3,248	0%	2
	Pacific Cod (Hook-and-Line and Pot < 60 ft)	3,785	4,627	842	82%	1,183
	Pacific Cod, Incidental Catch (Hook-and-Line and Pot)	22	500	478	4%	22
	Pacific Cod CDQ	1,010	27,820	26,810	4%	889
	Rock Sole	3,125	77,691	74,566	4%	3,121
	Rock Sole CDQ	5	9,885	9,880	0%	5
	Shortraker Rockfish (includes CDQ)	1	393	392	0%	0
	Yellowfin Sole	9,638	182,083	172,445	5%	9,551
	Yellowfin Sole CDQ	308	21,186	20,878	1%	308
	Octopus (includes CDQ)	116	900	784	13%	31
	Sculpin (includes CDQ)	418	5,200	4,782	8%	216
	Shark (includes CDQ)	10	200	190	5%	8
	Skate (includes CDQ)	3,014	24,746	21,732	12%	1,223
	Squid (includes CDQ)	0	361	361	0%	0
Total:		99,902	2,012,238	1,912,336	5%	71,531

Other flatfish: all flatfish except Pacific halibut, flathead sole, Greenland turbot, rock sole, yellowfin sole, Kamchatka flounder, arrowtooth flounder, and Alaska plaice.

Other rockfish: all Sebastes and Sebastolobus species except for Pacific ocean perch, northern, shortraker, and roughey rockfish.

For changes to the harvest specifications refer to <http://alaskafisheries.noaa.gov/2012/hschanges.htm>

Gulf of Alaska Catch Report

Through: 26-JAN-2013

National Marine Fisheries Service
Alaska Region, Sustainable Fisheries
Catch Accounting



Western, Central Pollock

Seasons	Account	Total Catch	Quota	Remaining Quota	% Taken	Last Week Catch
X	Pollock, 610 Shumagin	128	28,072	27,944	0%	128
X	Pollock, 620 Chirikof	2,948	51,443	48,495	6%	2,934
X	Pollock, 630 Kodiak	41	27,372	27,331	0%	32

Western Gulf

Seasons	Account	Total Catch	Quota	Remaining Quota	% Taken	Last Week Catch
	Arrowtooth Flounder	13	14,500	14,487	0%	13
	Deep Water Flatfish	0	176	176	0%	0
	Shallow Water Flatfish	4	13,250	13,246	0%	3
	Flathead Sole	11	8,650	8,639	0%	11
	Rex Sole	0	1,283	1,283	0%	0
	Pacific Ocean Perch	0	2,050	2,050	0%	0
	Rougheye Rockfish	0	82	82	0%	0
	Shortraker Rockfish	0	104	104	0%	0
	Thornyhead Rockfish	0	150	150	0%	0
	Dusky Rockfish	1	381	380	0%	0
	Northern Rockfish	1	2,017	2,016	0%	0
	Other Rockfish	1	44	43	1%	0
	Pacific Cod	5,240	21,210	15,970	25%	2,460
	Sablefish (Hook-and-Line)	0	0	0	0%	0
	Sablefish (Trawl)	0	351	351	0%	0
	Big Skate	1	469	468	0%	0
	Longnose Skate	1	70	69	1%	0

Gulf of Alaska Catch Report

Through: 26-JAN-2013

National Marine Fisheries Service
Alaska Region, Sustainable Fisheries
Catch Accounting



Central Gulf

Seasons	Account	Total Catch	Quota	Remaining Quota	% Taken	Last Week Catch
	Arrowtooth Flounder	272	75,000	74,728	0%	271
	Deep Water Flatfish	0	2,308	2,308	0%	0
	Shallow Water Flatfish	187	18,000	17,813	1%	187
	Flathead Sole	80	15,400	15,320	1%	80
	Rex Sole	24	6,291	6,267	0%	24
	Pacific Ocean Perch	1	10,985	10,984	0%	1
	Rougheye Rockfish	1	861	860	0%	1
	Shortraker Rockfish	1	452	451	0%	0
	Dusky Rockfish	1	3,581	3,580	0%	1
	Northern Rockfish	14	3,136	3,122	0%	14
	Thornyhead Rockfish	0	766	766	0%	0
	Other Rockfish	2	606	604	0%	1
	Pacific Cod	4,665	36,966	32,301	13%	2,124
	Sablefish (Hook-and-Line)	0	0	0	0%	0
	Sablefish (Trawl)	0	1,137	1,137	0%	0
	Big Skate	86	1,793	1,707	5%	75
	Longnose Skate	38	1,879	1,841	2%	30

ern Gulf

Seasons	Account	Total Catch	Quota	Remaining Quota	% Taken	Last Week Catch
	Rougheye Rockfish	0	297	297	0%	0
	Shortraker Rockfish	0	525	525	0%	0
	Thornyhead Rockfish	0	749	749	0%	0
	Pacific Cod	0	2,424	2,424	0%	0
	Big Skate	0	1,505	1,505	0%	0
	Longnose Skate	0	676	676	0%	0

Gulf of Alaska Catch Report

Through: 26-JAN-2013

National Marine Fisheries Service
Alaska Region, Sustainable Fisheries
Catch Accounting



West Yakutat

Seasons	Account	Total Catch	Quota	Remaining Quota	% Taken	Last Week Catch
	Arrowtooth Flounder	0	6,900	6,900	0%	0
	Deep Water Flatfish	0	1,581	1,581	0%	0
	Shallow Water Flatfish	0	3,950	3,950	0%	0
	Flathead Sole	0	4,623	4,623	0%	0
	Rex Sole	0	821	821	0%	0
	Pacific Ocean Perch	0	1,650	1,650	0%	0
	Dusky Rockfish	0	504	504	0%	0
	Other Rockfish	0	230	230	0%	0
	Pollock	0	3,385	3,385	0%	0
	Sablefish (Hook-and-Line)	0	0	0	0%	0
	Sablefish (Trawl)	0	268	268	0%	0

Southeast

Seasons	Account	Total Catch	Quota	Remaining Quota	% Taken	Last Week Catch
	Arrowtooth Flounder	0	6,900	6,900	0%	0
	Deep Water Flatfish	0	1,061	1,061	0%	0
	Shallow Water Flatfish	0	1,350	1,350	0%	0
	Flathead Sole	0	1,735	1,735	0%	0
	Rex Sole	0	1,037	1,037	0%	0
	Pacific Ocean Perch	0	1,815	1,815	0%	0
	Dusky Rockfish	0	296	296	0%	0
	Other Rockfish	0	200	200	0%	0
	Pollock	0	10,774	10,774	0%	0
	Demersal Shelf Rockfish	0	293	293	0%	0
	Sablefish (Hook-and-Line)	0	0	0	0%	0

Entire Gulf

Seasons	Account	Total Catch	Quota	Remaining Quota	% Taken	Last Week Catch
	Atka Mackerel	1	2,000	1,999	0%	0
	Octopus	49	1,455	1,406	3%	16
	Sculpin	135	5,731	5,596	2%	53
	Shark	7	6,028	6,021	0%	2
	Other Skates	50	2,030	1,980	2%	38
	Squid	3	1,148	1,145	0%	3
Total:		14,006	424,776	410,770	3%	8,504

2013 catch is through January 26 and 2012 catch is through January 28 unless otherwise stated.

Bering Sea and Aleutian Islands

Bering Sea Pollock

Eight American Fisheries Act (AFA) catcher/processors (C/Ps) are targeting pollock. Forty-four catcher vessels (CV) delivering shoreside are targeting pollock in 2013, the same as in 2012.

NMFS reallocated Aleutian Islands pollock TAC increasing the Bering Sea TAC by 1,900 mt for CDQ and 10,500 mt for inshore, C/P, and mothership directed fisheries. The revised Bering Sea

A season allocations are:

Sector	A season allocation	A season catch
Inshore	217,726	23,061
C/P	174,181	9,484
Mothership	43,545	3,068
CDQ	49,880	3,257

Pacific cod

Hook-and-line C/Ps

In 2013, 26 hook-and-line C/Ps are participating in the Pacific cod fishery (23 in 2012). The fishery is expected to remain open all year.

Week	mt	Week	mt
1/05/2013	2,329	1/07/2012	2,114
1/12/2013	4,742	1/14/2012	3,116
1/19/2013	4,993	1/21/2012	3,257
1/26/2013	3,949	1/28/2012	3,132
Total	16,013		11,620
A season TAC	57,462		57,684
Remaining	41,449		46,064

Pot catcher vessels

The 2013 A season fishery for pot CVs greater than or equal to 60 ft length overall closed January 22 with 25 vessels taking 9,899 mt of the 9,911 mt allocation. The 2012 A season fishery closed January 20 with 27 vessels taking 9,854 mt of the 9,950 mt allocation.

