UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
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Litigation Updates for the
June 2026 Meeting of the North Pacific Fishery Management Council

UCIDA v. NMFS

Parties:

Plaintiffs/Appellants: United Cook Inlet Drift Association (UCIDA); Cook Inlet Fishermen's Fund.

Federal Defendants/Appellees: National Marine Fisheries Service (NMFS); National Oceanic & Atmospheric Administration (NOAA); Secretary of Commerce, Howard W. Lutnick; and Assistant Administrator for NOAA.

Defendant-Intervenor/Appellees: State of Alaska.

Case Activity:

On May 29, 2024, plaintiffs filed a motion in the United States District Court for the District of Alaska challenging Amendment 16 to the Salmon Fishery Management Plan and implementing regulations—issued May 1, 2024—as inconsistent with the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the Administrative Procedure Act, and the National Environmental Policy Act. On July 1, 2025, the U.S. District Court for the District of Alaska granted summary judgment in NMFS's favor on all claims and dismissed plaintiffs' claims with prejudice. Plaintiffs appealed to the United States Court of Appeals for the Ninth Circuit.

Status/Next Steps:

The parties are in the process of filing briefs with the United States Court of Appeals for the Ninth Circuit (see attachments). The Ninth Circuit has scheduled oral argument on the appeal for Monday, August 10, 2026, in Anchorage, Alaska. The argument also may be streamed online at https://www.ca9.uscourts.gov/ or viewed in the archive at https://www.ca9.uscourts.gov/cases/streams-videos/.

Attached: Plaintiffs/Appellants' Opening Brief (filed January 21, 2026)
Federal Defendants/Appellees' Answering Brief (filed May 21, 2026)

Appeal No. 25-5523

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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

Appellants,

v.

NATIONAL MARINE FISHERIES SERVICE et al.,

Appellees,

STATE OF ALASKA,

Intervenor Appellees.

On Appeal from the United States District Court
for the District of Alaska
Case Nos. 3:24-cv-00116-SLG and 3:24-cv-00154-SLG
Hon. Sharon L. Gleason

APPELLANTS' OPENING BRIEF

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I. INTRODUCTION

This is a comeback case. In *United Cook Inlet Drift Association v. National Marine Fisheries Service*, 837 F.3d 1055 (9th Cir. 2016) ("*UCIDA 1*"), this Court rejected an amendment ("Amendment 12") to the Alaska Salmon Fishery Management Plan ("Salmon FMP"). The Magnuson-Stevens Fishery Conservation and Management Act (the "Magnuson-Stevens Act" or "Act"), 16 U.S.C. § 1801 *et seq.*, requires the National Marine Fisheries Service ("NMFS") to produce a fishery management plan ("FMP") for "each fishery under its authority that requires conservation and management." 16 U.S.C. § 1852(h)(1). In Amendment 12, NMFS removed the Cook Inlet salmon fishery from the Salmon FMP in order to defer its management obligations to the State of Alaska.

This Court invalidated Amendment 12, finding that NMFS improperly attempted to "shirk the statutory command that it 'shall' issue an FMP for each fishery within its jurisdiction requiring conservation and management." *UCIDA 1*, 837 F.3d at 1063. The Court explained that "[t]he Magnuson-Stevens Act unambiguously requires a Council to create an FMP for each fishery under its authority," that the word "fishery" was "defined" by the Act, that "[t]he Act makes plain that federal fisheries are to be governed by federal rules in the national interest, not managed by a state based on parochial concerns," and that NMFS, therefore, may not defer its management obligations to the State of Alaska. *Id.* at 1063–65.

During the 10 years since the decision in *UCIDA 1*, commercial fishermen in Cook Inlet have struggled in vain to get NMFS to comply with these "plain" and "unambiguous[]" statutory mandates. Following remand on *UCIDA 1*, NMFS issued Amendment 14, which punitively *closed all commercial fishing* in the Exclusive Economic Zone ("EEZ") and gave the state sole management authority for Cook Inlet salmon in state waters. The district court easily found Amendment 14 unlawful because it was "directly contrary to the Ninth Circuit's ruling in *UCIDA 1*." *United Cook Inlet Drift Ass'n v. Nat'l Marine Fisheries Serv.* (hereafter "*UCIDA 2*"), No. 3:21-CV-00255-JMK, 2022 WL 2222879, at *8 (D. Alaska June 21, 2022). This resulted in another remand.

Undeterred, NMFS promulgated Amendment 16 to the Salmon FMP (the rule at issue in this appeal), which finds a new way to shirk the same statutory commands based on an erroneous jurisdictional excuse. This time, NMFS allows a *small amount* of fishing in the EEZ, and NMFS calls this EEZ harvest the "fishery." According to NMFS, the "stocks of fish" that comprise this limited "fishery" are exactly and only those fish that are harvested in the EEZ each year. NMFS deems the fish that swim through the EEZ unharvested to belong to separate stocks and a separate fishery, even though all those fish are part of the same biological stocks of anadromous fish. And NMFS allows the State of Alaska to manage those supposedly separate stocks and separate "fishery" however it sees fit, without any

Magnuson-Stevens Act oversight. In short, Amendment 16 provides no management guidelines or conservation measures for how the *whole* Cook Inlet salmon fishery must be managed.

This violates the Magnuson-Stevens Act. The "statute requires an FMP for a fishery, a defined term." *UCIDA 1*, 837 F.3d at 1064. The term "fishery" means "one or more stocks of fish which can be treated as a unit for purposes of conservation and management . . ." and "*any fishing for such stocks*." 16 U.S.C. § 1802(13) (emphasis added). Salmon do not become a different "stock of fish" when they pass into (or out of) the EEZ, and NMFS's statutory obligation to provide conservation and management for the Nation's salmon stocks does not evaporate or rematerialize as salmon swim in and out of exclusive federal jurisdiction in the EEZ. To the contrary, the Act makes plain that the "fishery" NMFS must manage is composed of "stocks of fish" and "any fishing" for those stocks. *Id*.

None of this should be in dispute. NMFS's own regulatory guidelines for FMPs explain that "[t]he geographic scope of the fishery, for planning purposes, should cover the entire range of the stocks(s) of fish, and not be overly constrained by political boundaries." 50 C.F.R. § 600.320(b). The "fisheries" at issue in Amendments 12 and 14 both included the entire range of the stocks of fish. *See* Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Salmon, 77 Fed. Reg. 75572, 75579 (Dec. 21, 2012) (analyzing stocks throughout their range and all

harvest of salmon); *UCIDA 2*, 2022 WL 2222879, at *8 & n.94 ("[T]he Cook Inlet salmon fishery includes the stocks of salmon harvested by all sectors within State and federal waters of Cook Inlet." (quoting AKR0020364)).

NMFS's gerrymandered EEZ-only "stocks" and "fishery," which fall apart under bare minimum statutory and biological scrutiny, ultimately just reflect NMFS's continuing political desire to defer management decisions for salmon in Cook Inlet to the State of Alaska. But the overarching purpose of the Magnuson-Stevens Act is to ensure that the Nation's critical fishery resources, like the salmon stocks of Cook Inlet, are managed according to the robust national standards set forth by the Act. *UCIDA 1*, 837 F.3d at 1063. These protections are meaningless if NMFS can redefine "stocks" and a "fishery" to only include fish harvested in federal waters and disclaim responsibility for management or conservation of the stocks as a whole.

NMFS recalcitrance comes with substantial cost. While NMFS has spent years finding novel ways to avoid its statutory obligations, the fishery management failures and hardships described in *UCIDA 1* have snowballed. *Id*. at 1061; 2-ER-39–42; 2-ER-47–52. Cook Inlet was once "one of the nation's most productive salmon fisheries." *UCIDA 1*, 837 F.3d at 1057. The fishery is now plagued by repeated economic disaster declarations and fishery closures, not from lack of salmon, but due to mismanagement of the fishery that is causing irreparable harm to

the fishermen. 4-ER-914; 4-ER-925; 4-ER-933. This is precisely the result that the Magnuson-Stevens Act's national standards were intended to prevent.

This Court should vacate Amendment 16 and remand with instructions to NMFS to prepare a lawful FMP amendment for Cook Inlet and to the district court to consider such further relief as is just and proper, including a deadline, interim management measures, and collaboration, as appropriate.

II. JURISDICTIONAL STATEMENT

The district court had subject matter jurisdiction pursuant to 28 U.S.C. § 1331. The district court issued its order on summary judgment on July 1, 2025, and its judgment in favor of defendants (collectively "NMFS") that same day. Appellants (collectively "UCIDA") timely filed a notice of appeal on August 28, 2025. This Court has jurisdiction of that appeal under 28 U.S.C. § 1291.

III. ISSUES PRESENTED FOR REVIEW

1. Whether NMFS complied with the Magnuson-Stevens Act's mandate to prepare an FMP for the Cook Inlet salmon "fishery" when it limited the "stocks of fish" and the "fishery" to only those fish "harvested" in the EEZ.

2. Whether NMFS violated its obligation to establish "optimum yield" for the "fishery," as required by 16 U.S.C. § 1853(a)(3), (5) and National Standard 1, when it instead established optimum yield only for fish harvested in the EEZ.

3. Whether NMFS's salmon stock definitions are arbitrary, capricious, and contrary to National Standard 2's requirement to use the best scientific and

commercial data available when NMFS disregarded the salmon stock definitions recommended by NMFS's own scientific and statistical committee.

4. Whether NMFS complied with National Standard 3 when it failed to include conservation and management measures for stocks of salmon throughout their range.

IV. PERTINENT STATUTORY PROVISIONS

Appellants have reproduced pertinent statutory provisions as an addendum to this brief.

V. STATEMENT OF THE CASE

A. Statutory Framework

1. The Magnuson-Stevens Act

The Magnuson-Stevens Act is the primary domestic legislation governing management of federal fisheries. 16 U.S.C. §§ 1801–1891(d). The stated purpose of the Act 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).[1] The Magnuson-Stevens Act creates eight regional fishery management councils charged with the responsibility for preparing fishery management plans ("FMPs") and plan amendments for each federal fishery. *Id.* § 1852(a)(1).

[1] Salmon are anadromous species. 16 U.S.C. 1802(1) (defining "anadromous species" as "fish which spawn in fresh or estuarine waters of the United States and which migrate to ocean waters.").

The Magnuson-Stevens Act requires a fishery management plan for each "fishery" under the regional council's authority "that requires conservation and management." *Id.* § 1852(h)(1). A "fishery" is defined as

> (A) one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; and (B) any fishing for such stocks.

Id. § 1802(13). In turn, "stock of fish" is defined as "a species, subspecies, geographical grouping, or other category of fish capable of management as a unit." *Id.* § 1802(42). The fishery management plan 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 Act and its 10 national standards. *Id*. § 1851(a).

The Magnuson-Stevens Act's national standards guide all fishery management plans and the regulations implementing those plans. *Id*. As relevant to this litigation, National Standard 1 requires fishery management plans to prevent overfishing while achieving "the optimum yield from each fishery." *Id.* § 1851(a)(1). National Standard 2 requires all conservation measures to be based on the best scientific information available. *Id*. § 1851(a)(2). National Standard 3 provides that "[each] individual stock of fish" should be managed as a unit throughout their range, where practicable. *Id*. § 1851(a)(3).

In addition, all fishery management plans must contain certain required provisions. *See id.* § 1853. Relevant here, fishery management plans must

> assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and include a summary of the information utilized in making such specification.

Id. § 1853(a)(3). Thus "maximum sustainable yield" (or "MSY") and "optimum yield" (or "OY") are critical components for managing a fishery, consistent with the Act's purpose that the Nation's fishery resources are "finite but renewable" and that these "fisheries can be conserved and maintained so as to provide optimum yields on a continuing basis." *Id.* § 1801(a)(5).

Fishery management councils submit proposed fishery management plans and amendments to NMFS for review and approval. *Id.* §§ 1853, 1854. All fishery management plans and regulations implementing those plans must be consistent with the requirements of the Act. *Id*. § 1851(a). If a fishery management council fails to develop and submit a plan, NMFS may prepare a plan itself pursuant to the Secretarial amendment process. *See id.* § 1854(c)(1)(A). The Magnuson-Stevens Act allows judicial review under the APA for challenges to NMFS's approval and implementation of plans and amendments. *Alaska Factory Trawler Ass'n v. Baldridge*, 831 F.2d 1456, 1464 (9th Cir. 1987); 16 U.S.C. § 1855(f).

B. Management of the Cook Inlet salmon fishery

"Cook Inlet is one of the nation's most productive salmon fisheries." *UCIDA*

1, 837 F.3d at 1057. "Its salmon are anadromous, beginning their lives in Alaskan freshwater, migrating to the ocean, and returning to freshwater to spawn." *Id.* "Cook Inlet is a large inlet that connects the Pacific Ocean to major Alaskan rivers, and contains both state and federal waters." *UCIDA 2*, 2022 WL 2222879, at *2. "The Cook Inlet salmon fishery contains five species of Pacific salmon: Chinook, Silver, Sockeye, Pink, and Chum." *Id.* "Each species is comprised of a number of 'stocks,' which generally are delineated by the areas in which the salmon spawn or the time of year that they spawn." *Id.*

In *UCIDA 1*, this Court set forth a detailed factual and legislative background regarding the management of the Cook Inlet salmon fishery, which UCIDA does not repeat here. *See* 837 F.3d at 1057–61.

1. In *UCIDA 1*, this Court ruled that the Magnuson-Stevens Act unambiguously requires NMFS to create an FMP for the Cook Inlet salmon fishery.

In 2013, UCIDA filed suit challenging Amendment 12 and its implementing regulations. *Id.* at 1061. After the district court granted summary judgment to defendants, UCIDA appealed. *Id.* The primary question in *UCIDA 1* was whether NMFS "can exempt a fishery under its authority that requires conservation and management from an FMP because the agency is content with State management." *Id.* at 1057. This Court said no, "[t]he Magnuson-Stevens Act unambiguously requires [NMFS] to create an FMP for each fishery under its authority that requires conservation and management." *Id.* at 1065. This Court further admonished that

NMFS may not "shirk the statutory command that it 'shall' issue an FMP for each fishery within its jurisdiction requiring conservation and management" and cannot "wriggle out of this requirement by creating FMPs only for selected parts of those fisheries, excluding other areas that required conservation and management." *Id.* at 1063–64.

2. After *UCIDA 1*, NMFS created Amendment 14, which was invalidated by the district court in *UCIDA 2* for the same reason this Court struck down Amendment 12.

The history of Amendment 14 is recounted in detail in *UCIDA 2*. *See UCIDA 2*, 2022 WL 2222879, at *4–5. In short, the North Pacific Fishery Management Council (the "Council") gave up on trying to develop an FMP amendment addressing the Cook Inlet salmon fishery and acquiesced to a last-minute motion by the State of Alaska to simply close all commercial fishing in the EEZ portion of the fishery, giving total control of the management of the fishery to the State of Alaska. *See id.* at *4. NMFS approved the amendment as compliant with the Magnuson-Stevens Act. *Id*.

The district court ruled that Amendment 14 was arbitrary and capricious because it continued to delegate conservation and management to the State of Alaska in violation of the Magnuson-Stevens Act and this Court's ruling in *UCIDA 1*. *See id.* at *8. In so holding, the court explained that Amendment 14 "was crafted as a thinly veiled attempt to ensure an absence of federal management, which conflicts with the Ninth Circuit's holding in *UCIDA 1*." *Id.* The district court vacated

Amendment 14 and ordered NMFS to prepare a new FMP amendment by May 2024. *Id.* at *20.

3. After the Council failed to recommend an alternative, NMFS created Amendment 16 through the Secretarial amendment process.