Week	Catch	Week	Catch
1/05/2013	2,043	1/07/2012	3,245
1/12/2013	3,058	1/14/2012	3,850
1/19/2013	4,627	1/21/2012	2,758
1/26/2013	172	1/28/2012	0
Total	9,899		9,854

Pot C/Ps

The 2013 A season pot C/P fishery closed January 28 with three vessels reporting 1,735 mt of the 1,770 mt A season allocation. The 2012 A season fishery closed January 23 with five C/Ps reporting 1,656 mt of the 1,777 mt A season allocation.

Week	Catch	Week	Catch
1/05/2013	176	1/07/2012	458
1/12/2013	498	1/14/2012	589
1/19/2013	499	1/21/2012	487
1/26/2013	563	1/28/2012	123
Total	1,735		1,656

Hook-and-line or pot gear less than 60 ft length overall

Sixteen CVs (three hook-and-line, thirteen pot) less than 60 ft LOA using hook-and-line or pot gear reported 3,785 mt of the 4,627 mt annual allocation compared to 14 vessels (three hook-and-line, eleven pot) reporting 2,570 mt of the 4,645 mt annual allocation in 2012. For 2013, NMFS plans to reallocate 1,800 mt of the A season jig allocation to the less than 60 ft allocation. Pot gear effort is increasing after the pot closure in the Western GOA. NMFS projects a closure sometime next week. In 2012, the fishery closed February 17.

Week	Catch	Week	Catch
1/05/2013	743	1/07/2012	525
1/12/2013	841	1/14/2012	638
1/19/2013	1,017	1/21/2012	532
1/26/2013	1,183	1/28/2012	875
Total	3,785		2,570

Trawl catcher vessels

In 2013, 27 trawl CVs targeting Pacific cod reported 4,183 mt compared to 17 trawl CVs targeting Pacific cod reporting 2,073 mt for the same time period in 2012. The 2013 Pacific cod total catch is 4,607 mt (including the pollock target) of the 37,971 mt A season allocation. In 2012, the A season closed February 29 taking 33,515 mt of the 38,117 mt allocation.

Week	Catch	Week	Catch
1/26/2013	4,607	1/28/2012	2,073
Total	4,607		2,073

Flatfish

In 2013, Amendment 80 C/Ps are targeting rock sole (7) and yellowfin sole (3), and eight AFA C/Ps are targeting yellowfin sole. In 2012, Amendment 80 C/Ps targeted rock sole (10) and yellowfin sole (4), and 9 AFA C/Ps targeted yellowfin sole at the start of the season.

Halibut mortality

Halibut mortality rates are preliminary and may change as more catch is reported. This table compares the metric tons of halibut mortality and total groundfish catch through January 26, 2013 and January 28, 2012.

Area and Gear	2013		2012	
	Halibut mortality	Groundfish	Halibut mortality	Groundfish
BSAI trawl	105	64,059	144	73,880
BSAI hook-and-line	58	20,576	22	14,694
GOA trawl	10	7,658	82	4,504
GOA hook-and-line	13	1,086	33	5,566

Gulf of Alaska

Pacific cod

Western GOA

Sector	2013				2012			
	A season allocation	Catch	Closed	# of vessels	A season allocation	Catch Jan 26 8	Closed	# of vessels Jan 26 8
Hook-and-line C/Ps	2,254	n/a	n/a	<3	2,257	893	Jun 10	5
Hook-and-line CVs	145	n/a	n/a	<3	145	n/a	Apr 2	<3
Jig	318	0	n/a	0	189	n/a	Jun 10	<3
Pot CV/CP	4,095	4,346	Jan 28	32	4,100	2,651	Feb 6	21
Trawl CV	5,728	793	n/a	14	5,736	34	Feb 22	6
Trawl C/P	186	0	Jan 20	0	186	n/a	Feb 14	<3
Total	12,726	5,139		46	12,613	3,578		32

Central GOA

Sector	2013				2012			
	A season allocation	Catch	Closed	# of vessels	A season allocation	Catch Jan 28	Closed	# of vessels Jan 28
Hook-and-line C/Ps	1,488	0	n/a	0	1,736	1,509	Feb 23	5
Hook-and-line CVs <50 ft	3,375	353	n/a	36	3,938	1,612	Mar 4	51
Hook-and-line CVs >=50 ft	2,032	237	n/a	8	2,372	801	Mar 20	11
Jig	444	5	n/a	6	256	80	Mar 6	19
Pot CV/CP	6,459	3,735	n/a	44	7,538	5,641	Feb 10	44
Trawl CV	7,657	325	n/a	23	8,936	1,311	Mar 26	24
Trawl C/P	726	n/a	n/a	<3	847	n/a	Apr 8	<3
Total	22,180	4,655		117	25,623	10,954		153

The Central GOA pot sector has caught 58% of their A season allocation. NMFS projects a closure around February 10 at the current weekly catch rate of 1,347 mt.

Pollock

Directed fishing for pollock using trawl gear opened January 20, 2013. The A season allocations are: 610 - 4,292 mt, 620 - 16,433 mt, 630 - 5,998 mt.

In Area 610, 10 vessels started targeting pollock and then most of them moved to Pacific cod.

In Area ~~630~~, 28 vessels are targeting pollock. NMFS projects the fishery will close sometime this week. *620*

In Area 630, NMFS closed the fishery January 22, 2013, based on potential effort. Fishing effort was low, and NMFS will reopen Area 630 when requested.

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Cook Inlet Fishermen's Fund*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

Plaintiffs,

v.

NATIONAL MARINE FISHERIES
SERVICE; REBECCA BLANK, in her official
capacity as the Acting United States Secretary
of Commerce; JANE LUBCHENCO, in her
official capacity as Administrator, National
Oceanic and Atmospheric Administration; and
JAMES W. BALSIGER, in his official
capacity as NMFS Alaska Region
Administrator,

Defendants.

Civil Action No.: 1:13-cv-82

**COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTIVE RELIEF,
AND PETITION FOR REVIEW (42 U.S.C.
§ 4332; 16 U.S.C. §§ 1801-1891d; 5 U.S.C.
§§ 553, 701-706)**

SUMMARY OF ACTION

I. Plaintiffs in this case are associations that represent the interests of commercial salmon fishermen and seafood processors in Cook Inlet, Alaska, their families and employees,

United Cook Inlet Drift Association, et. al., v. NMFS, et al.

and the communities that depend on the continued viability of commercial fishing in the Inlet. Plaintiffs bring this action on behalf of their members asserting causes of action against the above-named federal Defendants (“Defendants” or, collectively, National Marine Fisheries Service (“NMFS”)) challenging regulations adopted by NMFS on December 21, 2012 to implement and approve Amendment 12 to the *Fishery Management Plan for Salmon Fisheries in the EEZ off the Coast of Alaska* (the “Salmon FMP”). See 77 Fed. Reg. 75,570 (Dec. 21, 2012). As discussed more fully below, Amendment 12 to the Salmon FMP and NMFS’s regulations implementing that Amendment are arbitrary, capricious, and contrary to the Magnuson-Stevens Fishery Conservation and Management Act (“MSA”), 16 U.S.C. §§ 1801-1819d; the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 et seq.; and the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 551-559, 701-706.

2. This action arises from NMFS’s decision to approve changes to the Salmon FMP to eliminate federal waters in Cook Inlet from that FMP over the objections of Plaintiffs and other members of the commercial fishing community. In 2007, Congress amended the MSA to require updates of all fishery management plans (“FMPs”). The purpose of the MSA is to conserve and manage the fishery resources of the United States and to promote commercial and recreational fishing under sound conservation and management principles. 16 U.S.C. § 1801(b). The MSA achieves those goals through the preparation and implementation of fishery management plans (“FMPs”), based on sound science, that will achieve and maintain the optimum yield (the amount of fish that will produce the greatest overall benefit to the nation) from each fishery. *Id.*

3. NMFS’s response to the Congressional requirement to update all FMPs was to amend the Salmon FMP to eliminate Cook Inlet (and two other federal fisheries) from the FMP

through Amendment 12. In so doing, NMFS conveniently avoided the Congressional obligation to update the FMP for these areas. With Amendment 12, NMFS formally abandoned federal management and oversight of the Cook Inlet salmon fisheries – home to some of the largest wild salmon runs in the world – concluding that federal management was unnecessary and that the State of Alaska was managing this fishery in a manner consistent with the MSA. NMFS’s conclusion is contrary to the MSA, and to the evidence in the record, and fundamentally arbitrary and capricious.

4. Cook Inlet salmon fisheries have been, and are, declining in Cook Inlet. As discussed more fully below, the primary reason for that decline has been management failures by the State of Alaska to use the science-based, transparent procedures contemplated in the MSA. The decision to formally remove Cook Inlet from the FMP, and turn over all management to the State of Alaska, ensures that this trend will continue and that the optimum yield goals of the MSA will never be realized.

5. Equally important, even if the State were managing the Cook Inlet salmon fisheries in a manner consistent with the MSA, NMFS’s decision to turn over management to the state by eliminating Cook Inlet from the FMP still violates the MSA. The MSA requires a fishery management plan for every federal fishery that “that requires conservation and management.” *Id.* § 1852(h)(1). The MSA contemplates that the FMP may delegate day-to-day management of a fishery to a state through an FMP, provided that the state’s laws and regulations are consistent with the FMP. *Id.* at § 1856(3). This is precisely what Plaintiffs asked NMFS to do, and precisely what the Salmon FMP does for other federal salmon fisheries in Alaska.

6. But rather than follow the carefully crafted process outlined by Congress (and utilized by NMFS for other federal salmon fisheries) NMFS chose a completely different route for Cook Inlet, arbitrarily removing it from the FMP so that the state can manage the fishery by default. But there is no provision allowing NMFS to abandon management to the State by eliminating a federal fishery from an FMP. Indeed, as explained more fully below, NMFS's removal of Cook Inlet from the Salmon FMP in Amendment 12 actually creates a jurisdictional loophole, whereby vessels not registered in the state of Alaska may fish for salmon in the federal waters of Cook Inlet without a permit and without time or gear restrictions to the detriment of valid permit holders such as Plaintiffs' members.

7. For all these reasons, and those discussed below, Plaintiffs respectfully request this Court to vacate the decision approving Amendment 12 and its implementing regulations, and seek an order requiring NMFS to comply with the MSA and develop an appropriate FMP that covers Cook Inlet. Plaintiffs request the Court to declare that Amendment 12, its underlying implementing regulations, and NMFS's NEPA Finding of No Significant Impact ("FONSI") are arbitrary, capricious, and an abuse of discretion; not in accordance with law; and in excess of statutory jurisdiction, authority, or limitations. Plaintiffs further seek an order vacating Amendment 12 and its underlying implementing regulations, and the FONSI, and remanding to Defendants, as appropriate, to reconsider these actions based on this Court's ruling and applicable law.

PARTIES

Plaintiffs

8. Plaintiff, the United Cook Inlet Drift Association ("UCIDA"), is a corporation in good standing registered under the laws of the State of Alaska. UCIDA represents the economic,

United Cook Inlet Drift Association, et. al., v. NMFS, et al.

social, and political interests of drift gillnet fishermen and their families in Cook Inlet, Alaska. UCIDA currently has approximately 250 members who hold limited-access salmon driftnet fishing permits, issued by the State of Alaska, in Cook Inlet.

9. UCIDA's members make their living by commercial fishing. UCIDA's members hold State of Alaska limited-entry permits (meaning permits can no longer be issued, and are fully allocated), which authorize them to catch all five species of salmon: sockeye, coho, chinook, chum, and pink. The majority of drift gillnet fishing by UCIDA's members in Cook Inlet occurs within federal waters in the exclusive economic zone ("EEZ").

10. Drift gillnet boats are small-scale fishing operations, typically crewed by one to three persons. Each fishing operation represents a substantial investment in the boat, gear, and the permit itself. Each boat is generally allowed to deploy a single 900-foot-long gillnet. The gillnet is suspended in the water column by floats (called "corks") as the boat drifts with the current – hence the name "drift gillnet." After the gillnet is allowed to "soak" in the water for a length of time (as the boat and net drift with the current), the gear is hauled in, and the fish are removed and placed on ice in the boat's hold. Those fish are then transported to, and offloaded at, one of Cook Inlet's local seafood processors in fishing communities such as Kenai, Kasilof, Ninilchik, or Homer. After processing, these salmon are delivered throughout the United States and around the world.

11. In addition to permit holders, UCIDA has approximately 65 associational members including fish processors, gear suppliers, crew members, and other interested members of the community.

12. UCIDA's mission is to promote public policy that facilitates the science-based and orderly harvest of Cook Inlet salmon in a manner that is economically and ecologically

sustainable and that protects commercial salmon fishing in Cook Inlet as a viable way of life. UCIDA and its members are committed to the protection of the environment of Cook Inlet, and to ensuring that its marine resources are both managed and conserved to enhance the health and productivity of the ecosystem. To that end, UCIDA has advocated in state and federal forums for management of these stocks in a manner consistent with the goals and objectives of the MSA, including management consistent with the MSA's Maximum Sustainable Yield ("MSY") principles (MSY is defined at 50 C.F.R. §600.310(e)(1)(A)(i) as the largest long-term average catch or yield than can be taken from a stock or stock complex under prevailing ecological, environmental conditions). The relief UCIDA seeks in this lawsuit is germane to its organizational purpose.

13. Plaintiff Cook Inlet Fishermen's Fund ("CIFF") is a non-profit corporation registered under the laws of the State of Alaska. CIFF has 446 members, including commercial fishermen of all gear types (including 201 driftnet fishermen and 224 set net fishermen), seafood processors, and community members. The majority of CIFF's members are from Alaska, but CIFF also has members 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.

14. 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. The relief CIFF seeks in this case is germane to its organizational purpose.

15. Plaintiffs, directly or through their members, fully participated, to the limited extent allowed by NMFS and the North Pacific Fisheries Management Council ("Council"), in

United Cook Inlet Drift Association, et. al., v. NMFS, et al.

the proceedings pre-dating the decisions challenged in this lawsuit. Plaintiffs submitted detailed written comments and testimony on Amendment 12 and its implementing regulations and the accompanying draft environmental assessment ("EA").

16. Plaintiffs have standing to bring this action because their members are directly and adversely impacted by Amendment 12 and its implementing regulations, which remove Cook Inlet from the Salmon FMP and thus the protections of the MSA. Plaintiffs and their members are also adversely impacted by Defendants' failure to comply with the procedural requirements of NEPA and the MSA. The challenged agency decisions are final and ripe for review by this Court.

Defendants

17. NMFS is an agency of the National Oceanographic and Atmospheric Administration ("NOAA"), United States Department of Commerce. Among its duties, NMFS is responsible for managing commercial marine fisheries to ensure sustainable harvests that provide the greatest overall benefit to the nation pursuant to the MSA.

18. Defendant Rebecca Blank is the Acting Secretary of the United States Department of Commerce and is sued in her official capacity. Secretary Blank directs all business of the Department of Commerce, including NOAA and its agency, NMFS. Through these agencies, Secretary Blank is ultimately responsible for the approval of Amendment 12, its implementing regulations, and the EA and corresponding FONSI, and is further responsible for the Department of Commerce's compliance with federal law, including NEPA, the MSA, and the APA.

19. Defendant Jane Lubchenco is the Administrator of NOAA and is sued in her official capacity. The Secretary of Commerce has delegated responsibility to the NOAA Administrator to ensure compliance with NEPA, the MSA, and the APA, and to promote

effective management and stewardship of the nation's fisheries resources and assets to ensure sustainable economic opportunities. The NOAA Administrator, in turn, has sub-delegated this responsibility to NMFS.

20. Defendant James Balsiger is the Administrator of the NMFS Alaska Region and is sued in his official capacity. Dr. Balsiger is listed as the responsible official for the EA.

JURISDICTION AND VENUE

21. This Court has jurisdiction over this action pursuant to 5 U.S.C. §§ 701-706 (APA), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 2201 (declaratory judgments), 28 U.S.C. § 2202 (injunctive relief), and 16 U.S.C. §§ 1855(f) and 1861(d) (MSA).

22. Defendants have waived sovereign immunity in this action pursuant to 5 U.S.C. § 702 and 16 U.S.C. § 1855(f).

23. Plaintiffs have exhausted all administrative remedies.

24. Venue is properly vested in this Court under 28 U.S.C. § 1391(e) because this action is brought against the Secretary of Commerce, and his or her delegates. The Secretary of Commerce is charged by Congress with the responsibility for making the challenged decision. The Office of the Secretary of Commerce is located within the judicial district, and a substantial part of the acts or omissions giving rise to this action occurred within the judicial district.

STATUTORY FRAMEWORK

The Magnuson-Stevens Fishery Conservation and Management Act

25. The MSA is the primary domestic legislation governing management of federal fisheries. 16 U.S.C. §§ 1801-1891d.

26. The MSA created eight regional fishery management councils that are primarily charged with preparing FMPs and plan amendments for each managed federal fishery. *Id.* § 1852(a)(1).

27. The MSA requires an FMP for each fishery under the regional council's jurisdiction "that requires conservation and management." *Id.* § 1852(h)(1). The FMP is the foundational document for management of each fishery and provides the framework for ensuring that fisheries are managed in a manner consistent with the requirements of the MSA and its national standards.