The administrative proceedings following the district court's second remand order in *UCIDA 2* continued to go sideways. The Council reviewed a draft environmental assessment and again considered alternative management schemes. 5-ER-1005–06. But "the State [of Alaska] informed NMFS and the Council . . . that it would not accept a delegation of management authority for the Cook Inlet EEZ salmon fishery under the conditions that would be necessary to comply with the [Magnuson-Stevens Act]." Third Status Report to the Development of a Salmon FMP Amendment to Address Cook Inlet, *UCIDA 2*, No. 3:21-CV-00255-SLG, Dkt. 98-1 at 2 (D. Alaska Apr. 13, 2023). "[T]he Council acknowledged [that] delegating management to a State that has indicated it is unwilling to accept delegation is not viable under the [Magnuson-Stevens Act]." *Id.* Accordingly, "the Council was left with one viable management alternative[,][2] adopting a federal management regime for the Cook Inlet EEZ." *Id.* A motion was put forward to adopt this as the preferred alternative, and the motion failed for lack of a second. 5-ER-985. With no Council

[2] Alternative 1 (no action) and Alternative 4 (closure of the EEZ) were not viable because of the Ninth Circuit's and the district court's rulings.

amendment, NMFS had "no other viable choice" and set to "immediately work on a Secretarial amendment" for the Salmon FMP. *See id*.

Given this failed process, commercial fishermen went back to the district court for help. On May 15, 2023, the district court issued an Amended Remedy Order, explaining that "the actions taken by the Federal Defendants in the eleven months following the Court's Order . . . are nearly identical to those taken to implement the now-vacated Amendment 14." *UCIDA 2*, No. 3:21-CV-00255-SLG, Dkt. 103, at 9 (D. Alaska May 15, 2023). It explained that

> [g]iven the history of this litigation and the progress of the remand thus far, the Court concludes that stronger judicial intervention is necessary to ensure that the same processes do not yield the same result.

See id. The Court ordered the parties to attend collaboration meetings. *See id.*

The parties had two collaboration meetings in May 2023 and filed a joint status report regarding the meetings. *See* Joint Status Report, *UCIDA 2*, No. 3:21-CV-00255-SLG, Dkt. 104 (D. Alaska June 5, 2023). Plaintiffs explained in the status report that "[a]t this point, UCIDA believes that the parties are still very far apart on what constitutes a legal and effective FMP for the Cook Inlet salmon fishery."[3] *Id.* at 7. On April 30, 2024, NMFS published the final rule implementing Amendment 16. *See* 2-ER-222.

[3] UCIDA also submitted detailed comment letters at every available stage of this process. *See, e.g.*, 5-ER-989; 5-ER-1010; 4-ER-913; 5-ER-972.

4. Amendment 16 creates a new "fishery" and designates new federal "stocks of fish."

In its final rule, NMFS explained that "amendment 16 will create a new fishery in Cook Inlet, which will occur entirely within Federal waters." 2-ER-230. NMFS defined that "fishery" as "*all harvest* of co-occurring salmon stocks in the Cook Inlet EEZ." *Id.* (emphasis added). NMFS explained:

> Defining the fishery as geographically constrained to the Cook Inlet EEZ is consistent with the Magnuson-Stevens Act. Section 3 of the Magnuson-Stevens Act broadly defines a "fishery" as one or more stocks of fish that can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; and any fishing for such stocks.
>
> NMFS has determined that salmon stocks in the Cook Inlet EEZ can be treated as a unit for purposes of conservation and management because they all fall within the geographical management area under NMFS's jurisdiction, the best scientific information available supports NMFS's determination that the EEZ has unique ecological characteristics due to the mixed stock nature of fishing in the EEZ, and fishing for these stocks in the EEZ has distinct technical and economic characteristics that distinguish it from State water fisheries as discussed in the response to *Comment 55*.

2-ER-229. NMFS defined the relevant "stocks of fish" as only those portions of each stock "harvested in the Cook Inlet EEZ Area," i.e., fish caught in federal waters. 2-ER-320–21.

5. Amendment 16 sets MSY using the biological definition of "stocks," but sets optimum yield using NMFS's new federal-waters-only definition of "stocks."

Amendment 16 sets maximum sustainable yield as either (a) the number of surplus fish over the State of Alaska's escapement goals or (b) the historical harvest that has been allowed by the state. NMFS determined that MSY applies to *all* fishing for stocks in state and federal waters. 2-ER-223 ("MSY is specified for salmon stocks and stock complexes in Cook Inlet"); 2-ER-232. NMFS then determined that optimum yield would be a range that includes all historical catches that the state has allowed in *federal waters only*, between 1999 and 2021, and that all other surplus fish are allocated to the state to manage. *See* 2-ER-223. This was a change from Amendment 14, where NMFS claimed that "the OY for the Cook Inlet salmon fishery is set to 'the level of catch from all salmon fisheries occurring within Cook Inlet (State and Federal Water catch) . . ..'" *UCIDA 2*, 2022 WL 2222879, at *9 (ellipsis in original; citation omitted).

6. A separate Secretarial rulemaking process resulted in harvest specifications for the 2024 season.

On April 12, 2024, NMFS published proposed harvest specifications "for the salmon fishery of the Cook Inlet exclusive economic zone (EEZ) Area." 3-ER-340. NMFS explained that the "proposed harvest specifications include catch limits that NMFS could implement . . . assuming the Secretary of Commerce . . . approves amendment 16 to the Salmon FMP." 3-ER-341. NMFS explained that if Amendment 16 is approved, it would "specify the annual [total allowable catch

("TAC")] amounts for commercial fishing for each salmon species after accounting for projected recreational fishing removals." *Id.*

The Council and the Advisory Panel ("AP") had already reviewed these proposed TAC amounts at their February 2024 meeting. *See* 3-ER-352; 3-ER-350. The AP recommended a TAC of 1,139,235 salmon. *See* 3-ER-348. NMFS reduced the AP's TAC by 400,805 sockeye and proposed a total of 738,440 to the Council. *See* 3-ER-345. (By comparison, historical annual harvests in Cook Inlet have routinely ranged from four to nine million fish. 4-ER-914.) The motion failed, and NMFS proceeded with a second Secretarial amendment process to establish its proposed TAC. 3-ER-342. On June 18, 2024, NMFS published the final rule establishing its proposed TAC for salmon fishing in federal waters in 2024.

7. The district court upholds Amendment 16 and the harvest specifications.

UCIDA filed its complaint and petition for review regarding Amendment 16 on May 29, 2024, 2-ER-90, and its complaint and petition for review regarding the resulting harvest specifications on July 16, 2024, 2-ER-55. On September 11, 2024, the district court granted UCIDA's motion to consolidate the two cases for all purposes.

On July 1, 2025, the district court entered its Decision and Order upholding Amendment 16. 1-ER-3. The court rejected UCIDA's arguments that Amendment 16 failed to comport with the Magnuson-Stevens Act's definition of "fishery," failed

to set optimum yield as required by the Magnuson-Stevens Act, and violated National Standards 1, 2, 3, and 10. *See* 1-ER-17–34. On August 28, 2025, UCIDA filed this appeal. 5-ER-1014.

VI. SUMMARY OF THE ARGUMENT

1. The Magnuson-Stevens Act unambiguously requires NMFS to create an FMP for the "fishery," which, here, is properly composed of the "stocks of fish" that require conservation and management in Cook Inlet. The Act defines a "fishery" to include "stocks of fish" and "any fishing for such stocks." Until Amendment 16, there was no dispute that the stocks of fish in Cook Inlet that require conservation and management are the biological stocks of salmon throughout their range. But Amendment 16 creates unprecedented, new "stocks of fish" consisting only of those Cook Inlet salmon that are harvested in the EEZ. Amendment 16 then defines the "fishery" comprised of these "stocks" as limited to EEZ harvest. By employing these definitional acrobatics, NMFS again avoids its obligation to create conservation and management measures for "any fishing" for the biological salmon stocks in Cook Inlet as required by the Act. Amendment 16 arbitrarily divides Cook Inlet salmon stocks based on which side of a jurisdictional boundary fish are harvested. Any fish that are not harvested in the EEZ are left to the State of Alaska to conserve and manage. At bottom, Amendment 16 is not an FMP amendment for the "fishery," a defined term, and thus it violates *UCIDA 1* and the Magnuson-

Stevens Act, and is arbitrary, capricious, and contrary to law.

2. Optimum yield is a critical component for managing a "fishery." But NMFS failed to even set OY for the "fishery," instead establishing OY only for EEZ harvest. In addition, NMFS's OY metric is not based on maximum sustained yield as required, which NMFS established for the Cook Inlet salmon stocks as a whole. Because NMFS did not set OY for the "fishery," it cannot comply with National Standard 1's directive to achieve OY for the "fishery."

3. In Amendment 16, NMFS redefined the salmon stocks that require conservation and management as only that portion of each stock harvested in the EEZ. But these definitions are contrary to the stock definitions recommended by NMFS's own scientific and statistical committee, which NMFS stated were the best scientific information available. NMFS's unexplained refusal to use the best scientific information available violates National Standard 2.

4. National Standard 3 requires NMFS to manage stocks of fish as units throughout their range to the extent practicable. NMFS's excuse that it can avoid this requirement entirely because of the limits on its jurisdiction is not credible. NMFS must set management measures for the "fishery" as the Act requires and then, separately, explain what "state action is necessary to implement measures within state waters to achieve FMP objectives." 50 C.F.R. § 600.320(e)(3). The Magnuson-Stevens Act and NMFS's own guidelines require it to prevent

jurisdictional boundaries from becoming a detriment to the conservation and management of anadromous salmon.

VII. ARGUMENT

A. Standard of Review

The district court's decision on summary judgment is reviewed *de novo*. *Metcalf v. Daley*, 214 F.3d 1135, 1141 (9th Cir. 2000). The Court reviews challenges to a federal agency's compliance with the Magnuson-Stevens Act under the APA's arbitrary and capricious standard. The APA directs a reviewing court to set aside agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

The Court is to inquire "'whether the agency "considered the relevant factors and articulated a rational connection between the facts found and the choice[s] made."'" *Pac. Coast Fed'n of Fishermen's Ass'n v. Nat'l Marine Fisheries Serv.*, 265 F.3d 1028, 1034 (9th Cir. 2001) (citation omitted). In making this inquiry, the Court "must engage in a careful, searching review to ensure that the agency has made a rational analysis and decision on the record before it." *Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, 524 F.3d 917, 927 (9th Cir. 2008). An agency action is arbitrary and capricious if the agency "relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or

the product of agency expertise." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *Ariz. Cattle Growers' Ass'n v. Salazar*, 606 F.3d 1160, 1163 (9th Cir. 2010).

B. Amendment 16's definitions of the "fishery" and the "stocks of fish" violate the Magnuson-Stevens Act because they are limited to only EEZ harvest.

In *UCIDA 1*, the Ninth Circuit said, "[t]he [Act] unambiguously requires [NMFS] to create an FMP for each ***fishery*** under its authority that requires conservation and management." 837 F.3d at 1065 (emphasis added). This is a broad obligation, the scope of which is dictated by the definition of the word "fishery." In Amendment 16, NMFS violated the Magnuson-Stevens Act by adopting an unlawfully narrow definition of "fishery," which it defined as "*all harvest* of co-occurring salmon stocks in the Cook Inlet EEZ." 2-ER-232 (emphasis added). Its "fishery" definition, in turn, was based on new "stock" definitions that cut biological stocks up based on which side of a jurisdictional boundary the fish are harvested. *See* 2-ER-320. These definitions defy the plain language and intent of the Act, and are arbitrary, capricious, and contrary to law.[4]

[4] In its Decision and Order, the district court did not accurately state the issue. It asserted that "Plaintiffs maintain that NMFS's FMP violates the [Act] because the FMP defines fishery to include only those salmon in the federal waters in Cook Inlet," *see* 1-ER-17, but this is not UCIDA's complaint. The issue is that NMFS defined the fishery as only fish *harvested* in the EEZ. *See* 2-ER-320. This distinction is important. Had NMFS defined the fishery "to include only those salmon in the federal waters in Cook Inlet," as the district court claimed, then NMFS's FMP would have been required to cover "any fishing for such stocks,"

1. "Fishery" is a defined term that establishes the scope of an FMP amendment.

The Magnuson-Stevens Act defines "fishery" as: "(A) one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; and (B) any fishing for such stocks." 16 U.S.C. § 1802(13). "Fishing" is all "catching, taking, or harvesting of fish," as well as "attempted catching, taking, or harvesting of fish," or "any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish." *See id.* § 1802(16). And a "stock of fish" is "a species, subspecies, geographical grouping, or other category of fish capable of management as a unit." *Id.* § 1802(42). Simply put, a "fishery" is a "stock[] of fish" *and* any "fishing" on that stock. *Id.* § 1802(13).

There is some judgment baked into identifying the stocks of fish that can be managed "as a unit," but once the "stocks" are identified, the Act plainly extends the scope of a "fishery" to "any fishing" (catching, taking, harvesting, or attempting to do so) on the stocks irrespective of where that fishing takes place. An FMP amendment for a "fishery" must, therefore, include conservation and management measures for "any fishing for such stocks" that comprise that fishery. *Id.*

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including fishing taking place in state waters. 16 U.S.C. § 1802(13)(B). By defining the "fishery" as only "all harvest" in the EEZ and the stocks as only the portions of each stock "harvested" in the EEZ, NMFS avoided this obligation.

§ 1802(13)(B).

Congress' definition of "fishery" is inherently logical in the context of the Act's purpose. The Act seeks "to provide for the preparation and implementation, in accordance with national standards, of fishery management plans which will achieve and maintain, on a continuing basis, the optimum yield from each fishery." *Id.* § 1801(b)(4). NMFS guidelines explain that "[t]he geographic scope of the fishery, for planning purposes, should cover the *entire range of the stocks(s) of fish*, and not be overly constrained by political boundaries." 50 C.F.R. § 600.320(b) (emphasis added). And as particularly relevant here, an anadromous stock, like salmon, cannot be conserved and managed in accordance with national standards unless all harvest of that stock, regardless of where it occurs, is considered.

Indeed, special concerns for anadromous stocks are reflected throughout the text and history of the Act. As Senator Ted Stevens explained, "species, such as salmon, go beyond the existing limits of one jurisdiction into another, and, as a matter of fact, may go beyond into the third area of international jurisdiction. As a practical matter, to the extent possible, we will have uniform and consistent management." 122 Cong. Rec. 119 (1976) (statement of Sen. Stevens). The Act explains that "[t]he fish off the coasts of the United States . . . and the anadromous species," like salmon, "which spawn in United States rivers or estuaries, constitute valuable and renewable natural resources." 16 U.S.C. § 1801(a)(1). Congress

envisioned a "national program for the conservation and management" of these "fishery resources" to ensure conservation and "to realize the full potential of the Nation's fishery resources." *Id.* § 1801(a)(6). That potential is realized through "the preparation and implementation, in accordance with national standards, of fishery management plans which will achieve and maintain, on a continuing basis, the optimum yield from each fishery." *Id.* § 1801(b)(4).

This issue was so important that Congress even gave NMFS the exclusive *extra-territorial* jurisdiction over anadromous stocks "throughout the migratory range" of anadromous species, even beyond the EEZ into international waters. *Id.* § 1811(b). To that effect, Congress provided that when issuing a "fishery management plan" for a "fishery," that NMFS could even require permits for fishing "beyond" the EEZ, if necessary. *Id.* § 1853(b)(1).

Defining the "fishery" correctly is therefore the lynchpin to a proper FMP amendment. The "Required Provisions" of an FMP expressly apply to a "fishery," including, among many others, the obligation to provide "conservation and management measures" for "the fishery," *id*. § 1853(a)(1); the obligation to specify "the maximum sustainable yield and optimum yield from, the fishery," *id*. § 1853(a)(3); to evaluate the impacts to and the "safety of participants in the fishery," *id*. § 1853(a)(9)(C); specify criteria for when the "fishery" is overfished, *id*. § 1853(a)(10); and to set an annual catch limit ("ACL") to prevent overfishing "in

the fishery." *Id.* § 1853(a)(15).

2. The "stocks of fish" are the building blocks of a "fishery." In Amendment 16, NMFS adopted new and improper stock definitions for its "fishery."