28. The MSA gives special attention to anadromous species such as salmon. Indeed, the MSA's stated purpose is "to take immediate action to conserve and manage the fishery resources found off the coasts of the United States, and the *anadromous species . . .* of the United States." *Id.* § 1801(b)(1) (emphasis added).

29. The Council manages fisheries in the EEZ off Alaska's coast. Prior FMPs developed by the Council govern the management of salmon fisheries, including but not limited to the salmon fisheries, in which Plaintiffs' members participate.

30. The authority of a state to manage fisheries in the EEZ, beyond the state's territorial waters (3 miles for purposes of MSA), is constrained by the MSA. The state may regulate all fishing activities in the adjacent portions of the EEZ only to the extent that the applicable FMP delegates such authority. *Id.* § 1856(a)(3). Absent such delegation through an FMP, the state may only regulate vessels registered under the laws of that state in the EEZ.

31. Fishery management councils submit proposed FMPs and FMP amendments to the Secretary of Commerce for review and approval. *Id.* §§ 1853, 1854. All FMPs must be

consistent with the requirements of the MSA, including the 10 national standards set forth in the MSA.

32. The MSA's national standards guide all FMPs and MSA regulations. For example, national standard 1 requires FMPs to prevent overfishing while achieving the optimum yield from each fishery for the United States fishing industry. *Id.* at § 1851(1). National standard 2 requires that all conservation measures be based on the best scientific information available. *Id.* at § 1851(2). National standard 3 provides that fisheries should be managed as a unit throughout their range, where practicable. *Id.* at § 1851(3). National standard 7 requires conservation measures to, where practicable, minimize costs and unnecessary duplication. *Id.* at § 1851(7). National standard 8 requires conservation measures to take into account the importance of the fishery resources to fishing communities, to provide for the sustained participation of, and to minimize impacts on, such communities. *Id.* at § 1851(8). National standard 10 requires conservation measures to promote the safety of human life at sea. *Id.* at § 1851(10).

33. The Secretary of Commerce, acting through NMFS, must disapprove an FMP amendment to the extent it is inconsistent with provisions of the MSA or any other applicable law. *Id.*

34. The Secretary of Commerce must also approve all regulations that implement a fishery management plan. *Id.* § 1854(b). The Secretary must give notice of proposed rulemaking and provide an opportunity for public comment on proposed regulations. *Id.*

35. Any fishery management regulation implementing an FMP must be consistent with the MSA, including the 10 national standards for fishery management and conservation. *Id.* §§ 1854(b), 1851(a).

The National Environmental Policy Act

36. Approvals of FMPs, FMP amendments, and implementing regulations are subject to NEPA requirements, 42 U.S.C. § 4321, *et seq.*; 16 U.S.C. § 1854(i).

37. Congress established NEPA as “our basic national charter for protection of the environment.” 40 C.F.R. § 1500.1(a). NEPA and its implementing regulations require that federal agencies, including NMFS, must prepare an environmental impact statement (“EIS”) for all “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C); *see* 40 C.F.R. § 1501.4. The purpose of NEPA is to ensure that federal decision-making is fully and publicly informed through a reasonably thorough and thoughtful analysis of the probable environmental impacts resulting from a proposed federal action, and through identification and analysis of a reasonable range of alternative actions, including the no-action alternative. In enacting NEPA, Congress sought to ensure that federal agencies take a hard look at the environmental consequences of any proposed action and required agencies to comply with the Act “to the fullest extent possible.” 42 U.S.C. § 4332.

38. NEPA requires that a federal agency proposing a major federal action with significant environmental effects prepare a detailed statement, which must include the environmental impacts of and alternatives to the proposed action. 42 U.S.C. § 4332(2)(C)(i)-(iii). This detailed written statement is an EIS. 40 C.F.R. § 1508.11.

39. To determine whether an EIS is necessary, an agency may first prepare an EA. *See id.* §§ 1501.4(c), 1508.9. An EA is a “concise public document ... that serves to ... [b]riefly provide sufficient evidence and analysis for determining whether to prepare an [EIS] or a [FONSI].” *Id.* § 1508.9. An EA must contain sufficient information and analysis to determine whether the proposed action is likely to have significant impacts, thus requiring preparation of an

EIS. *Id.* An EA must consider a reasonable range of alternatives, and must include a reasonably thorough discussion of the direct, indirect, and cumulative impacts of the proposed alternative.

40. If an agency concludes, based on the EA, that an EIS is not required, it must prepare a FONSI, which explains the agency's reasons for its decision. *Id.* §§ 1501.4(e), 1508.13.

41. The analysis of alternatives to a proposed agency action is "the heart of the environmental impact statement" and agencies should "[r]igorously explore and objectively evaluate all reasonable alternatives." *Id.* § 1502.14. The analysis must include a "no action" alternative, as well as reasonable alternatives beyond the agency's jurisdiction. *Id.* § 1502.14(c)-(d). These alternative analysis requirements also apply to EAs. *See* 42 U.S.C. § 4332(2)(E); 40 C.F.R. § 1508.9(b). Whether an action will have "significant" impacts requires consideration of both the context and intensity of effects. 40 C.F.R. § 1508.27. Context refers to the significance of the action to society as a whole, the affected region, the affected interests, and the locality. *Id.* § 1508.27(a). Intensity refers to the severity of the impacts. Factors considered in evaluating intensity include impacts that may be both beneficial and adverse, unique characteristics of the geographic areas, the degree to which the effects on the quality of the human environment are likely to be controversial, the degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks, the degree to which the action may establish a precedent for future actions, whether the action is related to other actions with individually insignificant but cumulatively significant impacts, and the degree to which the action may adversely affect an endangered or threatened species or its critical habitat. *Id.* § 1508.27(b).

42. For ongoing actions, federal agencies have a duty to supplement their NEPA analysis whenever (a) the agency makes substantial changes to the proposed actions; or (b) significant new circumstances or information exists relevant to environmental concerns and bears on the proposed action or its impacts. *Id.* § 1502.9(c)(1).

The Administrative Procedure Act

43. The APA provides for judicial review of final agency action by persons “aggrieved” by such action. 5 U.S.C. § 702. The actions reviewable under the APA include any “preliminary, procedural, or intermediate agency action or ruling . . . on the review of the final agency action.” *Id.* § 704.

44. The APA also provides standards applicable when a federal agency proposes and adopts final rules and regulations. *Id.* §§ 553, 551(4). Specifically, agencies must provide “[g]eneral notice” of any “proposed rule making” to the public through publication in the Federal Register. That notice must include: “(1) a statement of the time, place, and nature of public rule making proceedings; (2) reference to the legal authority under which the rule is proposed; and (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.” *Id.* § 553(b). An agency’s responsibility to consider public comments on a proposed rulemaking is required by 5 U.S.C. § 553(c).

45. Under the APA, a reviewing court shall “hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” *Id.* § 706(2). A reviewing court shall also “hold unlawful and set aside agency action, findings, and conclusions found to be . . . without observance of procedure required by law.” *Id.*

STATEMENT OF FACTS

The Cook Inlet Salmon Fishery

46. Upper Cook Inlet is home to five species of anadromous salmon – chinook, sockeye, coho, pink, and chum – as well as steelhead trout. Cook Inlet is also home to some of the largest natural, wild returns in the nation for chinook, sockeye, coho, pink, chum, and steelhead.

47. The Kenai River sockeye runs in Cook Inlet, in particular, are world-class, with the potential to produce millions of adult sockeye returns annually. These sockeye are also genetically unique, with an unusual variety in the age and size of adult returning stocks.

48. The commercial fishery on these Cook Inlet anadromous stocks dates back to at least 1882, utilizing all manner of gear types, from fishwheels to driftnets. The federal government expressly recognized the national importance of maintaining this commercial fishery in 1952 when it negotiated by treaty to exclude Cook Inlet from an international treaty banning most net fishing activities outside of state waters.

49. Commercial fishing in Upper Cook Inlet is currently limited to two gear types (set and drift gillnets) and occurs on all five Cook Inlet anadromous salmon stocks. Set net operations deploy gillnets from fixed locations near shore, anchored to the bottom, and commonly extending in sections as far as one and half miles off shore. Drift gillnets, by contrast, are deployed from small vessels. Each drift gillnet is approximately 900 feet long.

50. The majority of commercial fishing in Upper Cook Inlet is for sockeye. From 1966 through 2012 (excluding 1989, following the Exxon Valdez oil spill), the commercial catch of sockeye in Upper Cook Inlet ranged from 497,185 fish to 9.5 million fish. In 2010 the commercial catch was 2.8 million sockeye. Approximately 56% of those fish (1.59 million)

were caught by the drift fleet. The remaining 44% were caught by set nets. The vast majority of the commercially caught Cook Inlet salmon find their way to grocery stores and restaurants in the United States. Cook Inlet salmon are an important and healthy part of the nation's food supply.