To start, there can be no dispute that, biologically, Cook Inlet salmon stocks "are anadromous, beginning their lives in Alaskan freshwater, migrating to the ocean, and returning to freshwater to spawn." *UCIDA 1*, 837 F.3d at 1057. Years ago, NMFS determined that these biological stocks require "conservation and management," and that remains true today. *Id.* at 1062 ("The government concedes that Cook Inlet is a fishery under its authority that requires conservation and management."); *see* 5-ER-942 ("salmon are harvested in both State and Federal waters but originate from the same stocks").

For the first time ever in Amendment 16, NMFS defined the Cook Inlet salmon stocks as only that portion of each biological stock that is "harvested in the Cook Inlet EEZ Area." 2-ER-320; 3-ER-491. In briefing below, NMFS justified this new approach by claiming that Cook Inlet salmon in the EEZ are merely "biologically related to the stocks in the State-managed fishery." Federal Defendants' Response Brief, Case No. 3:24-cv-116-SLG, Dkt. 40 at 35 (Dec. 20, 2024). But there are no "biologically related" EEZ fish and state-waters fish. Cook Inlet salmon passing through the EEZ are the *same fish* that are born in and migrate back to state waters. But by cabining "stocks" to only those fish that are harvested in the EEZ, NMFS ensured that the Magnuson-Stevens Act's national standards

would *not* apply to those same fish before they are harvested or to fish from the same stock that swim through the EEZ and go unharvested. This defies the plain language and intent of the Magnuson-Stevens Act, particularly as applied to anadromous stocks, and is arbitrary, capricious, and contrary to law.

Moreover, prior to the final rule, there was no debate about what constitutes the stocks of salmon in Cook Inlet that require conservation and management. For example, "the 2021 Salmon FMP [] states that '[t]he Cook Inlet salmon fishery includes the stocks of salmon harvested by all sectors within State and federal waters of Cook Inlet.'" *UCIDA 2*, 2022 WL 2222879, at *8 (citation omitted). As recently as the proposed rule, NMFS acknowledged that "the jurisdictional issues in Cook Inlet are challenging because salmon are harvested in both State and Federal waters *but originate from the same stocks*[.]"[5] 5-ER-942 (emphasis added). It was only in the final rule that NMFS declared the existence of new Cook Inlet salmon "stocks"

[5] The proposed rule consistently refers to Cook Inlet salmon stocks as occurring in both federal and state waters. *See* 5-ER-943 ("Participants were universally concerned about the health of Cook Inlet salmon stocks."); 5-ER-945 ("harvest of all Cook Inlet stocks also occurs in State marine and fresh waters"); 5-ER-947 (describing how stocks mix together and move up Cook Inlet and "into State waters to reach their spawning streams"); 5-ER-948 (discussing fishing "for all Cook Inlet sockeye salmon and coho stocks"); 5-ER-953 ("Given the significant degree of interaction among salmon fisheries in Cook Inlet, management of salmon stocks as a unit or in close coordination throughout all Cook Inlet salmon fisheries is particularly important."). These are the stocks that require conservation and management.

consisting only of fish harvested in the EEZ. *Compare* 5-ER-968 (draft Environmental Assessment ("EA") Sept. 2023—paragraph under "*New draft FMP language for the Cook Inlet EEZ*") *with* 3-ER-491 (final EA Feb. 2024—bullets under "*New draft FMP language for Cook Inlet EEZ*"); *see* 2-ER-229; *see also* 2-ER-320–21.

NMFS changed its position on this critical issue without any acknowledgment or analysis. Such a change only "complies with the APA if the agency (1) displays 'awareness that it is changing position,' (2) shows that 'the new policy is permissible under the statute,' (3) 'believes' the new policy is better, and (4) provides 'good reasons' for the new policy, which, if the 'new policy rests upon factual findings that contradict those which underlay its prior policy,' must include 'a reasoned explanation ... for disregarding facts and circumstances that underlay or were engendered by the prior policy.'" *Organized Vill. of Kake v. U.S. Dep't of Agric.*, 795 F.3d 956, 966 (9th Cir. 2015) (quoting *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515–16 (2009)). NMFS satisfied none of these requirements when it decided for the first time, in the final rule, that Cook Inlet salmon stocks that require conservation and management consist only of the portion of those stocks harvested in federal waters. This failure also warrants reversal.

In addition, NMFS's new stock definitions are contradicted by the stock definitions used in its own record, which are the biological stocks rather than only

the portion of those stocks harvested in the EEZ. *United States Sugar Corp. v. Env't Prot. Agency*, 830 F.3d 579, 650 (D.C. Cir. 2016) ("unexplained inconsistencies" render agency action arbitrary and capricious). The Final Environmental Assessment ("FEA") analyzed the full biological Cook Inlet salmon stocks and all harvest on those stocks. 3-ER-382 ("The EA provides the best available information on the status of the salmon stocks in Cook Inlet"); *id*. ("Assessment is done at the stock or stock complex level and takes into consideration total catch of salmon from all fisheries."); 3-ER-497 ("Because salmon are exploited in multiple fisheries, and because multiple salmon stocks may be exploited within the Federal waters of Cook Inlet, it is necessary to determine fishery specific contribution to the total exploitation rate to determine the actions necessary to end and prevent future overfishing."); 3-ER-554 ("However, even with conservative management, because harvests in the EEZ (and State waters) occur before spawning escapements are fully assessed, it is still possible that these harvests could result in the spawning escapement goals not being achieved for some stocks during some years[.]"). The FEA explains that a closure in the Cook Inlet EEZ salmon fishery may occur for a given fishing year if "[o]pening the Cook Inlet EEZ salmon fishery would likely result in overfishing for one or more stocks." 3-ER-498 (emphasis added). The underlined language plainly refers to the full stocks because it is logically impossible to determine that a stock is overfished if that stock is defined as fish *harvested* in the

EEZ (in which case 100% of the stock is harvested every year if EEZ fishing occurs). Even more absurdly, a closure of the Cook Inlet EEZ salmon fishery in a given year would mean that no fish were harvested in the EEZ, which, in turn, would mean that the stock (defined as only the fish *harvested* in the EEZ from a biological stock, *see* 2-ER-320–21) would never have existed for that year.

The FMP also analyzes Cook Inlet salmon stocks as a whole even though it claims that it is only looking at stocks composed of EEZ harvest. It explains that "NMFS and the Council will work with the State to coordinate management of State and Federal salmon fisheries harvesting *the same stocks* to the extent practicable to avoid overfishing and minimize disruption to all Cook Inlet salmon harvesters." 2-ER-318 (emphasis added). The FMP goes on to say that "[f]or salmon stocks harvested in the Cook Inlet EEZ Area, MSY is defined at the stock or stock complex level." 2-ER-319. "[T]his definition of MSY does not subdivide between State and EEZ waters in Cook Inlet." *Id*. There are even statements in the final rule that contradict NMFS's new definition.[6]

[6] *See, e.g.*, 2-ER-230 ("total harvest of Cook Inlet salmon stocks will continue to occur predominately within State waters"); 2-ER-232 (for "salmon stocks harvested in the Cook Inlet EEZ Area, MSY is defined at the stock or stock complex level"); 2-ER-239 ("Over time, NMFS will work to expand the scientific information available to manage Cook Inlet salmon stocks."); 2-ER-242 ("NMFS agrees that it is prudent for conservation of Cook Inlet salmon stocks to reduce the number of commercial fishery openings in the Cook Inlet EEZ Area."); 2-ER-254–55 ("NMFS

Finally, NMFS's new stock definitions also render key Magnuson-Stevens Act provisions irrelevant. If NMFS can define a "stock" as only fish *that have already been harvested* in a specific location (i.e., those Cook Inlet salmon harvested in the EEZ), then "any fishing for such stocks" has no meaning or purpose because there can be no fishing for fish that have already been caught. *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) ("It is 'a cardinal principle of statutory construction' that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.'" (quoting *Duncan v. Walker*, 533 U.S. 167, 174, (2001)). Nor, under NMFS's definition, does the Act's definition of "migratory range" have any meaning as there is no "maximum area at a given time of the year within which fish of [the] anadromous species or stock . . . can be expected to be found." 16 U.S.C. § 1802(29). By NMFS's definition, fish only become part of the "stock" at the time they are netted and pulled out of the water and therefore have *no* migratory range.

Finally, NMFS's own guidelines condemn its jurisdictionally constrained stock definitions. 2-ER-229; *see also* 2-ER-293 (map of the EEZ area). Those guidelines explain that "[t]he geographic scope of the fishery, for planning purposes, should cover the entire range of the stocks(s) of fish, and not be overly constrained

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will manage salmon fishing in the Cook Inlet EEZ Area using the best available science to achieve OY and prevent overfishing on all Cook Inlet salmon stocks").

by political boundaries." 50 C.F.R. § 600.320(b). In other words, a *jurisdictional* grouping cannot substitute for a *geographic* grouping because those terms mean distinctly different things. *See Oregon Trollers Ass'n v. Gutierrez*, 452 F.3d 1104, 1120–21 (9th Cir. 2006) (discussing the vital importance of preventing "jurisdictional differences" from adversely affecting conservation practices when "fish live in the waters of more than one jurisdiction" and explaining that geographic scope of FMP should include stocks throughout their range).

In sum, NMFS's last-minute change (from the proposed rule to the final rule) to the definitions of the Cook Inlet salmon stocks that need conservation and management is arbitrary and capricious, contrary to the record, and contrary to the Magnuson-Stevens Act.

3. The scope of an FMP Amendment for Cook Inlet must include "any fishing for such stocks," not just harvest in the EEZ.

The FMP amendment must address "any fishing" for the *full* Cook Inlet salmon stocks. NMFS abdicated this responsibility by redefining the Cook Inlet salmon stocks as only the portion of those stocks harvested in the EEZ, then it used those artificially narrow stock definitions to create a "fishery" that is limited to "*all harvest* of co-occurring salmon stocks in the Cook Inlet EEZ."[7] 2-ER-232 (emphasis

[7] If NMFS had appropriately defined the stocks biologically as they have always been defined, then NMFS's "fishery" would be required to include "any fishing for such stocks," which necessarily includes state-water fishing.

added). But NMFS did not even apply its stock or fishery definitions consistently. For example, NMFS defined MSY in the final rule at the "stock or stock complex level," explaining that "[b]ecause MSY must be defined in terms of the stocks or stock complexes, *this definition of MSY does not subdivide between State and EEZ waters in Cook Inlet*." 2-ER-232 (emphasis added). This makes sense and is consistent with the statute. Salmon that are born in the Kenai River do not become different "stocks" of fish when their anadromous lifecycle migration takes them from the river, to the ocean, and then back to the river again.

Despite NMFS's concession when setting MSY, it artificially limited the scope of Amendment 16's other conservation and management measures to "harvest[] by the commercial and recreation fishing sectors *within the Cook Inlet EEZ Area*." 2-ER-229 (emphasis added). In defense of this position, NMFS asserted that nothing supports "that a Federal FMP must cover fishing that occurs in State waters if a harvested stock occurs in both State and Federal waters." *Id.* But NMFS is flatly incorrect. Under the plain language of the Magnuson-Stevens Act, the "fishery" consists of "*any* fishing for such stocks." 16 U.S.C. § 1802(13)(B) (emphasis added). NMFS cannot invent new definitions for the "stocks" that require conservation and management and a new "fishery" definition to avoid its obligation to account for fishing occurring outside the EEZ.

Ultimately, this is just another "thinly veiled attempt" by NMFS to defer to

the state by defining away its responsibility for fishing in state waters. Congress was clear that salmon stocks are an important national resource, and that these fishery resources must be managed "in accordance with national standards." 16 U.S.C. § 1801(b)(4). "The Act makes plain that federal fisheries are to be governed by federal rules in the national interest, not managed by a state based on parochial concerns." *UCIDA 1*, 837 F.3d at 1063. By narrowly constraining the "stocks" and the "fishery" to only fish that have been harvested in federal waters, NMFS fails to include the statutorily required provisions in the FMP that Congress included to ensure that these important stocks of fish are managed in the national interest.

4. Nothing about the Act's obligation to produce an FMP for a "fishery" requires NMFS to exceed its jurisdictional authority and manage fishing on stocks in state waters.

NMFS argued below, and will likely argue on appeal, that considering Cook Inlet salmon stocks as a whole and giving the word "fishery" its plain statutory meaning to include "any fishing" for those stocks would infringe on the State of Alaska's rights to manage harvest in state waters. But what NMFS sees as lamentable, Congress said was essential: "federal fisheries are to be governed by federal rules in the national interest, not managed by a state based on parochial concerns." *UCIDA 1*, 837 F.3d at 1063.

Besides, NMFS's fears are overstated. Defining the "fishery" to include "all fishing" on Cook Inlet salmon stocks does not mean that NMFS must usurp state management. It means only that NMFS must set the standards necessary to ensure

conservation and management of the stocks, then work cooperatively with the state to find ways to achieve those standards. Nothing about NMFS's obligation to establish conservation and management measures for "any fishing" on stocks of fish covered by an FMP (including fishing occurring in state waters) requires NMFS to exceed its jurisdictional authority and automatically supersede state management in state waters. *See* 2-ER-229–30.

In fact, Congress expected that NMFS and the states would collaborate under FMPs that address federal and state waters, *see* H.R. Rep. No. 94-445, at 73 (1976), *as reprinted in* 1976 U.S.C.C.A.N. 593, 641 ("The Committee is most hopeful that appropriate action will be taken by the States to cooperate with the Secretary so that Federal assertion of jurisdiction in such instances will not be necessary."), and that states have primary authority under the Magnuson-Stevens Act to manage fishing occurring within their territorial waters. 16 U.S.C. § 1856(a)(1) ("Except as provided in subsection (b), nothing in this chapter shall be construed as extending or diminishing the jurisdiction or authority of any State within its boundaries."). This is the rule, but Congress also created an exception:

> **Exception [¶] (1)** If the Secretary finds, after notice and an opportunity for a hearing . . ., that--
>
> **(A)** the fishing in a fishery, which is covered by a fishery management plan implemented under this chapter, is engaged in predominately within the exclusive economic zone and beyond such zone; and
>
> **(B)** any State has taken any action, or omitted to take any

> action, the results of which will substantially and adversely affect the carrying out of such fishery management plan;
>
> the Secretary shall promptly notify such State and the appropriate Council of such finding and of his intention to regulate the applicable fishery within the boundaries of such State (other than its internal waters), pursuant to such fishery management plan and the regulations promulgated to implement such plan.

16 U.S.C. § 1856(b). This provision shows that Congress anticipated that some fishing in "a fishery, which is covered by [an FMP]" may occur outside federal waters and provided a process for addressing state actions that "substantially and adversely affect the carrying out of such [FMP]."

Indeed, numerous cases confirm the non-controversial fact that a state has authority to manage fishing in its territorial waters under normal circumstances, even in a manner contrary to an FMP—to a point. *Guindon v. Pritzker*, 31 F. Supp. 3d 169, 176 (D.D.C. 2014) ("It also bears noting that states manage their own waters, and do not always conform to federal rules . . . . State regulations thus may affect the federal management scheme."); *Fishing Rts. All., Inc. v. Pritzker*, 247 F. Supp. 3d 1268, 1273–74 (M.D. Fla. 2017) ("the federal season length reduction has been counteracted by non-conforming state regulations"); *Coastal Conservation Ass'n v. U.S. Dep't of Com.*, 846 F.3d 99, 104 (5th Cir. 2017) ("While the Gulf Council has shortened the fishing season in federal waters, the Gulf states have responded by loosening restrictions in state waters[.]"). This is precisely why NMFS itself created

guidelines requiring an FMP to describe the "[m]anagement activities and habitat programs of adjacent states and their effects on the FMP's objectives and management measures" and, "[w]here state action is necessary to implement measures within state waters to achieve FMP objectives," "identify what state action is necessary, discuss the consequences of state inaction or contrary action, and make appropriate recommendations." 50 C.F.R. § 600.320(e)(3).