51. The Cook Inlet salmon fishery is highly competitive and requires conservation and management.

The 1990 Salmon FMP

52. The last major revision to the Salmon FMP was in 1990. The 1990 Salmon FMP has two management areas: the East Area and the West Area. The border between the two areas is the longitude of Cape Suckling.

53. The 1990 Salmon FMP addressed commercial salmon fishing in the East and West Areas differently. In the East Area (which consists primarily of coastal waters off Southeast Alaska), the 1990 FMP set forth the Council's management goals and objectives. The 1990 FMP delegated management of East Area fisheries, consistent with the Council's management goals and objectives, to the State of Alaska.

54. In the West Area, by contrast, the 1990 Salmon FMP provided little guidance on how to manage salmon. Instead, the 1990 Salmon FMP closed the vast majority of the West Area to commercial fishing, consistent with prohibitions in the International Convention for the High Seas Fishery of the North Pacific Ocean ("High Seas Convention"). Also consistent with the High Seas Convention, the 1990 FMP exempted from this closure three historic net fisheries: Cook Inlet, Prince William Sound, and the Alaska Peninsula area. The EEZ portion of Cook Inlet open to fishing is a contiguous area of approximately 1,100 square miles. The 1990 Salmon

FMP did not expressly delegate management to the State of Alaska or set clear management goals or objectives for the West Area.

55. The High Seas Convention was repealed and replaced in 1992 by the North Pacific Anadromous Stock Act of 1992, which contained no provisions for management of the three historic net fisheries areas. Despite the change in the law, the Council took no action to make changes to the FMP to clarify for the West Area how it was to be managed for nearly 20 years.

The State of Alaska's Management of the Cook Inlet Salmon Fishery

56. The State of Alaska has managed the salmon fisheries in Alaska since 1959. The State of Alaska sets its fishery management policies through the Alaska State Board of Fish, and implements those management policies through the Alaska Department of Fish and Game.

57. The State of Alaska manages salmon in Cook Inlet based on a series of state management plans. Generally speaking, these management plans set escapement goals for salmon. An escapement goal, in this context, is the number of salmon that the state has determined are necessary or desirable to "escape" past a fishery, and thereby, provide spawning stock for successive generations or meet other needs.

58. The state management plans also include allocation decisions. Allocation decisions are generally made by setting the number of fishing days allowed for a particular gear type during the season.

59. In season, the state manages these fisheries based on assessments of run strength, as measured against desired escapement goals. If the run strength is estimated to be larger than normal, then more fishing days are authorized to avoid exceeding maximum escapement targets. If run strengths are estimated to be smaller than normal, then fewer fishing days are authorized to

avoid dropping below minimum escapement targets. These run strength assessments are based on pre-season forecasts, test boat data, and other factors.

60. Setting science-based escapement goals for salmon is essential to a well managed fishery. If an escapement goal is set too low, then the fishery gets over-fished and run strengths diminish over time. If an escapement goal is set too high, then the harvestable surplus is lost. Where too many salmon escape and spawn, the fitness of that run may also be diminished in future years due to density-dependent effects and other biological and ecological factors. That is especially the case for sockeye, where rearing space and food supply in the lakes and rivers are a limiting factor. Over-escapement events can reduce run strengths for two or three successive years.

61. The state has two basic kinds of escapement goals: biological and sustainable. Biological escapement goals are intended to achieve the maximum sustainable yield (human consumption for that fishery as a food resource). Sustainable escapement goals, by contrast, are based on historical data showing that a certain harvest level can be sustained. In Cook Inlet, only 4% of the stocks have a biological escapement goal.

62. Beginning in 2000, the state imposed a "Sustainable Salmon Fisheries Policy" ("SSFP") intended to ensure the long-term viability of salmon runs in Alaska.

63. The state has affirmatively stated that it is under no obligation to comply with the MSA in making its fishery management decisions. Indeed, the state's record has shown that it has not managed the fisheries, especially the fisheries in Cook Inlet, in a manner consistent with the MSA.

64. In 1990, when the last Salmon FMP was created, the state typically managed the salmon fisheries in accordance with the MSA. Beginning in 1996, the state began departing

from MSA management. And, when the state subsequently adopted the SSFP, it no longer made any attempt to manage fisheries in Cook Inlet under MSA standards.

65. As noted above, only 4% of the stocks in Cook Inlet have biological-based escapement goals. Many runs in Cook Inlet have no escapement goal of any kind. There are no escapement goals for pink salmon or steelhead, only one tributary with escapement goals for chum, and two tributaries with escapement goals for coho. Of the 35 chinook tributaries, only seven have any escapement goals or monitoring data, and most of those seven are listed under the state designation of “stock of concern.” Equally important, between 2002 and 2010, the state missed the lower-end of its escapement goals statewide 15% of the time (resulting in over-fishing) and missed the upper-end of its escapement goals statewide 35% of the time (resulting in under-fishing). In other words, the state misses its own goals half of the time.

66. State management in Cook Inlet has destabilized the fishery. As a result, many seafood processors have simply quit doing business in Cook Inlet, citing a hostile business environment created by state mismanagement as the reason. In recent decades, the commercial catch of salmon in Cook Inlet have declined as a result of state management decisions. Harvests of some stocks have declined as much as 50% due to state management. Every year, millions of salmon (worth millions of dollars to local communities and businesses), above and beyond those necessary to meet biological needs, go un-harvested due to state mismanagement.

67. While some of these declines are attributable to allocation decisions, most are the result of long-term declines in total salmon returns to the Inlet or management decisions that allow a significant harvestable surplus to go un-harvested.

68. One such management decision is a growing trend towards terminalizing the drift fishery – that is, directing fishing nearer to shore, and nearer to the mouth of the rivers. While

that kind of management is effective in some locations, it is not effective in Cook Inlet due to its unique geography, and the run sizes and timing associated with the large sockeye returns in Cook Inlet.

69. Fishing in the EEZ portions of Cook Inlet – farther from the mouth of the river, is essential to elongate the fishing season by a few days and produce an orderly fishery. This kind of elongated fishing season reduces the risk that seafood processors will be overwhelmed as a result of too many deliveries from fishermen in too short of a period of time. In 2011, new restrictions that limited fishing in the EEZ in favor of nearshore fishing resulted in overwhelming the processing capacity of the Inlet, massive degradation in food quality as fish essentially rotted on the docks, and a lost harvest of more than 300,000 sockeye alone. Fishing time in the EEZ, farther from the terminal points, also allows more data to be gathered to assess run strength and allows fishery managers to make better informed decisions.

70. The state's failures in management fully were demonstrated in the summer of 2012. Early in the fishing season, the state incorrectly determined that returns of chinook salmon to the Kenai River were expected to be low, below biological goals. In order to ensure the chinook returns were met, the state completely closed the commercial set net fishery that largely targets sockeye salmon, closed recreational fishing for chinook, and asked the U.S. Fish and Wildlife Service ("FWS") to close subsistence fishing on chinook salmon. These closures resulted in an economic disaster for the set net fishery and many processors, their crew members and employees, and led to significant over-escapement to the Kenai, Kasilof, and Susitna Rivers. To make matters worse, the state continued to promise that it would open the set net fishery and encouraged set net fishermen and processors to retain their employees during these closures. While relying on these empty promises, these set net employers incurred additional expenses to

their ultimate detriment because the state never re-opened the fishery. As a result, many set net fishermen, lost *their entire yearly income* due to these closures

71. As a result of these management failures, the Governor of Alaska ultimately requested the Secretary of Commerce to declare a fishery management disaster for Cook Inlet. The Secretary issued a disaster declaration on September 13, 2012. Contrary to the state's faulty predictions, chinook returns for the Kenai were well above biological escapement goals. In short, the severe fishery closures mandated by the state (and the associated economic and financial ruin) were entirely unnecessary and detrimental to fisheries and fish stocks.

72. In addition to state mis-management, Cook Inlet stocks are under pressure from habitat-related concerns and population pressure. More than one-third of the population of Alaska resides on Cook Inlet. The development from this population and associated infrastructure not only creates habitat impacts, but further creates significant resource pressure for sport and personal use fisheries (fisheries for home consumption). In addition to these impacts, invasive species such as northern pike have decimated a number of salmon runs in the Inlet. The state has known about these species for many years, yet has done little to address the problem despite repeated pleas from Plaintiffs.

73. These management errors, and others, combined with population and resource pressure and habitat concerns, leave the world-class wild salmon runs of Cook Inlet salmon fisheries at significant risk. In recent years, the sockeye runs to five lakes – Trapper, Red Shirt, Neal, Sucker, and Caswell – have disappeared entirely. Returns to a sixth lake – Shell – appear poised for extirpation as well. In addition, there are now seven stocks listed as “stocks of concern” in Cook Inlet. The net result is that commercial fishing, and the health of the stocks, is on the decline in Cook Inlet under continued state management.