The Pacific Fishery Management Council's Salmon FMP ("West Coast FMP") provides an apt example of how NMFS is supposed to address anadromous salmon fisheries under the Magnuson-Stevens Act.[8] There, NMFS defined the "fishery" to include anadromous stocks throughout their range. *See* West Coast FMP at Table 1-1, pp. 7–13 ("Stocks and Complexes in the Fishery"). The scope of that FMP covers "the coastwide aggregate of natural and hatchery salmon species that is contacted by salmon fisheries in the [EEZ] off the coasts of Washington, Oregon, and California." *Id.* at 5. NMFS established an OY for the whole "fishery,"

[8] NMFS points to this as an example of an FMP that "covers salmon stocks caught in the EEZ off the coasts of Washington, Oregon, and California." 2-ER-230. The West Coast FMP is available on the Pacific Fishery Management Council's website: Salmon fishery management plan and amendments, Fishery Management Plan (2024), https://www.pcouncil.org/fishery-management-plan-and-amendments-3/, or directly at this link: Pacific Coast Salmon Fishery Management Plan (Feb. 2024), https://www.pcouncil.org/documents/2022/12/pacific-coast-salmon-fmp.pdf/; *see also Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998 (9th Cir. 2010) (explaining that it is appropriate to take judicial notice of information made publicly available by government entities on their websites).

defined as:

> The optimum yield to be achieved for species covered by this plan is the total salmon catch and mortality (expressed in numbers of fish) resulting from fisheries within the EEZ adjacent to the States of Washington, Oregon, and California, *and in the waters of those states (including internal waters), and Idaho*, that, to the greatest practical extent within pertinent legal constraints, fulfill the plan's conservation and harvest objectives.

See id. § 2.2, p. 13 (emphasis added). Moreover, the West Coast FMP establishes status determination criteria, conservation objectives, and other conservation and management measures for the stocks *throughout their range*, by appropriately accounting for "any fishing for such stocks." *See id.* at pp. 15–20 (status determination criteria that take into account all fishing on the stocks); Table 3-1, pp. 21–27 (conservation objectives for the "stocks in the fishery"); *id.* at pp. 28–41 (harvest controls for any fishing on such stocks). In sharp contrast, Amendment 16 cabins these definitions, criteria, and measures to EEZ harvest only. *See* 2-ER-320 (stocks defined as only EEZ harvest of each stock); 2-ER-322 (status determination criteria for stocks as defined); 2-ER-319–20 (OY for just EEZ harvest); 2-ER-238 ("OFL and ABC are specified for each stock or stock complex," defined at 2-ER-320 as only EEZ harvest).

Additionally, the West Coast FMP establishes harvest measures without distinction for EEZ and state territorial waters. *See* West Coast FMP at pp. 62–63. It explains that "[t]he Council assumes these ocean harvest controls also apply to

territorial seas or any other areas in state waters specifically designated in the annual regulations." *Id.* at 62. The West Coast FMP contemplates in-season adjustments to quotas for "[a]ny catch that take place in fisheries within territorial waters that are inconsistent with federal regulations in the EEZ." *See id.* at p. 66; *see also* 50 C.F.R. § 660.408(j) ("Quotas (by species, including fish caught 0–3 nm seaward of Washington, Oregon, and California)."). It also explains that "[c]losures will be coordinated with the states so that the effective time will be the same for EEZ and state waters." West Coast FMP at p. 79. In short, in the West Coast FMP, NMFS appropriately defined the "fishery," established conservation and management measures for the "fishery," and recognized that adjacent states maintain default authority over their territorial waters (subject to 16 U.S.C. § 1856(b)).

The Ninth Circuit approved of the West Coast FMP's treatment of stocks throughout their ranges in *Oregon Trollers* after it reiterated that the "'geographic scope of the fishery, for planning purposes, should cover the entire range of the stock[s] of fish, and not be overly constrained by political boundaries.'" 452 F.3d at 1121 (quoting 50 C.F.R. § 600.320(b)). "By defining the Klamath Management Zone to reach from Humbug Mountain, Oregon, to Horse Mountain, California, the [West Coast FMP] takes into account the migration pattern of the Klamath chinook from the Klamath River to the ocean, and their growth to maturity off the coasts of Oregon and California." *Id.* It further explained that "[s]almon fisheries throughout

this range, off the coasts of both states, are managed in the same manner to ensure that 35,000 natural spawning Klamath chinook escape." *Id.*

In sum, the Act requires an FMP for stocks occurring in both state and federal waters to set standards and metrics for "any fishing for such stocks." That is precisely what NMFS did for the salmon stocks covered by the West Coast FMP. NMFS's contrary jurisdictional justifications for its constrained stocks and fishery here are inapt and should be rejected.

C. NMFS failed to set OY for the "fishery," it did not base OY on MSY, and it deferred to the State of Alaska in violation of National Standard 1 and *UCIDA 1*.

The Magnuson-Stevens Act requires that "[a]ny [FMP] which is prepared by any Council, or by the Secretary, with respect to any fishery, shall . . . assess and specify the present and probable future condition of, and the maximum sustainable yield and ***optimum yield from, the fishery***, and include a summary of the information utilized in making such specification[.]" 16 U.S.C. § 1853(a)(3) (emphasis added). The Act directs that:

> The term "optimum", with respect to the yield from a fishery, means the amount of fish which—
>
> (A) will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems;
>
> (B) is prescribed on the basis of the maximum sustainable yield from the fishery, as reduced by any relevant social, economic, or ecological factor; and
>
> (C) in the case of an overfished fishery, provides for

> rebuilding to a level consistent with producing the maximum sustainable yield in such fishery.

Id. § 1802(33). Under National Standard 1, an FMP's "[c]onservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each *fishery* for the United States fishing industry." *Id.* § 1851(a)(1) (emphasis added).

In Amendment 16, NMFS establishes "the OY range for the Cook Inlet EEZ salmon fishery . . . as the range between the average of the three lowest years of total estimated EEZ salmon harvest and the three highest years of total estimated EEZ salmon harvest from 1999 to 2021." 2-ER-320. This definition of OY violates the Magnuson-Stevens Act for at least three reasons.

First, the FMP must set and specify the OY from the "fishery," a defined term. 16 U.S.C. § 1853(a)(3). Amendment 16 only sets OY for NMFS's artificially defined "Cook Inlet EEZ salmon fishery," which only includes harvest in the EEZ area. 2-ER-320; *see also* 2-ER-232; 3-ER-503–504. The "fishery" cannot be limited to only *some* of the fishing that occurs on a biological "stock" that requires conservation and management, as NMFS would have it. The "fishery" consists of "any fishing" on the stock that requires conservation and management. Thus, there is no "EEZ fishery" and OY cannot be "better defined" for that fantasy fishery. *See* 2-ER-232. NMFS manipulated the definition of "fishery" to wriggle out of its obligation to set OY for *any* fishing on the biological Cook Inlet salmon stocks,

whether such fishing is in state or federal waters

NMFS tried to justify its narrow OY metric in the final rule by explaining that because "OY may be established at the stock, stock complex, or fishery level," and because "the fishery is properly defined as all harvest of co-occurring salmon stocks in the Cook Inlet EEZ," then "OY is *better defined* for the Cook Inlet EEZ fishery rather than at the stock or stock complex level." 2-ER-232 (emphasis added). But NMFS has it backwards. A "fishery" is not a subset of a "stock" or "stock complex." Instead, a stock or stock complex is the building block of a fishery, which is *broader*, not *narrower*.[9] This is plain from the definition of a "fishery," *see* 16 U.S.C. § 1802(13)(A) ("one or more stocks of fish which can be treated as a unit"), from NMFS's guidelines, *see* 50 C.F.R. § 600.305(c) (explaining how to group stocks together into a fishery); *id.* § 600.310(d)–(e)(3) (discussing the stocks or stock complexes that comprise a fishery and how OY may be set at the "stock, stock complex, or fishery level"); *id.* § 600.320(b) (explaining that the geographic scope of a fishery should cover the entire range of "stock[s] of fish"), and from the West Coast FMP, *see* West Coast FMP § 2.1, p. 13 (defining OY at the fishery level).

Second, NMFS's measure of OY is not based on MSY, as the Act requires. OY must be prescribed "on the basis of the maximum sustainable yield from the

[9] The district court erred when it failed to appreciate this important distinction. *See* 1-ER-25; *see also* 50 C.F.R. § 600.305(c)(5) (discussing grouping stocks together into complexes).

fishery." 16 U.S.C. § 1802(33). In Amendment 16, "MSY is specified for salmon stocks and stock complexes in Cook Inlet." 2-ER-223. OY must therefore be based on this same "fishery" that includes stocks and stock complexes in Cook Inlet. 16 U.S.C. § 1802(33) (OY must be "prescribed on the basis of the maximum sustainable yield from the fishery"). But for OY, NMFS arbitrarily cut up these salmon stocks and stock complexes based on a jurisdictional boundary. Since MSY was set at the stock or stock complex level, *see* 2-ER-319, NMFS could either define the yield that was optimum for each stock, or for each stock complex, or for the entire fishery. *See* 50 C.F.R. § 600.310(e)(3) ("OY may be established at the stock, stock complex, or fishery level."); *id.* § 600.310(e)(3)(ii) ("OY is a long-term average amount of desired yield from a stock, stock complex, or fishery."). Because NMFS chose to set OY for the "fishery," it needed to define the "long-term average amount of desired yield from" all the stocks in the fishery as a whole. *See* West Coast FMP § 2.1, p. 13 (example of defining OY at the fishery level).

Third, NMFS chose a measure of OY that ensures full-scale deferral to the State of Alaska—*again*. In Amendment 14, NMFS closed the Cook Inlet EEZ to commercial fishing so that the State could exclusively manage commercial salmon fishing in Cook Inlet's state waters. 3-ER-2112. The district court told NMFS it cannot just close the EEZ, so NMFS did the next closest thing. It created a "Cook Inlet EEZ salmon fishery" that is intentionally designed to maintain the status quo—

i.e., facilitate state management. In the final rule, NMFS explains that "[b]ecause EEZ fishing opportunity is expected to be similar to the status quo under this action, salmon harvests in the Cook Inlet EEZ Area and other areas of Cook Inlet are expected to remain at or near existing levels." 2-ER-250–51. Because NMFS's OY range includes the average of the three lowest years and the average of the three highest years of total estimated EEZ salmon harvest from 1999 to 2021, *see* 3-ER-503–04, NMFS has set an OY range that accounts for *nearly every possible harvest scenario that has occurred in the last two decades under state management*.[10] This is deferral.

NMFS has not established OY for the "fishery," and its chosen OY metric—which is not based on MSY—is entirely deferential to the State of Alaska. Amendment 16 violates *UCIDA 1* and the Magnuson-Stevens Act, which do not permit deferral to the state and which require OY for the "fishery," a defined term.

D. Amendment 16 also violates National Standards 2 and 3.

1. Amendment 16 is not based on the best available science.

National Standard 2 requires that "[c]onservation and management measures shall be based upon the best scientific information available." 16 U.S.C.

[10] In *UCIDA 2*, the Court explained that under state management, "the commercial harvest of salmon from the Cook Inlet has decreased significantly over the past two decades." 2022 WL 2222879 at *3. Yet, inexplicably, NMFS relied entirely on performance *from the past two decades of unlawful management* to define the level of yield that is "optimum" in the Cook Inlet EEZ. *See* 3-ER-503–04.

§ 1851(a)(2). Courts have explained that "[a]bsent some indication that superior or contrary data was available and that the agency ignored such information, a challenge to the agency's collection of and reliance on scientific information will fail." *Massachusetts v. Pritzker*, 10 F. Supp. 3d 208, 217 (D. Mass. 2014) (citation omitted).

Here, NMFS disregarded the scientific analysis conducted by its own scientific and statistical committee, the entity created by the Act to provide "scientific advice for fishery management decisions, including recommendations for acceptable biological catch, preventing overfishing, maximum sustainable yield, and achieving rebuilding targets, and reports on stock status and health …." 16 U.S.C. § 1852(g)(1)(B). The scientific and statistical committee developed a Stock Assessment and Fishery Evaluation report (the "SAFE report") to "summarize the best scientific information available concerning the past, present, and possible future condition of the salmon stocks and fisheries, along with ecosystem considerations/concerns." 3-ER-475. The SAFE report recommended that the FMP define the stocks for the Kenai River Late Run sockeye salmon stock and the Kasilof River sockeye salmon stock in a manner that tracked these stocks throughout their range. *See, e.g.*, 2-ER-153; 3-ER-374; SPEC00054. The SAFE report explains

> The definitions of salmon stocks considered in this SAFE *align with*, or are aggregations of, the stock definitions used by the State. . . . Assumptions of the analyses within this SAFE include: *that Federal stock definitions align*

> *with the State's definitions for Kenai River Late Run sockeye, Kasilof River sockeye, and Kenai River Late Run Large Chinook salmon* [and so on].

2-ER-133 (emphases added); 3-ER-359; SPEC00034.[11]

NMFS disregarded that recommendation and defined the Kenai Late Run sockeye salmon stock and the Kasilof sockeye salmon stock in the analysis as limited to those fish that have been harvested in the Cook Inlet EEZ Area. 3-ER-491. NMFS does not explain why it disregarded the recommendations of its own SAFE report, which it elsewhere said was the best available science. *Compare* 4-ER-758 *with* 3-ER-475. Contrary data was available to NMFS, and it ignored it. Accordingly, NMFS violated National Standard 2.

2. NMFS fails to manage stocks as a unit throughout their range, in violation of National Standard 3.

National Standard 3 requires "[t]o the extent practicable, an individual stock of fish [to] be managed as a unit throughout its range, and interrelated stocks of fish [to] be managed as a unit or in close coordination." 16 U.S.C. § 1851(a)(3). The Ninth Circuit has explained that "'[t]he purpose of [National Standard 3] is to induce a comprehensive approach to fishery management' that is not jeopardized when fish live in the waters of more than one jurisdiction." *Oregon Trollers*, 452 F.3d at 1120

[11] The district court noted that the version of the SAFE report cited by UCIDA was issued after the April 30, 2024 final rule, but the draft versions of the SAFE report (from January 2024 and March 2024) are both in the record and make identical recommendations regarding the stock definitions used. *See* 3-ER-352–75; COUN01894–1952; SPEC00026–111.

(quoting 50 C.F.R. § 600.320(b)). "To further this goal, '[t]he geographic scope of the fishery, for planning purposes, should cover the entire range of the stock[s] of fish, and not be overly constrained by political boundaries.'" *Id.* at 1121. It explained that "[w]hen a stock of fish is managed in the same manner throughout its geographical range, National Standard No. 3 is satisfied." *Id.*

For Amendment 16, NMFS explained that it "designed management measures that allow it to manage stocks of salmon as a unit throughout the portion of their range under NMFS's authority" because it is "not practicable for NMFS to manage salmon stocks into State waters where NMFS has no management jurisdiction." 2-ER-247 (emphasis added). In this way, NMFS artificially limited its conservation and management measures to only the EEZ. But it is certainly practicable for NMFS to set management measures for the "fishery" as the Act requires and then, separately, explain what "state action is necessary to implement measures within state waters to achieve FMP objectives." 50 C.F.R. § 600.320(e)(3). The mere fact that NMFS cannot ordinarily force the state to take action is not an excuse for failing to identify the state action and explaining the consequences of state inaction or contrary action. This information is critically important to facilitate the management of a multi-jurisdictional fishery as the architects of the Act envisioned. S. Rep. No. 94-416, at 30 (1975) ("[U]nity of management, or at least close cooperation, is vital to prevent jurisdictional differences from adversely affecting conservation

practices."). By stubbornly focusing on just the EEZ, NMFS has deprived the "fishery" of a "'national or regional perspective,'" *see Oregon Trollers*, 452 F.3d at 1121 (citation omitted), and effectively ensured that the stocks of salmon in Cook Inlet will not be managed as a unit throughout their range. *Nat. Res. Def. Council, Inc. v. Daley*, 209 F.3d 747, 749 (D.C. Cir. 2000) ("The [Magnuson-Stevens] Act was enacted to establish a federal-regional partnership to manage fishery resources."). Similarly, the fact that the state is blatantly obstructing Magnuson-Stevens Act management in Cook Inlet, *see* Third Status Report to the Development of a Salmon FMP Amendment to Address Cook Inlet, *UCIDA 2*, No. 3:21-CV-00255-SLG, Dkt. 98-1 at 2 (D. Alaska Apr. 13, 2023) ("[T]he State informed NMFS and the Council during the Council meeting that it would not accept a delegation of management authority for the Cook Inlet EEZ salmon fishery *under the conditions that would be necessary to comply with the [Act]*." (emphasis added)), is *more reason*—not less—why NMFS must articulate the consequences of state inaction or contrary action in its FMP.

E. Vacatur of Amendment 16 is the appropriate remedy.

Vacatur is the required, default remedy under the APA. *Se. Alaska Conservation Council v. U.S. Forest Serv.*, 443 F. Supp. 3d 995, 1022 (D. Alaska 2020). "The Ninth Circuit has explained that a court should 'order remand without vacatur only in "limited circumstances,"' and 'leave an invalid rule in place only

"when equity demands."'" *Id.* (quoting *Pollinator Stewardship Council v. U.S. E.P.A.*, 806 F.3d 520, 532 (9th Cir. 2015)). In light of the errors identified above, UCIDA requests that the Court immediately vacate Amendment 16 and its implementing regulations. Vacatur is the presumptive remedy for agency actions that are arbitrary, capricious, or contrary to law. *Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 413–14 (1971) *abrogated on other grounds by Califano v. Sanders*, 430 U.S. 99 (1977). Vacatur of the regulations implementing Amendment 16 will reinstate the prior existing regulations, which while not ideal, are preferrable to the status quo. *Paulsen v. Daniels*, 413 F.3d 999, 1008 (9th Cir. 2005) ("The effect of invalidating an agency rule is to reinstate the rule previously in force."). The limited circumstances that justify remand without vacatur are not implicated here. *See Pollinator Stewardship Council*, 806 F.3d at 532. This is not a situation where equity demands leaving Amendment 16 in place during remand. *Compare Cal. Cmtys. Against Toxics v. U.S. E.P.A.*, 688 F.3d 989, 994 (9th Cir. 2012) (vacatur would lead to air pollution); *Idaho Farm Bureau Fed'n v. Babbitt*, 58 F.3d 1392, 1405 (9th Cir. 1995) (vacatur would risk potential extinction of a species). And vacatur is especially appropriate here where the very core of NMFS's FMP is erroneous.

VIII. CONCLUSION

The determination of the "fishery" is the lynchpin to a proper FMP. *See Gulf*

Fishermens Ass'n v. Nat'l Marine Fisheries Serv., 968 F.3d 454, 457 (5th Cir. 2020), *as revised* (Aug. 4, 2020) ("The concept of a 'fishery' is central to the Act[.]"). Amendment 16 adopts flawed "stock" definitions and a legally erroneous definition of "fishery." *Oregon v. Ashcroft*, 368 F.3d 1118, 1129 (9th Cir. 2004) ("We 'must, of course, set aside [agency] decisions which rest on an erroneous legal foundation.'" (alteration in original; quoting *NLRB v. Brown*, 380 U.S. 278, 291–92 (1965)), *aff'd sub nom. Gonzales v. Oregon*, 546 U.S. 243 (2006)). For the reasons explained above, UCIDA respectfully requests that this Court vacate Amendment 16 and its implementing regulations and remand with instructions to NMFS to prepare a lawful FMP amendment for Cook Inlet and to the district court to consider such further relief as is just and proper, including a deadline, interim management measures, and collaboration, as appropriate.

IX. STATEMENT OF RELATED CASES

Appellants are not aware of any related cases pending before this Court.

DATED: January 21, 2026

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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No. 25-5523

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED COOK INLET DRIFT ASSOCIATION, et al.,
Plaintiffs–Appellants,

v.

NATIONAL MARINE FISHERIES SERVICE, et al.,
Defendants–Appellees,

and

STATE OF ALASKA
Intervenor–Appellee.

Appeal from the United States District Court for the District of Alaska
No. 3:24-cv-00116 (Hon. Sharon L. Gleason)

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INTRODUCTION

For years, the National Marine Fisheries Service has worked to develop a framework under the Magnuson–Stevens Fishery Conservation and Management Act for managing the Cook Inlet salmon fishery in the exclusive economic zone (EEZ) off the southern coast of Alaska. Cook Inlet is split between state and federal waters. But fish do not respect jurisdictional boundaries, making management of the area challenging. These challenges are apparent in the fact that the current fishery management plan is the agency's third attempt at developing a management framework for the area since 2012, after these Plaintiffs sued and the first two efforts were found invalid by this Court and the district court.

Taking due account of those prior remands and the fact that Alaska refuses to accept expressly delegated management authority of salmon in federal waters, the Fisheries Service developed a plan that regulates fishing in federal waters of Cook Inlet without relying on the State to achieve any management objectives. As with the prior plans, the current plan seeks to maintain historic salmon-harvest levels and, to the extent possible, to avoid subjecting commercial fishermen to multiple management jurisdictions.

Plaintiffs filed suit again. But this time they assert that the Fisheries Service must regulate salmon fishing in both federal and state waters, even though the Magnuson–Stevens Act does not grant the

federal government the general authority to regulate fisheries in state waters. To the contrary, the Act explicitly preserves state management authority over fisheries in state waters.

The district court correctly concluded that the Fisheries Service complied with the Magnuson–Stevens Act when it implemented an amendment to the FMP covering the Cook Inlet EEZ, without reaching beyond its management jurisdiction. And the court further correctly found that the Fisheries Service otherwise complied with the Act's National Standards. This Court should affirm.

STATEMENT OF JURISDICTION

The Fisheries Service adopts Plaintiffs' statement of jurisdiction.

STATEMENT OF THE ISSUES

1. Whether the Fisheries Service complied with the Magnuson–Stevens Act when it issued a salmon fishery management plan that covered only federal waters in Cook Inlet and excluded Alaska's waters.

2. Whether the Fisheries Service complied with the Magnuson–Stevens Act's National Standard 1, which mandates that the agency achieve the optimum yield for each fishery, when it specified the optimum yield for the Cook Inlet salmon fishery.

3. Whether the Fisheries Service's decision complied with the Magnuson–Stevens Act's National Standard 2, which mandates that the agency rely on the best available science in adopting a fishery

management plan, when it implemented an FMP amendment that was vetted within the Fisheries Service and included peer review through a scientific and statistical community.

4. Whether the Fisheries Service's decision complied with the Magnuson–Stevens Act's National Standard 3, which mandates that the agency manage individual stocks of fish as a unit throughout their range to the extent practicable, when it decided to manage the Cook Inlet EEZ as a fishery and to closely coordinate with the State of Alaska.

STATEMENT OF THE CASE

A. The Magnuson–Stevens Fishery Conservation and Management Act

The Magnuson–Stevens Act, 16 U.S.C. §§ 1801–1891d, establishes a national program for conservation and management of fishery resources within federal jurisdiction. The Act is designed to promote domestic commercial and recreational fishing under sound conservation and management principles. *Id.* § 1801(b)(1), (3). The Act authorizes the Secretary of Commerce to implement a comprehensive fishery management program to prevent overfishing and to rebuild stocks; the Secretary has delegated the authority to administer the Act to the National Marine Fisheries Service. *See id.* §§ 1853, 1854, 1855.

The Magnuson–Stevens Act asserts federal jurisdiction over fisheries within the EEZ, which the Act defines as extending from the

seaward boundary of each coastal state out to 200 nautical miles from the coastline. *Id.* §§ 1802(11), 1811. The Act clarifies that states retain jurisdiction over state waters, which for most states, including Alaska, is the first three nautical miles from the coast. *See id.* § 1856(a) (subject to an exception, "nothing in this chapter shall be construed as extending or diminishing the jurisdiction or authority of any State within its boundaries").

To assist the Fisheries Service in its fishery management program, the Act establishes regional Fishery Management Councils, which recommend proposed fishery management plans (FMPs), plan amendments, and regulations. *Id.* §§ 1852(h)(1), 1853(c). The Fisheries Service must implement any proposal through rulemaking, which includes public comment. *Id.* § 1854(a)-(b).

Generally, FMPs apply to each "fishery" under the Fisheries Service's jurisdiction that "requires conservation and management." *Id.* § 1852(h)(1). The Act defines a "fishery" as "(A) one or more stocks of fish which can be treated as a unit for the purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; and (B) any fishing for such stocks." *Id.* § 1802(13). In turn, the Act defines "stock of fish" as "a species, subspecies, geographical grouping, or other category of fish capable of management as a unit." *Id.* § 1802(42).

Fishery management plans must be consistent with the Act's ten "national standards for fishery conservation and management." *Id.* § 1851(a). Relevant here are three of those standards. First, National Standard 1 requires the Fisheries Service to "prevent overfishing while achieving, on a continuing bases, the optimum yield for each fishery." *Id.* § 1851(a)(1), Second, National Standard 2 requires the Fisheries Service to base any conservation and management measures "upon the best scientific information available." *Id.* § 1851(a)(2). And third, National Standard 3 states that "[t]o the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination." *Id.* § 1851(a)(3). The Fisheries Service's advisory management guidelines shed further light on this requirement, explaining that cooperation among governments is important to fisheries management and that, "[w]here management of a fishery involves multiple jurisdictions, coordination among the several entities should be sought in the development of a [fishery management plan]." 50 C.F.R. § 600.320(c); *see* 16 U.S.C. § 1851(b) (explaining that the regulatory guidelines are advisory and "shall not have the force and effect of law").

Finally, the Magnuson–Stevens Act requires that an FMP specify "optimum yield," as a long-term average management target. 16 U.S.C. § 1853(a)(3). "Optimum" is defined in the Act as the amount of fish

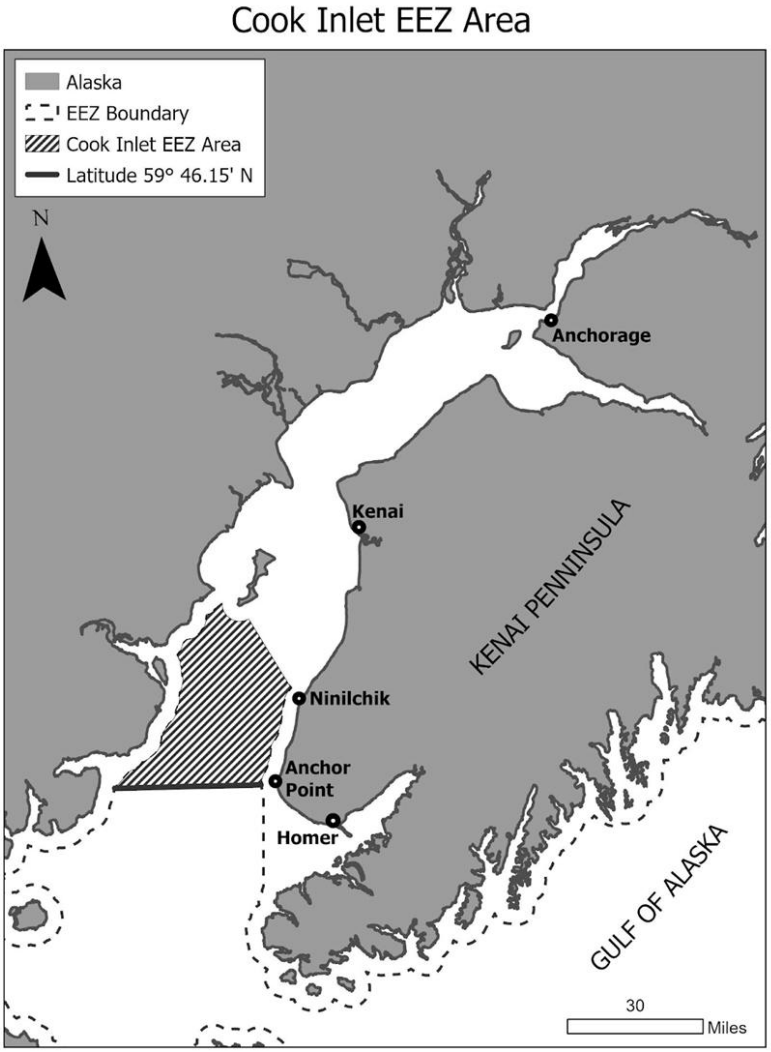
harvested in a fishery that will provide the greatest overall benefits for the Nation. *Id.* § 1802(33)(B). Optimum yield is "prescribed on the basis of the maximum sustainable yield from the fishery, as reduced by any relevant social, economic, or ecological factor." *Id.* In mixed-stock fisheries, optimum yield is often specified for the entire fishery, with other reference points (such as maximum sustainable yield) specified for individual stocks of fish. 50 C.F.R. § 600.310(e)(3)(iv)(C). Importantly, when determining the greatest benefit to the Nation, optimum yield is reduced from maximum sustainable yield to account for ecological factors and to identify the harvest levels that will continue to support multiple active fishery sectors without resulting in overfishing for any one stock. *Id.* § 600.310(e)(3)(iii)(A); 600.310(b)(2)(ii) ("The most important limitation on the specification of [optimum yield] is that the choice of [optimum yield] and the conservation and management measures proposed to achieve it must prevent overfishing.").

B. Factual and Procedural Background

1. The Cook Inlet salmon fishery

Cook Inlet is a 180-mile-long inlet that stretches from the Gulf of Alaska in the Northern Pacific Ocean inland toward Anchorage and south-central Alaska. The State of Alaska manages fishing in Cook Inlet from 0–3 nautical miles from the shore, while the federal

government manages fishing in the EEZ, which includes any Cook Inlet waters more than 3 nautical miles from the shore. *Fisheries of the Exclusive Economic Zone Off Alaska; Cook Inlet Salmon; Amendment 16*, 88 Fed. Reg. 72,314, 72,315 (Oct. 19, 2023). The map below (found at 89 Fed. Reg. 34,765) shows the extent of the Cook Inlet EEZ area.



Five species of Pacific salmon (Chinook, pink, sockeye, chum, and coho) are found in Cook Inlet. 2-ER-294. These salmon species can be further subdivided into "stocks," which are generally delineated by the

areas that the salmon spawn or the time of year that they spawn (e.g., "Kenai River sockeye salmon" or "Kenai River late run Chinook salmon"). 3-ER-537. Typically, salmon are managed to meet "escapement goals," which are the number of salmon from a particular stock that "escape" harvest and return to a river to spawn. 5-ER-944.

After salmon leave the river of their birth, they spend years at sea where they can be found in groups of diverse species and stocks from across the Pacific. 5-ER-947. When it is time to spawn, the salmon return to their place of birth. Stocks that originated in Cook Inlet will enter Cook Inlet but will remain in diverse groups of various Cook Inlet stocks. 5-ER-947. As they get closer to shore, the stocks begin to disaggregate and disperse towards individual rivers until finally beginning the journey upstream. 5-ER-947. For management purposes, this means that the closer to the river a fishery operates, the better that fishery can target a particular stock. 5-ER-947. The fishery in the Cook Inlet EEZ, between 3 and 200 nautical miles from shore, is a "mixed stock" fishery, meaning that participants catch a variety of Cook Inlet salmon stocks and cannot effectively target any one particular stock. 5-ER-947.

There is a lengthy history underlying management of the salmon fisheries of Cook Inlet. Before passage of the Magnuson–Stevens Act, federal regulations allowed for salmon net fishing in federal waters under State regulations and declared that federal regulation of net

fishing in those waters would be the same as state regulation in state waters. 35 Fed. Reg. 7,070 (May 5, 1970); 50 C.F.R. § 210.1 (1971).

In 1979, under the precursor to the Magnuson–Stevens Act, the Fisheries Service approved a fishery management plan for the salmon fishery in the EEZ off the coast of Alaska, including in parts of Cook Inlet. 5-ER-940. The 1979 fishery management plan covered only federal waters in the EEZ, not state waters.