Amendment 12 to the Salmon FMP

74. In 2007, Congress amended the MSA to require all fishery management councils to amend their FMPs to “establish a mechanism for specifying annual catch limits in the plan (including a multiyear plan), implementing regulations, or annual specifications, at a level such that overfishing does not occur in the fishery, including measures to ensure accountability.” 16 U.S.C. § 1853(a)(15). Congress gave the fishery management councils a deadline of “fishing year” 2011 to accomplish this goal for any fishery that was not being over-fished. *Id.* § 1853 note.

75. In 2010, the Council began the process of amending the Salmon FMP to comply with this statutory deadline. Plaintiffs, and their members, fish processors, and community leaders from Cook Inlet enthusiastically participated in the Council’s process. Plaintiffs explained in public testimony and written comments that the salmon fisheries in Cook Inlet were experiencing significant management concerns that have resulted in reduced run strengths, wasted harvests, and reduced salmon quality. Plaintiffs further explained that the state was not managing this fishery in a manner consistent with the MSA, as conceded by the state who affirmatively represented that it was not obligated to do so. Accordingly, Plaintiffs asked the Council to update the FMP for the West Area, provide management goals and objectives for Cook Inlet and annual catch limits (or an appropriate proxy for annual catch limits) as required by the MSA, and then delegate management to the state consistent with these goals and objectives. This is precisely what the Council proposed to do (and did) for the federal salmon fisheries in the East Area, and Plaintiffs explained that similar measures were necessary to address ongoing management concerns in Cook Inlet.

76. Plaintiffs also offered to work with the Council, and with Defendants, to secure funding to carry out those tasks.

77. Instead of granting Plaintiffs' request or working with the commercial salmon fishing groups to address their concerns, Council members told Plaintiffs that their belief that the Council could provide them any help was "naive and misguided" or "ill-founded, at best." The Council emphasized that the "National Marine Fisheries Service does not have the expertise . . . to effectively manage salmon fisheries," and that it was naive to expect that the federal agencies could help the state achieve the optimum yield required by the MSA or help stabilize unpredictability in the management of the fishery.

78. Instead of complying with Congress's annual catch limit requirement, the Council, with the support of Defendants, adopted Amendment 12 to the FMP, which provides no annual catch limits for Cook Inlet. Instead of including annual catch limits in the Salmon FMP for Cook Inlet, the Council redrew the map of the West Area to withdraw Cook Inlet from inclusion in the West Area and the Salmon FMP altogether. In so doing, the Council effectively abdicated all federal responsibility for managing salmon in Cook Inlet, contrary to the MSA.

79. The Council also conceded that Amendment 12 would create a jurisdictional loophole for any fishing vessel not registered under the laws of the State of Alaska. The loophole now allows any fishing vessel access to the EEZ portions of Cook Inlet without any time or gear restrictions.

80. NMFS's staff told Plaintiffs that these changes were made by the Council in order to *avoid* compliance with Congress's mandate to set annual limit requirements for Cook Inlet and the other West Area fisheries.

NMFS Approves Amendment 12 and Issues a FONSI

81. The Council submitted Amendment 12 and its implementing regulations to NMFS for approval in December of 2011. On April 2, 2012, NMFS published notice of Amendment 12 in the Federal Register and solicited public comment. 77 Fed. Reg. 19,605 (Apr. 2, 2012). On April 11, 2012, NMFS published notice of the draft rules implementing Amendment 12 and solicited public comment. 77 Fed. Reg. 21,716 (Apr. 11, 2012).

82. Plaintiffs submitted comprehensive comments on Amendment 12, the proposed implementing regulations, and the draft EA, on May 29, 2012.

83. Plaintiffs' explained that the Council's decision to remove Cook Inlet from the Salmon FMP was arbitrary, capricious, and contrary to law and asked the Defendants to reject Amendment 12 and its implementing regulations as inconsistent with the requirements of the MSA.

84. Plaintiffs also submitted detailed comments on the errors in the EA, the failure of the EA to comply with NEPA and its implementing regulations, and the need for a full EIS.

85. On June 25, 2012, NMFS issued its final EA and FONSI, concluding that Amendment 12 would have no significant impact on the environment.

86. The final EA and FONSI concluded that no EIS was necessary.

87. The final EA and FONSI did not consider the alternative of treating Cook Inlet differently from the other federal fisheries in the West Area.

88. On June 29, 2012, NMFS approved Amendment 12 to the FMP in a one-paragraph letter. The letter explained that regulations to implement Amendment 12 would follow at a later date. Under the MSA, such regulations must be issued within 30 days after the end of the public comment period. 16 U.S.C. § 1854(b)(3).

89. On August 16, 2012, after the close of the official comment period, and after NMFS failed to promulgate final regulations within the time prescribed by 16 U.S.C. § 1854(b)(3), Plaintiffs submitted additional new information to NMFS regarding the 2012 disaster declaration requested by the Governor of Alaska for Cook Inlet. Plaintiffs explained that these management errors seriously undermined the Council's assumptions that the state was properly managing these fisheries, as well as NMFS's assumptions underlying the EA and FONSI.

90. On September 13, 2012, Acting Secretary of Commerce Rebecca Blank declared a fishery disaster in Cook Inlet.

91. On October 22, 2012, Plaintiffs again submitted new information to NMFS regarding fishery management in Alaska. This time, Plaintiffs submitted a letter from FWS raising serious and significant concerns regarding the State of Alaska's sustainable escapement goals, explaining that they were scientifically unsound and unsupported. Plaintiffs further explained that this analysis completely undermined the Council's reasoning (as well as the reasoning in the EA) that the state was managing the fisheries in a manner consistent with the MSA, or that the state's sustainable escapement goals were the equivalent of the MSA's optimum yield.

92. On December 21, 2012, nearly four months after the statutory deadline to issue final regulations expired, NMFS published its notice of approval of the regulations implementing Amendment 12. The decision relies primarily on national standards 3 and 7 as its justification for removing Cook Inlet from the Salmon FMP.

93. The Federal Register notice supporting the rule failed entirely to address the importance or relevance of the 2012 fishery disaster in Cook Inlet or the criticism of the FWS.

FIRST CLAIM FOR RELIEF

(Violation of the MSA and the APA)

94. Plaintiffs incorporate by reference all preceding paragraphs of this Complaint.

95. MSA Sections 304(a) and (b), 16 U.S.C. §§ 1854(a)-(b), require Defendants to ensure FMPs and implementing regulations are consistent with the requirements of the MSA.

96. Amendment 12 and its implementing regulations violate Sections 304(a) and (b) because NMFS's decision to remove the Cook Inlet salmon fisheries from the Salmon FMP is contrary to the express purpose of the MSA regarding anadromous stocks, and express requirements that an FMP is necessary "for each fishery under its authority that requires conservation and management," because the Cook Inlet salmon fishery clearly requires conservation and management. *Id.* § 1852(h)(1).

97. Amendment 12 and its implementing regulations violate Sections 304(a) and (b) because NMFS's decision to remove the Cook Inlet salmon fisheries from the Salmon FMP is contrary to the Congressional mandate to establish annual catch limits for each fishery, especially where, as here, NMFS explained that the reason for the removal was to avoid compliance with the annual catch limit requirement. *Id.* § 1853(a)(15).

98. Amendment 12 and the implementing regulations violate Sections 304(a) and (b) and are otherwise arbitrary and capricious because NMFS's decision to remove Cook Inlet from the Salmon FMP creates a jurisdictional loophole allowing unregistered vessels to fish with impunity in the EEZ portions of Cook Inlet.

99. Amendment 12 and the implementing regulations violate Sections 304(a) and (b) and are otherwise arbitrary and capricious because NMFS relied on unsupported assumptions regarding the sufficiency of State of Alaska management in Cook Inlet, while ignoring data and

analysis submitted by Plaintiffs and the former State of Alaska area biologist for Cook Inlet providing clear evidence to the contrary.

100. Amendment 12 and the implementing regulations violate Sections 304(a) and (b) and are otherwise arbitrary and capricious because NMFS failed to reconcile or address the 2012 fishery disaster with its determination that an FMP for Cook Inlet is not necessary.

101. Amendment 12 and the implementing regulations violate Sections 304(a) and (b) and are otherwise arbitrary and capricious because NMFS failed to reconcile or address concerns raised by the FWS regarding problems with the state's sustainable escapement goals.

102. Amendment 12 and the implementing regulations violate Sections 304(a) and (b) and are otherwise arbitrary and capricious because NMFS's justification for removing Cook Inlet from the Salmon FMP based on national standard 3, 16 U.S.C. § 1851(3), is (a) legally and factually flawed, premised on the incorrect assumption that the State of Alaska is managing salmon fisheries in Cook Inlet in a manner consistent with the MSA, and (b) fails to explain why NMFS cannot cooperatively manage the fishery with the state as it does in the East Area and with other fisheries.

103. Amendment 12 and the implementing regulations violate Sections 304(a) and (b) and are otherwise arbitrary and capricious because NMFS's justification for removing Cook Inlet from the Salmon FMP based on national standard 7, 16 U.S.C. § 1851(7), and the factors contained in the implementing regulations, is based on an impermissible interpretation of that standard, lacks factual support in the record, is contrary to its own prior statements and the evidence submitted by Plaintiffs, and otherwise fails to address important parts of the problem.

104. Amendment 12 and the implementing regulations violate Sections 304(a) and (b) and are otherwise arbitrary and capricious because NMFS fails to meaningfully address concerns

related to national standard 10, 16 U.S.C. § 1851(10) (safety of life at sea).

105. Amendment 12 and the implementing regulations violate Sections 304(a) and (b) and are otherwise arbitrary and capricious because the decision that no federal management is necessary for Cook Inlet salmon cannot be legally or logically reconciled with the NMFS's decision to close fishing on these same stocks of fish in the remaining portions of the West Area, its decision that an FMP was necessary for federal salmon fisheries in the East Area, and the overall poor record of state management in Cook Inlet.

106. The MSA allows judicial review pursuant to the APA, 5 U.S.C. § 706(2)(A), (B), (C), or (D). 16 U.S.C. § 1855(f)(1)(B). Those provisions of the APA authorize reviewing courts to set aside federal agency action that is arbitrary, capricious, an abuse of discretion or contrary to law, in excess of statutory limitations, or without observance of the procedures required by law. 5 U.S.C. § 706(2).

107. NMFS's approval of Amendment 12 and its implementing regulations violates 16 U.S.C. § 1854(a) and (b) because the decision to remove Cook Inlet from the Salmon FMP is arbitrary, capricious, an abuse of discretion, otherwise not in accordance with the law, and without observance of procedure required by law.

108. By failing to comply with the MSA, NMFS has both prejudiced and injured Plaintiffs' rights and interests, and Plaintiffs have no other adequate remedy at law. For these reasons, Plaintiffs are entitled to the relief requested below.

SECOND CLAIM FOR RELIEF

(Violation of NEPA and the APA)

109. Plaintiffs incorporate by reference all preceding paragraphs of this Complaint.

110. NMFS did not adequately consider the potential for significant environmental effects from the proposed action. Among other failings, NMFS did not (1) adequately consider the context and intensity of potential adverse environmental effects; (2) fully consider or properly analyze socioeconomic effects; or (3) comply with NEPA's requirements for addressing incomplete or unavailable information. *See, e.g.*, 40 C.F.R. §§ 1502.16, 1502.22, 1508.9-10.

111. NMFS violated NEPA and its implementing regulations, and otherwise acted arbitrarily and capriciously, by relying on a stale Programmatic EIS from 1978 and a 1990 EA evaluating the Salmon FMP, neither of which fully considered the issue of whether to remove Cook Inlet from the Salmon FMP. Because the decision to remove Cook Inlet from the FMP was a substantial change from the actions contemplated in 1978 and 1990, and because there is significant new information since 1990 on the condition of the fisheries in Cook Inlet, a supplemental programmatic EIS was required. NMFS's failure to produce such a supplemental EIS was arbitrary, capricious, and contrary to NEPA.

112. NMFS violated NEPA and its implementing regulations, and otherwise acted arbitrarily and capriciously, by failing to produce a full EIS to properly address the significant direct, indirect, and cumulative environmental impacts identified by Plaintiffs. An EIS was necessary in light of the uncertainties identified by the Plaintiffs as well as the uncertainties identified in the notice accompanying the rule, in light of the controversial nature of the action and its effects, and in light of unprecedented nature of the decision to remove an important fishery from the oversight of an FMP.

113. NMFS violated NEPA and its implementing regulations, and otherwise acted arbitrarily and capriciously, by failing to produce a supplemental EIS or EA in light of significant new information submitted to NMFS after it issued its FONSI regarding the fishery

disaster declaration and the state's recent mismanagement of this fishery, as well as the new questions raised by FWS.

114. NMFS violated NEPA and its implementing regulations, and otherwise acted arbitrarily and capriciously, because it relied on a deficient EA that does not consider a reasonable range of alternatives, including the alternative of treating Cook Inlet differently than the other two federal salmon fisheries in the West Area.

115. NMFS violated NEPA and its implementing regulations, and otherwise acted arbitrarily and capriciously, because the EA fails to take a hard look at the direct, indirect, and cumulative impacts of continued state management of the Cook Inlet fishery.

116. NMFS violated NEPA and its implementing regulations, and otherwise acted arbitrarily and capriciously, because the EA fails to take a hard look at the impact of unregulated fishing by unregistered vessels in Cook Inlet.

117. NMFS violated NEPA and its implementing regulations, and otherwise acted arbitrarily and capriciously, because the EA fails to take a hard look at the status and population trends of all stocks in Cook Inlet.

118. These violations of NEPA, 42 U.S.C. § 4332(2)(C), (E), and its implementing regulations are arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law, and without observance of procedure required by law. These violations have caused or threaten serious prejudice and injury to Plaintiffs' rights and interests. NMFS's actions under NEPA are reviewable under the APA, 5 U.S.C. §§ 701-706, and Plaintiffs are entitled to the relief requested below.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

United Cook Inlet Drift Association, et. al., v. NMFS, et al.

- A. Declare that the Defendants violated the MSA, APA, and NEPA;
- B. Declare that the Defendants' actions, as set forth above, were arbitrary and capricious, an abuse of discretion, not in accordance with law, and without observance of procedure required by law;
- C. Vacate Amendment 12 and its implementing regulations, and, as appropriate, remand with an order instructing the Defendants to develop an FMP for Cook Inlet that complies with the requirements of the MSA, APA, and NEPA;
- D. Vacate the FONSI, and remand with an order instructing, as appropriate, the Defendants to prepare an EA or EIS that complies with NEPA and the APA;
- E. Award Plaintiffs their reasonable attorney fees, costs, expenses, and disbursements, including attorney fees associated with this litigation pursuant to the Equal Access to Justice Act or other law; and
- F. Award Plaintiffs other and further relief as this Court may deem just and equitable.

DATED this 18th day of January, 2013.

STOEL RIVES, LLP

/s/ Beth S. Ginsberg

Beth S. Ginsberg, D.C. Bar No. 448118

Jason T. Morgan, WSBA No. 38346

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*Attorneys for Plaintiffs United Cook Inlet
Drift Association and Cook Inlet Fishermen's Fund*



Representative Jonathan Kreiss-Tomkins
ALASKA STATE LEGISLATURE HOUSE DISTRICT 34

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January 28, 2013

Dr. Jane Lubchenco, Administrator
National Oceanic and Atmospheric Administration
1401 Constitutional Avenue, NW
Room 5128
Washington, DC 20230

Dear Dr. Lubchenco:

I am writing in regard to the National Marine Fisheries Service's restructured observer plan implemented in 2013. Of major concern is the inclusion of some 1,300 previously unobserved community-based vessels that are less than 60 feet in length. Fishermen and fishing associations have major concerns about the negative impact of the restructured program as currently configured on these small fishing businesses. Their concerns include program inefficiencies, escalating observer costs, reduced safety, reduction of coverage in high catch and bycatch fisheries, and NMFS failure to implement electronic monitoring (EM) as an alternative to human observers for small longline vessels. As a member of the Alaska House of Representatives Fisheries Committee, I share their concerns.

Alaska's fishing associations have long recognized the need to gather scientific information to manage fisheries for sustainability. However, it is questionable that this plan will achieve that goal. The 2013 deployment plan reduces coverage in high volume fisheries that have substantial chinook and halibut by-catch and assigns over half the observed trips to vessels that account for less than 12% of the catch without providing any guarantee that priorities will be adjusted in the future. By doubling the cost of an observer day above recent and analyzed levels, NMFS insured coverage levels will be below minimums identified by the agency as essential to conservation and management.

I am also concerned that NMFS has not provided an electronic monitoring (EM) alternative to human observers for the small longline fleet. Implementation of EM concurrent with implementation of the restructured program was requested by fishing associations, vessel owners, and the North Pacific Fishery Management Council (Council). The industry-run EM pilot program documented deployment and data analysis costs of \$198 for Sitka vessels and \$332 for Homer vessels. EM can provide a representative estimate of catch and bycatch for small vessels while providing essential cost efficiencies for the program and Alaska's small fishing businesses. If NOAA cannot

develop performance standards and technical guidelines for integrating EM into the restructured program, then NOAA needs to explore other avenues, such as Exempted Fishery Permits, to ensure EM is available to the "vessel selection pool" as an alternative to human coverage by 2014.