2. Amendment 12 and this Court's decision in *Cook Inlet I*

In December 2012, Fisheries Service approved Amendment 12 to the FMP. *Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Salmon*, 77 Fed. Reg. 75,570 (Dec. 21, 2012). This Amendment was borne from recognition by the North Pacific Fishery Management Council that there was ambiguity with respect to management authority for three historic net fisheries in the EEZ because of the withdrawal of prior regulations that had determined that those fisheries would be managed under State regulations. 3-ER-409. In reexamining the issue, the Council recommended (and the Fisheries Service agreed) that the Cook Inlet area should be excluded from the FMP, which would allow Alaska to continue managing salmon stocks in the Cook Inlet EEZ. 3-ER-409. In making this determination, the Fisheries Service concluded that the Cook Inlet EEZ fishery did not require federal conservation and management because it had been

successfully managed by Alaska since statehood. 77 Fed. Reg. at 75,574. Thus, the Fisheries Service implemented Amendment 12 to exclude the Cook Inlet EEZ from the fishery management plan and to effectively defer management of the federal salmon fishery in the area to Alaska. *Id.* at 75,574, 75,583.

Plaintiffs from this case challenged Amendment 12, and this Court held that the amendment violated the Magnuson–Stevens Act. *United Cook Inlet Drift Ass'n v. Nat'l Marine Fisheries Serv.*, 837 F.3d 1055, 1065 (9th Cir. 2016) ("*Cook Inlet I*"). This Court held that the Magnuson–Stevens Act provides that a fishery management council "shall" prepare a fishery management plan for a fishery "under its authority" that requires "conservation and management," regardless of whether Alaska was adequately providing such management. *Id.* at 1062 (quoting 16 U.S.C. § 1852(h)(1)). The Court noted that the Act allows the Fisheries Service to delegate authority over a federal fishery to a state, but that it must do so expressly in a fishery management plan rather than implicitly. *Id.* at 1063 (citing 16 U.S.C. § 1856(a)(3)(B)). Because Amendment 12 excluded the Cook Inlet EEZ from the FMP and so neither provided for federal management of the Cook Inlet EEZ nor expressly delegated management to the State, this Court held that Amendment 12 violated the Magnuson–Stevens Act and remanded to the district court. *Id.* at 1065.

3. Amendment 14 and the district court's decision in *Cook Inlet II*

On remand, the Fisheries Service worked with the Council to amend the FMP and to promulgate a new final rule that would comply with this Court's decision in *Cook Inlet I*. The agency's preferred approach was to expressly delegate management authority of Cook Inlet EEZ fishery to Alaska and thus to preserve the historic extent of the fishery under one manager. *Fisheries of the Exclusive Economic Zone Off Alaska; Cook Inlet Salmon; Amendment 14*, 86 Fed. Reg. 60,568, 60,568–69 (Nov. 3, 2021). Keeping this historic management regime would minimize complexities of dual management, would avoid subjecting fishermen to multiple management regimes, and would be unlikely to appreciably change salmon conservation metrics and thresholds because harvest levels were unlikely to increase. 5-ER-941. The State ultimately decided, however, that it would not accept a delegation of management authority for Cook Inlet EEZ. 86 Fed. Reg. at 60,569. Without an agreement from Alaska to accept the delegation of management authority, the Council recommended an amendment that would incorporate the Cook Inlet EEZ into the FMP and close it to commercial salmon fishing. *Id.*

The Fisheries Service subsequently published a final rule implementing the recommendation (referred to as Amendment 14). 86 Fed. Reg. 60,568. The final rule extended the preexisting closure of the

salmon fishery in adjacent EEZ waters to include the Cook Inlet EEZ, finding that the closure was consistent with management throughout the broader area and that sufficient harvest levels could occur in the state waters of Cook Inlet. 86 Fed. Reg. at 60,569.

Again, these Plaintiffs challenged the FMP amendment. *United Cook Inlet Drift Ass'n v. Nat'l Marine Fisheries Service*, 2022 WL 2222879 (D. Alaska, June 21, 2022) ("*Cook Inlet II*"). The district court granted summary judgment to Plaintiffs, holding, among other things, that the Fisheries Service's closure of the Cook Inlet EEZ to salmon fishing constituted a "deferral" of management to Alaska and that the agency could not rely on the State to achieve optimum yield. *Id.* at *8. This was because the agency's standards "rel[ied] entirely on decisions made by the state of Alaska," such as setting the annual catch limit in Cook Inlet EEZ to zero and assuming that fishing in state waters would achieve optimum yield. *Id.* at *9. The district court vacated Amendment 14 and remanded to the Fisheries Service for further proceedings.

4. Amendment 16 to the fishery management plan

On remand, the Fisheries Service once again worked with the Council to amend the fishery management plan, this time to establish a federal management regime that allowed for commercial salmon fishing in the Cook Inlet EEZ. 3-ER-420. The Fisheries Service's preferred approach was again to expressly delegate management authority of the

Cook Inlet EEZ fishery to the State of Alaska, but that alternative was not viable because the State again refused to accept the delegation. 5-ER-941. So, consistent with this Court's decision in *Cook Inlet I* and the District of Alaska's decision in *Cook Inlet II*, the Fisheries Service developed an amendment that would create a completely new federal management regime authorizing commercial and recreational salmon fishing in the Cook Inlet EEZ. 5-ER-942.

After providing public notice and an opportunity to comment on the proposed amendment, the Fisheries Service issued a final rule implementing Amendment 16 in April 2024. *Fisheries of the Exclusive Economic Zone off Alaska; Cook Inlet Salmon; Amendment 16*, 89 Fed. Reg. 34,718 (April 30, 2024). Amendment 16 establishes "Federal fishery management for all salmon fishing that occurs in the Cook Inlet EEZ, which includes commercial drift gillnet and recreational salmon fishery sectors." *Id.* at 34,718. Through Amendment 16, the Fisheries Service implemented a detailed federal management regime, including: criteria for specifying annual harvest limits and evaluating overfishing; a federal permitting process; fishing gear restrictions; fishing time and area restrictions; and monitoring, recordkeeping, and reporting requirements. *Id.* Amendment 16 did not alter salmon fishery management outside of the Cook Inlet EEZ. *Id.*

In Amendment 16, the Fisheries Service laid out how the Amendment would comply with National Standard 1 by preventing

overfishing while achieving "optimum yield" on a continuing basis, which is the amount of harvest that will provide the greatest overall benefit to the Nation. 88 Fed. Reg. 72,318–19. The agency explained that optimum yield is generally based on several biological reference points, including "maximum sustainable yield," which is the largest-long-term average catch that can be taken from a stock or stock complex under prevailing conditions. *Id.* at 72,319. As the Fishery Service outlined, maximum sustainable yield is a reference point that "must be defined at the stock or stock complex level without reference to management jurisdictions" whereas optimum yield "is a long term average amount of desired yield from a particular stock or fishery and is generally set below" maximum sustainable yield. *Id.* Under Amendment 16, optimum yield "would be defined at the EEZ fishery level [(rather than for individual stocks)] to both account for the interactions between salmon stocks in the ecosystem and provide Federal managers with a target that is within their control to achieve." *Id.*

The Fisheries Service laid out how maximum sustainable yield for each stock was specified based on the best scientific information available, including escapement goals, information about total run size for stocks, and historical catch data. *Id.* This set the upper bound for the potential optimum yield for the salmon fishery. *Id.* at 73,320. But the Fisheries Service explained that optimum yield must be reduced from maximum sustainable yield to account for various ecological,

economic, and social factors because "it is not possible to harvest one stock at a time in this mixed stock fishery, because there are weak stocks intermingled with stocks that regularly exceed their escapement goal, and because harvest of all Cook Inlet stocks also occurs in State marine and fresh waters." *Id.* Thus, the agency set the optimum yield for the Cook Inlet EEZ based on "the range between the averages of the three lowest years of total estimated EEZ salmon harvest and the three highest years of total estimated EEZ salmon harvest from 1999 to 2021," which would "temper the influence of extreme events" and thus result in "a range of harvests that are likely to be sustainable and provide the greatest net benefit to the Nation in the future." *Id.*

5. The district court's decision

Yet again, Plaintiffs challenged the Amendment under the Magnuson–Stevens Act. Relevant here, Plaintiffs argued (1) that the Fisheries Service was required to issue a fishery management plan for all of Cook Inlet, not just the EEZ; (2) that the Amendment's definition of optimum yield violated the Magnuson–Stevens Act because it was based on total harvest of all salmon within the EEZ, whereas the calculation of maximum sustainable yield was based on the individual stocks of salmon throughout their range; (3) that the Amendment violated the Magnuson–Stevens Act's National Standard 2 because it was not based on the best scientific information available; and (4) that the Amendment violated National Standard 3 because it did not

manage federal and state waters under the same umbrella. The district court granted summary judgment to the Fisheries Service on all claims.

First, the court found that the Fisheries Service complied with the Magnuson–Stevens Act when it excluded state waters from the amended FMP. 1-ER-17–23. The court held that the text of the Act does not require the Fisheries Service to adopt a fishery management plan that includes waters outside the EEZ and that Amendment 16 was consistent with the Act's definition of "fishery." 1-ER-19–20.

Second, the court held that the Fisheries Service reasonably defined optimum yield based on salmon catch within the EEZ. 1-ER-23–28. The court found that the agency's methodology in specifying optimum yield was reasonable considering the agency's jurisdiction "is limited to the EEZ" and considering "the mixed stock nature of the Cook Inlet EEZ fishery." 1-ER-25.

Third, the court held that Amendment 16 was consistent with National Standard 2 because it was based on the best scientific information available. 1-ER-28–30. And finally, the court held that Amendment 16 was also consistent with National Standard 3 because the Fisheries Service "provided a rational basis for determining that a single management of Cook Inlet salmon throughout their range was not practicable. 1-ER-31.

Plaintiffs appealed.

SUMMARY OF ARGUMENT

1. The Fisheries Service complied with the Magnuson–Stevens Act when it issued an amendment to the FMP for the Cook Inlet EEZ salmon fishery, excluding Alaska's state waters. Plaintiffs argue that the agency was required to regulate both federal and state waters, but that argument is based on a misunderstanding of the statute.

The text of the Magnuson–Stevens Act grants the Fisheries Service the authority only to manage federal waters in the EEZ, not state waters. In fact, the Act explicitly preserves state authority over state waters. This Court's caselaw confirms this understanding of the statute.

Plaintiffs argue that the statute nonetheless requires the Fisheries Service to reach beyond its jurisdictional authority and to regulate fisheries in state waters, but the statute does not support their argument. Plaintiffs primarily base their argument on the language in the statute which defines a fishery as one or more stocks of fish which can be treated as a unit for purposes of conservation and management. The way Plaintiffs see it, that language requires the Fisheries Service to manage fish across their entire range, regardless of how far that range extends into a state. But that interpretation of the statute butts up against the statutory language that explicitly preserves a state's authority over management of its own fisheries. And Plaintiffs' argument ignores the statutory language that grants the Fisheries

Service discretion to determine which fish can be grouped together for purposes of conservation and management. All in all, the Fisheries Service complied with the Magnuson–Stevens Act when it issued Amendment 16, which regulates salmon fishing in the Cook Inlet EEZ and does not reach into Alaska's state waters.

2. The Fisheries Service complied with National Standard 1 when it set the optimum yield for the Cook Inlet EEZ salmon fishery. As explained above, the agency appropriately set the boundaries of the Cook Inlet EEZ fishery and the optimum yield for that fishery. The record shows how the Fisheries Service calculated the optimum yield and explained why that calculation was reasonable. And the agency explained how its calculation for optimum yield (a long-term average management target) differed from its calculations for maximum sustainable yield (a biological calculation). The Fisheries Service's approach was consistent with the statute and its own regulations, and Plaintiffs have not demonstrated otherwise.

3. The Fisheries Service also complied with National Standard 2, which requires the agency to base its management decisions on the best available scientific information. Plaintiffs argue that the Fisheries Service contradicted its own scientific report, but a closer look at the record shows that the agency's decision was consistent with its own analysis. And Plaintiffs do not identify any other science that the agency allegedly overlooked or misread in making its decision.

4. Finally, the Fisheries Service complied with National Standard 3, which requires the agency to manage related stocks of fish as a unit "to the extent practicable" and to provide for close coordination with other jurisdictions. The Fisheries Service complied with both of those requirements. It explained why it was not practicable to manage Cook Inlet salmon as one unit across their entire range because the State of Alaska retained management jurisdiction over its state waters. And the agency explained how it would coordinate salmon management closely with Alaska, providing for data sharing and accounting for harvests and spawning in state waters when establishing management measures for the EEZ.

In issuing Amendment 16, the Fisheries Service complied with the Magnuson–Stevens Act. This Court should affirm.

STANDARD OF REVIEW

This Court reviews the district court's grant of summary judgment de novo. *Fence Creek Cattle Co. v. U.S. Forest Serv.*, 602 F.3d 1125, 1131 (9th Cir. 2010). The Court reviews Plaintiffs' Magnuson–Stevens Act claims under the arbitrary-or-capricious standard of review for administrative action. *Cook Inlet I*, 837 F.3d at 1061. Under that standard, a court may reverse a reviewable agency action only if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). This standard is "highly deferential, presuming the agency action to be valid and affirming the

agency action if a reasonable basis exists for its decision." *Nat'l Mining Ass'n v. Zinke*, 877 F.3d 845, 866 (9th Cir. 2017) (quoting *Nw. Ecosystem All. v. U.S. Fish & Wildlife Serv.*, 475 F.3d 1136, 1140 (9th Cir. 2007)). Courts give special deference to agency interpretations of scientific issues; when an agency makes predictive or scientific judgments "a reviewing court must be at its 'most deferential.'" *Seven Cty. Infrastructure Coal. v. Eagle Cty.*, 605 U.S. 168, 182 (2025) (quoting *Baltimore Gas & Elec. Co. v. Nat. Res. Def. Council*, 462 U.S. 87, 103 (1983)).

ARGUMENT

The Fisheries Service's amendment to the FMP complied with the Magnuson–Stevens Act. The agency's decision was not arbitrary or capricious, and this Court should affirm.

I. The Fisheries Service complied with the Magnuson–Stevens Act when it limited its management to federal waters.

The Magnuson–Stevens Act generally limits federal management authority to federal waters and preserves state jurisdiction over state waters. The Fisheries Service complied with the Act when it limited the FMP amendment to the Cook Inlet EEZ.

A. The Magnuson–Stevens Act grants the Fisheries Service jurisdiction to manage fisheries only in federal waters.

The plain text of the Magnuson–Stevens Act limits the Fisheries Service's jurisdiction off Alaska to the management of fishing in federal waters between 3 and 200 nautical miles offshore. The Act establishes "sovereign rights and exclusive fishery management authority" over all fishery resources "within the exclusive economic zone." 16 U.S.C. § 1811(a). The Act defines the EEZ as "the zone established by Proclamation Numbered 5030," in which President Reagan defined the EEZ as a zone in which the United States would assert sovereign rights over natural resources, extending 200 nautical miles from shore. *Id.* § 1802(11) (citing Proclamation 5030, 97 Stat. 1557 (Mar. 10, 1983)). But the Act clarifies that the inner boundary of the EEZ "is a line coterminous with the seaward boundary" of each coastal state. *Id.* § 1802(11). In Alaska's case, that line is three nautical miles from the State's coast. 43 U.S.C. § 1301(b).

The federal government's jurisdiction over fishery management is cabined accordingly. The Act explains that the North Pacific Fishery Management Council "shall have authority over fisheries in the Arctic Ocean, Bering Sea, and Pacific Ocean *seaward of Alaska*." 16 U.S.C. § 1852(a)(1)(G) (emphasis added). Nothing in the Magnuson–Stevens

Act suggests that the Act was intended to allow the federal government to intrude on fisheries management in state waters.

Rather, the Act expressly recognizes and preserves state jurisdiction over fishery management in state waters. Subject to one limited exception, discussed below, the Act provides that "nothing in this chapter shall be construed as extending or diminishing the jurisdiction or authority of any State within its boundaries." *Id.* § 1856(a)(1). In passing the Magnuson–Stevens Act, Congress legislated against the traditional background that states "have broad trustee and police powers over wild animals within their jurisdiction" to the extent that state management is "not incompatible with, or restrained by, the rights conveyed to the federal government by the constitution." *Center for Biological Diversity v. U.S. Forest Serv.*, 80 F.4th 943, 947 (9th Cir. 2023) (quoting *Kleppe v. New Mexico*, 426 U.S. 529, 545 (1976)). The text of the Act confirms that the statute was not intended to upset that traditional understanding; rather, the statute preserves traditional state jurisdiction. 16 U.S.C. § 1856(a)(1).

The Magnuson–Stevens Act's state-jurisdiction provision is subject to only one limited exception. *Id.* § 1856(b). Under this exception, if the Secretary of Commerce: (1) finds that the fishing in a fishery covered by a management plan is predominantly in an EEZ; (2) finds that a state has taken an action or failed to take an action that has substantially and adversely affected the Fishery Service's ability to

carry out such a plan; and (3) has provided notice and the opportunity for a hearing under the procedures in the Administrative Procedure Act, 5 U.S.C. § 554; then the Secretary may assume responsibility for regulation of a state fishery. 16 U.S.C. § 1856(b). This provision does not include the authority to preempt state regulation of "internal waters" (i.e., rivers and lakes) and only permits federal preemption so long as the conditions for preemption continue to be met. *Id.* § 1856(b)(1), (2). Plaintiffs have never argued that this exception applies here. Here, the harvest of salmon occurs predominantly in state waters, not in the EEZ. 89 Fed. Reg. 34,726. And the Fisheries Service has consistently found that Alaska's management of the Cook Inlet salmon is consistent with the Magnuson–Stevens Act. *Id.* So the § 1856(b)(1) exception does not apply by its own terms and, in any event, no party has ever argued that the exception applies here. Thus, the Act narrowly cabins the Fishery Service's ability to preempt state management of state fisheries.

This Court's caselaw agrees that the text of the Magnuson–Stevens Act only grants the Fisheries Service authority to regulate in federal waters. For instance, the Court explained in *Cook Inlet I* that "States retained jurisdiction over the first three miles from the coast" and that "the federal government had jurisdiction over the next 197 miles." 837 F.3d at 1058. In *Cook Inlet I*, the Court made it clear that the Fisheries Service must manage *federal* fisheries, but the Court

never suggested that the statutory mandate to manage federal fisheries somehow also created an obligation to preempt state management in state waters. *See id.* at 1063 ("The Act makes plain that federal fisheries are to be governed by federal rules in the national interest, not managed by a state based on parochial concerns."). Other cases from this Court likewise describe federal jurisdiction over fisheries management as confined to the EEZ. *See, e.g.*, *Parravano v. Babbitt*, 70 F.3d 539, 542 (9th Cir. 1995) (the Act grants "the authority to set harvest levels in ocean fisheries located between three and two hundred nautical miles offshore"); *Yakutat, Inc. v. Gutierrez*, 407 F.3d 1054, 1058 (9th Cir. 2005) ("The Magnuson Act provides the Secretary with fishery management authority within the exclusive economic zone of the United States.").

Other Circuits also recognize that the Magnuson–Stevens Act creates a cooperative-management structure in which states retain the authority to manage fisheries within their state waters. *New York v. Atl. States Marine Fisheries Comm'n*, 609 F.3d 524, 527 (2nd Cir. 2010) ("The Atlantic seaboard states retain primary authority over the conservation and management of fisheries within the 'territorial sea;—waters within three miles of shore, as well as in rivers and estuaries."); *Daniels v. Executive Director of Florida Fish & Wildlife Conservation Commission*, 127 F.4th 1294, 1306 (11th Cir. 2025) ("[Plaintiff's] interpretation of the Magnuson–Stevens Act flounders because the

language, structure, and context of § 1856(a) indicate that Congress did not intend to preempt state regulations that affect fishing activities.").

At bottom, the text of the Magnuson–Stevens Act is clear: the statute grants the federal government the authority to manage fisheries in federal waters and preserves state authority to manage fisheries in state waters. Amendment 16 complies with the Magnuson–Stevens Act because it regulates salmon fishing in the EEZ while preserving Alaska's authority to manage salmon fishing in its own waters.

B. The Act's definitions of "fishery" and "stocks of fish" do not require the Fisheries Service to manage state fisheries in state waters.

Plaintiffs' argument hinges on the statutory language requiring a fishery management plan for each "fishery," which Plaintiffs claim means that the Fisheries Service must regulate the entire Cook Inlet salmon population (in state and federal waters) under a single fishery management plan. Plaintiffs' argument is wrong because it misreads the statutory text and improperly vests management of state fisheries with the federal government.

1. The Fisheries Service appropriately defined the fishery and stocks in the Cook Inlet EEZ.

The Magnuson–Stevens Act defines a "fishery" as "(A) one or more stocks of fish *which can be treated as a unit for purposes of conservation and management* and which are identified on the basis of geographical,

scientific, technical, recreational, and economic characteristics; and (B) any fishing for such stocks." 16 U.S.C. § 1802(13) (emphasis added). A "stock of fish" is "a species, subspecies, geographical grouping, or other category of fish *capable of management as a unit*." *Id.* § 1802(42) (emphasis added). The statutory definitions of "fishery" and "stocks of fish" thus both show that, in defining the scope of a fishery or stock in a fishery management plan, the Fisheries Service has discretion to determine whether certain groups of fish can be managed as a unit. *See Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 394 (2024) ("[A] statute's meaning may well be that the agency is authorized to exercise a degree of discretion."). Plaintiffs do not disagree. Pls' Br. 20 ("There is some judgment baked into identifying the stocks of fish that can be managed "as a unit" . . . .").

As an initial matter, nothing in the definition of "fishery" or "stocks of fish" demonstrates that Congress intended to grant the Fisheries Service the authority to regulate fishing in state waters. Precisely the opposite: the definitions make clear that the terms are management units, not biological designations, and must be defined based on the ability to treat fish as a unit for management purposes. 16 U.S.C. § 1802(13), (42). Under the statute, the Fisheries Service makes a practical determination, informed by the agency's expertise in fisheries management, as to which stocks can be treated as a unit for management purposes.

This Court recognized that the Fisheries Service has significant discretion in delineating the scope of its management in *Oregon Trollers Association v. Gutierrez* when it held that the Fisheries Service was permitted to distinguish between natural-spawned and hatchery-spawned fish when defining stocks. 452 F.3d 1104, 1117 (9th Cir. 2006). There, plaintiffs argued that the statute did not permit such a distinction between natural-spawned and hatchery-spawned stocks because the two types of fish swim side-by-side and because the Fisheries Service had previously failed to distinguish between the fish in setting management goals. *Id.* at 1117–18.

This Court rejected that argument. First, it noted that the term "category of fish" in the statute meant that the Fisheries Service could manage any "division" or "distinct class" of fish, such as natural spawners. *Id.* at 1118. Second, the Court explained that the "host of possible bases for choosing a 'management unit' [(including 'geographic' and 'technical' factors)] indicates the term's flexibility." *Id.* The Court concluded that the statute unambiguously gives the Fisheries Service the authority to use its expertise to determine which fish can be managed as a unit. *Id.* at 1119 ("[W]e see nothing in the Act to prevent the [Fisheries Service] from regarding naturally spawning Klamath chinook as a 'stock' of salmon within the meaning of [the statute] . . . . Even without the assistance of *Chevron* deference, we would read the Act in this way.").

Here, the Fisheries Service reasonably explained why it defined the "fishery" as all salmon fishing in the Cook Inlet EEZ. 2-ER-222. The Cook Inlet EEZ salmon stocks can be managed together because they are located within the geographic area under the agency's jurisdiction, stocks there are uniquely mixed, and fishing in the EEZ has distinct "technical and economic characteristics that distinguish it from State water fisheries." 2-ER-229. The federal government and state management agencies "regularly have separate fisheries that harvest the same stocks of fish" and the agency will coordinate management with the State of Alaska to the extent practicable and set catch limits that account for both harvests. 2-ER-230. This definition of the salmon fishery is also consistent with the Ninth Circuit's decision in *Cook Inlet I*, which states that "[n]o one disputes that the exempted area of Cook Inlet" (i.e., Cook Inlet EEZ) "is a salmon fishery." 2-ER-229 (quoting *Cook Inlet I*, 837 F.3d at 1064). The agency's decision thus comported with this Court's decision in *Cook Inlet I*, which understood that the term "fishery" could be limited, in accordance with the agency's management authority, to the Cook Inlet EEZ Area.

Courts in the Ninth Circuit have routinely rejected interpretations of the Magnuson–Stevens Act that would require the Fisheries Service to reach beyond its authority and issue management plans for fisheries over which it does not have jurisdiction. For example, in *Washington Trollers Association v. Kreps*, plaintiffs sued the Fisheries Service

because the agency had issued a fishery management plan that contained no description of inland fisheries. 466 F. Supp. 309, 313 (W.D. Wash. 1979), *rev'd on other grounds* 645 F. 2d 684 (9th Cir. 1981). The court held that the Fisheries Service complied with the Magnuson–Stevens Act because "it was not unreasonable" to approve a plan "limited to the ocean salmon fishery under [the agency's] jurisdiction." *Id.*; *see also Pac. Coast Fed'n of Fishermen's Ass'n, Inc. v. Sec'y of Commerce*, 494 F. Supp. 626, 633 (N.D. Cal. 1980) ("The Court therefore concludes . . . that the Secretary does not have jurisdiction over the inland fisheries.").

Plaintiffs' interpretation of the Magnuson–Stevens Act would require the Fisheries Service to issue a fishery management plan for Cook Inlet that includes detailed descriptions of a fishery managed by the State of Alaska and potentially draft extensive plans that set season dates, gear restrictions, and catch limits that it cannot implement. Nothing in the statute mandates this use of agency resources, and the Court should not read in such a requirement. And even if Plaintiffs prevailed in this litigation and the Fisheries Service did issue a fishery management plan that covered some State-managed waters, nothing would change in Cook Inlet. Given the State's refusal to accept delegated management authority for the Cook Inlet EEZ, it is unlikely that Alaska would change any of its management practices in response to the FMP, and the Fisheries Service would have no authority to force

Alaska to make any changes. That is the end result of Plaintiffs' interpretation of the statute, which would require the agency to expend its limited resources to issue a fishery management plan for fish over which it does not have jurisdiction.

Plaintiffs' most pointed argument is that Amendment 16 did not merely define the "fishery" as the Cook Inlet EEZ, but rather defined the very "stocks of fish" within that fishery as consisting only of fish "harvested" in the EEZ—biologically the same salmon, but separated based on which side of a jurisdictional line they are caught. *See* Pls' Br. 23–24. That argument mischaracterizes the Amendment. Amendment 16 does not create stocks out of individual harvested fish; it establishes which biologically delineated salmon stocks are subject to federal management. When the Amendment refers to stocks "harvested in the Cook Inlet EEZ Area" it is identifying which salmon stocks—Kenai River Late Run sockeye, Kenai River Chinook, and so on—have historically been caught in the EEZ and therefore fall within the federal management unit. *See* 89 Fed. Reg. at 34,725; 2-ER-132 ("The SAFE report and FMP define those salmon stocks with evidence of historical harvests in the Cook Inlet EEZ Area.").

The Amendment consistently treats these stocks as biologically defined entities that spawn in Alaska's rivers and migrate through the EEZ. *See* 89 Fed. Reg. at 34,728 ("[Maximum sustainable yield] should be defined for a stock or stock complex, regardless of where fishing

occurs, and thus it is not set for State waters or Federal waters."). Plaintiffs' own acknowledgment (Pls' Br. 24 n.5) that the Fishery Service's proposed rule "consistently refers to Cook Inlet salmon stocks as occurring in both federal and state waters" confirms that the agency never abandoned biological stock definitions—it merely exercised its statutory discretion to set the management unit at the EEZ boundary.

The Fisheries Service offered a rational explanation of why Cook Inlet EEZ should be managed as a unit and how the agency will coordinate with the state. It is enough to resolve this case that: (1) the Magnuson–Stevens Act does not extend federal authority for fisheries management into state waters; (2) the Act defines fisheries and stocks as groups that are capable of management as a unit; and (3) the Fisheries Service adequately explained why Cook Inlet EEZ salmon were capable of management as a unit in a manner consistent with this Court's prior caselaw.

2. Plaintiffs' other arguments lack merit.

Plaintiffs make several other arguments as to how the Fisheries Service's definition of the Cook Inlet fishery violated the Magnuson–Stevens Act, which largely center on attempting to alter the definition of "fishery" from one which necessarily implicates judgment about whether fish can be managed as a unit to one that is purely based on biological factors. Pls' Br. 23–31. Those arguments are wrong and are inconsistent with the text of the Magnuson–Stevens Act.

To start, Plaintiffs allege that managing stocks in the Cook Inlet EEZ as a separate salmon fishery when some of the same biological stocks are harvested in state waters necessarily "defies the plain language and intent of the Magnuson–Stevens Act" and is "contrary to law." Pls' Br. 23–24. But, other than references to the statutory definitions of "fishery" and "stocks of fish," Plaintiffs do not point to which provision of the Act the Fisheries Service supposedly violated. And, as explained above, those statutory definitions show that a "fishery" or "stock" is not supposed to be a strict biological definition but rather is a management unit informed by practical considerations. *See Oregon Trollers*, 452 F.3d at 1118. Here, the Fisheries Service reasonably explained why salmon in the Cook Inlet EEZ can be treated as a unit for management purposes and how it would coordinate management, to the extent practicable, with Alaska. That more than satisfied the requirements of the Magnuson–Stevens Act. Nor could Plaintiffs' argument hold water as a matter of common sense. Fish readily move between federal and state waters. Absent clear congressional intent, this Court should not assume that the Magnuson–Stevens Act implicitly gave the Fisheries Service jurisdiction to regulate state waters simply because the fish at issue can be found in both state and federal waters.

In arguing for their statutory interpretation, Plaintiffs explain that Congress expected the Fisheries Service to collaborate with states

in fisheries management and point to examples of other federal–state cooperatively managed fisheries. Pls' Br. 32–35. The Fisheries Service does not dispute that, under the Magnuson–Stevens Act, it should manage interrelated stocks of fish "in close coordination" with states "[t]o the extent practicable." 16 U.S.C. § 1851(a)(3). But it is equally true that the Act clearly preserved state authority over state waters and did not grant the Fisheries Service jurisdiction to usurp that authority absent exceptional circumstances (which Plaintiffs have not argued are present here). *Id.* § 1856(a)(1). The Magnuson–Stevens Act does not require the federal government to issue fishery management plans that extend beyond its jurisdiction into state waters, nor could it in a situation like this one where the State of Alaska refuses to engage in cooperative management.

That is the distinction between this situation and the Pacific Coast Salmon FMP that Plaintiffs point to in which the Fisheries Service cooperatively manages a fishery hand-in-hand with states: in that case, the states agreed to the cooperative-management regime. *See* Pls' Br. 34–37. The Fisheries Service has a long history of cooperation with Washington, Oregon, and California for salmon management, and those states have agreed to affirmatively work with the federal government to manage salmon stocks in their state waters. In contrast, the State of Alaska has repeatedly rejected any federal proposal for cooperative or delegated management in the Cook Inlet EEZ. *See* 86

Fed. Reg. at 60,569, 89 Fed. Reg. at 34,726. Plaintiffs point to no example in which the Fisheries Service has issued a fishery management plan covering state waters when the state has not agreed to engage in cooperative management, which is the consequence of the statutory interpretation for which they now argue.

Next, Plaintiffs argue that the Fisheries Service changed position "without any acknowledgment or analysis" when it determined that the FMP would only apply to fish in the EEZ. Pls' Br. 24–27. That argument is misplaced for two reasons. First, because the Fisheries Service's definition of the Cook Inlet salmon fishery is not a change in position under the Magnuson–Stevens Act. And second, because even if the Fishery Service did change its position, the agency adequately explained why it defined the fishery a certain way.