The Department of Commerce and your agency have received letters of concern and recommendations that include those from the Alaska congressional delegation, Alaska Senator Bert Stedman, Alaska Representative and Chair of the Fisheries Committee, Senator Paul Seaton, and fishing associations representing the industry from Ketchikan through Kodiak. I add my concerns and recommendations to theirs.

Please consider not deploying observers to the small boat fleet in the "vessel selection pool" until a viable EM option is available. To expedite development of EM, please provide waivers from human observer coverage to the "vessel selection pool" boats that volunteer to carry EM in 2013 and beyond. I agree with our congressional delegation that NOAA has the flexibility to take either or both of these steps now.

In closing, I urge you to prioritize observer coverage to fisheries with the most impact to the resource, and to mitigate impacts to Alaska's coastal fishermen and fishery dependent communities by providing EM to small boats as an alternative to human observers. Finally, I urge you to work with the Council to initiate a meaningful stakeholder process that identifies changes to the observer program that increase cost efficiencies while achieving scientific goals and minimizing impacts to Alaska's fishery dependent communities.

Sincerely,



Representative Jonathan Kreiss-Tomkins

CC: Senator Lisa Murkowski
Senator Mark Begich
Congressman Don Young
Governor Sean Parnell
ADF&G Commissioner Cora Campbell
Eric Schwaab, Acting Assistant Secretary for Conservation and Management, NOAA
Sam Rauch, Acting Assistant Administrator for Fisheries, NOAA
Eric Olson, Chairman of the North Pacific Fishery Management Council

**FISHING VESSEL OWNERS' ASSOCIATION
INCORPORATED**

AGENDA B-2
Supplemental
FEBRUARY 2013

4005 20TH AVE. W., ROOM 232
SEATTLE, WASHINGTON 98199-1290
PHONE (206) 284-4720 • FAX (206) 283-3341

SINCE 1914

January 14, 2013

RECEIVED
JAN 18 2013

Mr. Eric Olson, Chairman
North Pacific Fishery Management Council
605 West 4th, Suite 306
Anchorage, AK 99501-2252

RE: **Observer Program**

Dear Chairman Olson:

The members of the Fishing Vessel Owners' Association (FVOA) would like to provide a suggested design change for the 2014 Observer Program. The members supported the Council process in developing the original observer program as well as the recent amendments which activated the funding mechanism in the Magnuson-Stevens Fishery Conservation and Management Act. The members have concerns that the current design fails to provide meaningful observations of the harvesting impacts from the various fleets. These vessels of concern are principally those that were not covered at 100%.

FVOA members are concerned that the recent design will likely not produce more than 13%, and could be less than 10% overall coverage of harvesting impacts. The Association requests that the Council ask for an analysis of the design changes, set forth below, for potential use in the 2014 season. These changes are predicated on the following information provided to us from NMFS relative to the amount of fish taken by top producing vessels that account for 80% of the harvest. For example, for halibut in 2012, a total of 967 vessels participated, 287 being the top vessels that harvested 80% of the halibut. For the hook and line catcher vessel fleet that targeted sablefish, there were 279 in 2012, 112 of which accounted for 80% of that harvest. For trawl catcher vessels targeting Pacific cod in the Gulf of Alaska (GOA) there were 69, 30 of which accounted for 80% of the harvest. Similar information is readily available for the other sectors.

FVOA proposes that the fleet be divided into two observer categories of vessels. Category 1 would be those vessels that fall into the delivery of 80% of the harvest measured by highest producing vessels by sector. Category 2 would be the vessels that fall in the landing of 20% of the harvest by sector.

Category 1	Category 2	
80 Percentile	20 Percentile	
278 halibut vessels (CV)	689 vessels	Halibut 2012
112 sablefish vessels (CV)	158 vessels	Sablefish 2012
69 cod CV trawl	39 vessels	Trawl Pacific Cod CVs

FVOA requests that the Council have analyzed a deployment design that would dedicate 65%, 75%, or 85% of the available observer dollars for coverage of those vessels in the 80 percentile. This analysis would also look at 35%, 25%, and 15% of the observer dollars dedicated for coverage of Category 2 vessels. This analysis would aid the Council in determining how much harvesting impacts can be covered with different financial allocation schemes based on funding availability. We would suggest that all vessels be subject to the trip-by-trip call in of less than 72 hours. FVOA would suggest dropping the requirement of having an observer on a vessel for 60 days in the <57.5' group of vessels. There is no persuasive rationale that has been presented as to why this requirement on vessels <57.5' produces a better observer result than the trip-by-trip requirements for vessels >57.5'. The random choice of choosing a vessel would remain the same, except that the vessels in Category 1 would be subject to a more aggressive level of probability of being chosen than vessels in Category 2.

FVOA requests the Council have this option analyzed based on the existing problem statement adopted for amendment of the previous observer program. It is the opinion of the FVOA members that the option proposed for analysis will provide a more effective, efficient, and fair observation of the various fleet sectors. The above options will not only put observers where significant amounts of fish are actually being caught, but also provide information on the lesser producers of fish.

Sincerely,



Robert D. Alverson
Manager

RDA:cmb

Cc: Dan Hull, Chairman, Observer Committee

Wallace W. Hinderer
3744 Crabapple Place
Port Angeles, Wash. 98362

RECEIVED

JAN 29 2013

Mr. Eric Olson
C/O North Pacific Fisheries Management Council

January 24, 2013

Dear Mr. Olsen;

My Name is Wallace W. Hinderer. I presently fish the F/V Raechel Louise. I have fished for halibut since the 1980's. My fishing focused around the Chignik Area from Port Wrangel west to the Shumigan Islands, with the majority of my efforts in the vicinity of Chignik Bay. In recent years I fished on the south end of Kodiak Island between Cape Alitak and twenty three miles off shore. This is the area my fishing efforts have covered in area 3-B.

I would like to discuss issues that concern me, as they are impacting my business to the point I am considering no longer fishing my boat in the halibut fishery. I can terminate the employment of three crew members. I can have another boat fish my poundage and probably come out ahead of operating my own boat fishing for halibut. Crew shares, fuel, insurance (crew liability), groceries, bait, gear replacement, vessel maintenance, and taxes all diminish my ability to keep my business viable. The fact that the taxes come right off the gross, before any expenses are deducted, make them especially burdensome.

After the inception of the IFQ program, I purchased approximately enough quota percentage to raise my TAC from the eight thousand pounds I was originally issued to a total of twenty thousand pounds. Within a few years due to quota increases my TAC rose to over eighty thousand pounds, and I was assessed a management tax in addition to city and borough tax. From this point my TAC declined to what I anticipate this year to be about sixteen thousand pounds. I think this event is the result of management. To make matters worse I was taxed to support this management .

Early on, halibut stocks seemed to be dwindling. Management taxes were increased. Today they are at 2.1 percent. In addition a new tax is coming for all halibut fishermen. It is to help pay for an extension of the observer program to the halibut fleet including vessels under fifty feet in length. NOAA informed me that this change was authorized by the North Pacific Fisheries Management Council to assess by catch in the halibut fishery. I believe that only thirty percent of dragging activities are observed, and the draggers may choose the times they take observers on their vessels. If there is any extension of observer coverage it should be focused on the dragger fleet. There have been times when I was on schooled halibut, that draggers were making tows within a few miles of me. As the quota goes down federal taxes are increased. This appears to focus more on money rather than sincere management. The results speak for themselves.

I own a forty four foot Hansen seiner. It has five bunks. They accommodate four crew, and the remaining bunk is for storage of essential spare equipment to be used in the event of a break down at sea. To accommodate an observer, some of our provisions for safety would have to be abandoned. This I will not do.

I question the IPHC's method of stock assessment. They take literally thousands of fish out of the fishery annually. This impacts every halibut fisherman and by default becomes little more than a hidden tax. If the IPHC would use fewer hooks and extrapolate their data, the negative impact on the fishery would be mitigated and reasonable stock assessment maintained.

Lastly the actions I am being forced to adopt due to taxation and management will sadly have a negative impact. I will terminate three jobs from the Alaskan economy. My boat will generate absolutely no further information, which I have always been willing to share via my log books and personal interaction with NOAA and IPHC representatives. This looks like a lose lose situation to me. Please share this letter with your fellow council members. Thank you for taking the time to read and consider the comments I have made.

Sincerely,

A handwritten signature in black ink, appearing to read "Wallace W. Hinderer", with a large, sweeping flourish at the end.

Wallace W. Hinderer