On the first point, the Fisheries Service has never had a prior policy that a fishery management plan *must* manage both federal and state waters where some fish traverse both. So the agency's definition of the Cook Inlet salmon fishery as encompassing only the EEZ is not properly characterized as a change in position because the agency always would have understood Amendment 16 to be permissible under the statute. *See Altera Corp. & Subsidiaries v. Comm'r of Internal Revenue*, 926 F.3d 1061, 1085 (9th Cir. 2019) (if an agencies prior policy allowed for an action, "there is no policy change, merely a clarification of the same policy."). Indeed, this is consistent with the Magnuson–

Stevens Act, which is clear that the statute does not diminish state authority over a state's own fisheries. 16 U.S.C. § 1856(a)(1).

But even if the way the Fisheries Service defined the Cook Inlet salmon fishery or the stocks was considered a change in agency position, the agency nonetheless sufficiently explained its analysis. When an agency changes its position, it need not show that the reasons for the new policy are better than the reasons from the old one; "it suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency *believes* it to be better, which the conscious change of course adequately indicates." *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (emphasis in original). When an agency changes its existing policy, it "need not always provide a more detailed justification than what would suffice for a new policy created on a blank slate." *Altera Corp.* 926 F.3d at 1085 (quoting *Fox*, 556 U.S. at 515).

Here, the Fisheries Service met that standard by explaining that the scope of the Cook Inlet salmon fishery was reasonable and that there are good reasons for it. *See* supra 25–31. As documented in the rulemaking implementing Amendment 16, the Fisheries Service made an informed decision as to why it adopted its definition of the Cook Inlet salmon fishery and that it adequately explained that decision.

At times in their brief, Plaintiffs seem to argue that the Fisheries Service changed position by altering the difference in the definition of

stocks between its proposed rule and its final rule. *See* Pls' Br. 24, 24 n.5. To begin with, any changes between a proposed rule and a final rule are not a "change in position" under *FCC v. Fox* because a proposed rule is not an official statement of an agency's position, it is simply a proposal. A final rule that departs from a proposed rule is still permissible if it is "a logical outgrowth of the proposed rule." *Nat. Res. Def. Council v. U.S. Envtl. Prot. Agency*, 279 F.3d 1180, 1186 (9th Cir. 2002) (internal quotation omitted). Plaintiffs have not made any argument that the final rule was not a logical outgrowth of the proposed rule here and have thus forfeited that point.

But even if the Court considers Plaintiffs' argument, there was no inconsistency between the proposed rule and the final rule. To be sure, the final rule was revised "to specify the salmon stocks or stock complexes" to which it applied. 89 Fed. Reg. at 34,720. But that was not a substantive change, it merely involved listing the stocks that the agency had already identified as being present in the Cook Inlet EEZ. In fact, the proposed rule shows that the Fisheries Service was focused on managing salmon fish in federal waters from the start: "Therefore, Federal authority to manage Cook Inlet salmon fishing is limited to EEZ waters. . . . [the Fisheries Service] lacks statutory authority to establish harvest limits or implement a harvest strategy that applies in State waters." *Fisheries of the Exclusive Economic Zone Off Alaska; Cook Inlet Salmon; Amendment 16*, 88 Fed. Reg. 72,317 (Oct. 19, 2023);

see also id. at 72,320 (explaining that optimum yield would be defined based on harvest in the EEZ and that overfishing for each stock would be evaluated based on the maximum potential yield for "that stock in the EEZ").

As noted above, Plaintiffs' arguments seem to turn on their mischaracterization of Amendment 16 as defining "stocks" to include only individual fish that have already been harvested in a particular location. *See, e.g.*, Pls' Br. 28. But those arguments are based on a clear misunderstanding of the FMP. The FMP does not, as Plaintiffs say, retroactively define each stock of salmon based only on the individual fish that are caught every year. *Cf.* Pls' Br. 27–28. Rather, the term "harvested" in the agency's definition of the stocks was to outline *which* stocks of Chinook, sockeye, coho, pink, and chum salmon occur in the EEZ and are thus managed under the plan—in other words, the plan manages for those stocks that have historically been caught in federal waters. 2-ER-132 ("The SAFE report and FMP define those salmon stocks with evidence of historical harvests in the Cook Inlet EEZ Area."); *see also* 89 Fed. Reg. 34,725 ("As explained in the preamble to the proposed rule and the response to Comment 1, the "fishery" that is subject to Federal management under amendment 16 are the salmon stocks harvested by the commercial and recreational fishing sectors within the Cook Inlet EEZ Area.").

Plaintiffs also argue that the Fisheries Service's decision runs counter to the agency's own guidelines. Pls' Br. 28–29. But that argument misunderstands the guidelines and overlooks analysis that is in the record. The agency's guidelines inform the statutory requirement that "*[t]o the extent practicable*, an individual stock of fish shall be managed as a unit throughout its range." 16 U.S.C. § 1851(a)(3) (emphasis added). The advisory guidelines, which "shall not have the force and effect of law," *id.* § 1851(b), explain that this statutory standard serves to "induce a comprehensive approach to fishery management." 50 C.F.R. § 600.320(b). The guidelines further instruct that the geographic scope of a fishery should "not be overly constrained by political boundaries." *Id.*

The statute's use of the terms "to the extent practicable," and "not be overly constrained" indicate that Congress and the Fisheries Service were aware that the agency would be managing cross-jurisdictional fish and intended to vest the agency with significant discretion . Certainly, the Fisheries Service can seek to manage cross-jurisdictional fish in one FMP when possible. But the statute undisputedly provides discretion to make a different decision when the agency determines it is necessary to do so, as it did here. *See* 89 Fed. Reg. 34,743. In other words, the regulatory guidelines do not require the Fisheries Service to issue unenforceable management measures for other sovereigns, they simply

state that the Fisheries Service should seek to take a comprehensive approach to fishery management when possible.

Finally, Plaintiffs argue that the Fisheries Service violated the Magnuson–Stevens Act by failing to include salmon fishing in state waters in the FMP and instead managing only harvest in the EEZ. Pls' Br. 29–31. Just like their prior arguments, this one fails both because the Fisheries Service need not manage fisheries in state waters and because the agency fully explained its decision in any event. Plaintiffs also argue that the Fisheries Service was inconsistent in its definition of the fishery because it did not distinguish between state waters and the EEZ when specifying the "maximum sustainable yield" for each stock or stock complex of salmon. Pls' Br. 30. But maximum sustainable yield is a biological reference point that serves a different purpose than the scope of the fishery and must be set for individual fish stocks or stock complexes. 50 C.F.R. § 600.310(e)(1). In specifying maximum sustainable yield under Amendment 16, the Fisheries Service considers projected run sizes and escapement goals, which is a necessary step in determining how much harvest could occur in the EEZ without overfishing a stock. 2-ER-223. Nothing in the statute suggests that the definition of maximum sustainable yield is intended to constrain the Fisheries Service's definition of the fishery, which is a management, not biological, definition. Simply put, there is no inconsistency in the agency's decision.

At bottom, all of Plaintiffs arguments rest on the incorrect assumption that the Fisheries Service is required to reach beyond its jurisdiction and issue an FMP that covers both federal and state waters. Nothing in the Magnuson–Stevens Act requires such a result. In fact, the Act specifically vests the Fisheries Service with significant discretion in setting the scope of a fishery and determining which fish may be successfully managed as a unit. The Fisheries Service reasonably exercised that discretion here and explained why it set the boundaries of the Cook Inlet salmon fishery to include only the EEZ. The FMP appropriately manages the federal fishery while preserving state authority over the state fishery and taking into account spawning escapements and harvests in state waters. This Court should affirm.

II. The Fisheries Service complied with National Standard 1 when it reasonably defined optimum yield for Cook Inlet EEZ.

The Fisheries Service also complied with National Standard 1, which requires the agency to manage fisheries so as to achieve "optimum yield from each fishery." 16 U.S.C. § 1851(a)(1). Optimum yield "may be established at the stock, stock complex, or fishery level" and "is a long-term average amount of desired yield." 50 C.F.R. § 600.310(e)(3), (e)(3)(ii). Thus, optimum yield is not used to set catch limits for any particular year, but is used as a long-term metric for

evaluating the success of a management framework. 16 U.S.C. § 1852(h)(5).

Here, the Fisheries Service specified the optimum yield as "the range between the averages of the three lowest years of total estimated EEZ salmon harvest and the three highest years of total estimated EEZ salmon harvest from 1999 to 2021," which would "temper the influence of extreme events" and thus result in "a range of harvests that are likely to be sustainable and provide the greatest net benefit to the Nation in the future." 2-ER-223. In specifying optimum yield, the Fisheries Service relied on historic catch data between 1999 and 2021, which is the best scientific information available regarding the harvest levels that have supported a viable commercial fishery while protecting the least abundant stocks from overfishing. 2-ER-235. That data captured a variety of conditions and allowed the Fisheries Service to set an optimum yield that best allows for the maximum harvest while still maintaining a strong amount of each individual stock and preventing overfishing. 2-ER-235.

Plaintiffs raise three objections to the way that the Fisheries Service specified optimum yield in Amendment 16, none of which have merit. First, Plaintiffs argue that the agency failed to set optimum yield for the "fishery" because it set an optimum yield for the Cook Inlet EEZ and did not include state waters. Pls' Br. 38–39. This argument may be rejected for the same reasons explained above. *See* supra 25–31.

Second, Plaintiffs argue that the Fisheries Service erred by not specifying optimum yield on the basis of maximum sustainable yield. Pls' Br. 39–40. But the Fisheries Service *did* specify optimum yield on the basis of maximum sustainable yield. As the Fisheries Service explained in its proposed rule, the potential upper bound for optimum yield in the fishery as a whole would be the combined maximum sustainable yields of all of the stocks that exist in the fishery. 5-ER-945. So the agency's calculation of maximum optimum yield flowed directly from its calculation of maximum sustainable yield. But the agency nonetheless chose to set optimum yield at the fishery level rather than for individual stocks "[b]ecause it is not possible to harvest one stock at a time in this mixed stock fishery, because there are weak stocks intermingled with stocks that regularly exceed their escapement goal, and because harvest of all Cook Inlet stocks also occurs in marine and fresh waters." 5-ER-945.

The Fisheries Service explained that it reduced the optimum yield from the combined maximum sustainable yields of all stocks as a buffer to account for "these various ecological, economic, and social factors." 5-ER-945. It further defined optimum yield "at the fishery level to account for mixed stock harvest and variabilities in run strength." 5-ER-945. That approach is consistent with the agency's regulations, which state that while maximum sustainable yield must be defined at the stock or stock complex level, 50 C.F.R. § 600.310(e)(1)(i)–(iii), optimum yield

may be set either at the stock, stock complex, or fishery level. *Id.* § 600.310(e)(3). The Fisheries Service's decision to define optimum yield for the Cook Inlet EEZ fishery and to reduce the optimum yield from of the combined maximum sustainable yield for all stocks was based on the best scientific information available to the agency, was reasonable, and complied with the Magnuson–Stevens Act.

Finally, Plaintiffs argue that in setting optimum yield for the Cook Inlet EEZ, the Fisheries Service "ensure[d] full-scale deferral to the State of Alaska." Pls' Br. 40–41. Plaintiffs' argument is that, in using historical catch data that occurred under state management, the Fisheries Service is simply recreating a state-managed regime. Pls' Br. 40–41. This argument is misguided. The Fisheries Service independently determined that historic catch data from the very area it now manages is the best scientific information available regarding the appropriate optimum yield for the Cook Inlet EEZ. 5-ER-945. And Plaintiffs do not suggest any alternative scientific information on which the Fisheries Service could rely.

Alaska may have previously managed fishing in the Cook Inlet EEZ, but that does not mean that state catch data is inherently suspect or that using such data to specify optimum yield amounts to improper deferral. The Fisheries Service has consistently determined that catch levels under state management could not have been increased without risking overfishing, and thus historic catch levels are the best evidence

of the maximum harvests the EEZ can support without any stock experiencing overfishing. *See, e.g.*, 2-ER-233 ("[The Fisheries Service] has evaluated historical EEZ harvest levels and found that harvest in the EEZ could not be increased . . . without causing serious impacts to other salmon harvesters and major conservation problems for other stocks.").

The Fisheries Service also relied on independent analysis by the Council's Scientific and Statistical Committee, which determined that there had not been any reduced yield as a result of prior state management. 2-ER-236 In any event, the Fisheries Service explained that, as it collects its own data regarding what level of fishing will capture as much yield as possible without risking overfishing, the agency may revise its specification of optimum yield. 2-ER-235. And in fact, the Magnuson-Stevens Act requires fishery management councils to review the specification of optimum yield on a continuing basis and revise it as appropriate. 16 U.S.C. § 1852(h)(5).

This is in stark contrast to the amendment at issue in *Cook Inlet II*, which the district court vacated because it improperly deferred management to the state. There, the Fisheries Service relied "entirely on decisions made by the state of Alaksa" in achieving optimum yield for the fishery and simply trusted the state to take the management reins. *Cook Inlet II*, 2022 WL 2222879 at *8–*9. But here, the Fisheries Service specifically defined optimum yield for the EEZ, thereby

ensuring that it can achieve that level of harvest in the EEZ without any reliance on the state. In *Cook Inlet II*, the fatal flaw in the FMP amendment was implicit deferral to the state through inaction. Amendment 16 does the exact opposite, undercutting Plaintiffs' claim that the agency is again deferring to the state.

The Fisheries Service properly set the optimum yield for the Cook Inlet EEZ salmon fishery and thus complied with National Standard 1 and the Magnuson–Stevens Act.

III. The Fisheries Service complied with National Standard 2 because it based Amendment 16 on the best available science.

Next, Plaintiffs argue that the Fisheries Service violated National Standard 2 because it failed to base Amendment 16 on the best available science. That is wrong.

National Standard 2 dictates that the Fisheries Service shall base conservation and management measures "upon the best scientific information available." 16 U.S.C. § 1851(a)(2). In determining whether the Fisheries Service relied on the best scientific information available, the Court "must be highly deferential to the judgment of the agency" because the decisionmaking involves the use of "scientific and technical expertise." *Oregon Trollers*, 452 F.3d at 1120 (quoting *Nat'l Wildlife Fed'n v. U.S. Army Corps of Eng'rs*, 384 F.3d 1163, 1174 (9th Cir.2004)); *see also Seven Cty.*, 605 U.S. at 182 ("Black-letter administrative law

instructs that when an agency makes those kinds of speculative assessments or predictive or scientific judgments, and decides what qualifies as significant or feasible or the like, a reviewing court must be at its most deferential." (internal quotations omitted)).

Plaintiffs' only argument as to how the Fisheries Service failed to use the best available science is their argument that the agency disregarded a "Stock Assessment and Fishery Evaluation" (SAFE) report that the agency itself wrote. Pls' Br. 42–43. Plaintiffs claim that the report recommended that the FMP define salmon stocks in a way that aligns with the state definition. Pls' Br. 42–43. But Plaintiffs do not explain how the definitions in the report and the definitions that the Fisheries Service adopted are meaningfully different. Indeed, the report explains that the "report and FMP define those salmon stocks with evidence of historical harvests in the Cook Inlet EEZ." 2-ER-132.

Moreover, the record makes clear what scientific basis the Fisheries Service did rely upon— Amendment 16 creates a management structure that is grounded in the annual SAFE report, scientific assessments in the environmental analysis for Amendment 16, historical escapement data, independent analysis by the Council's Scientific and Statistical Committee, and 22 years of catch records. 2-ER-231–32, 2-ER-246, 89 Fed. Reg. at 34,726, 34,730. That is precisely the kind of scientific and technical expertise to which this Court must afford its greatest deference. This Court should defer to the agency's

decisionmaking. *Oregon Trollers*, 452 F.3d at 1120. The Fisheries Service complied with National Standard 2.

IV. The Fisheries Service complied with National Standard 3 because the agency reasonably explained why the Cook Inlet stocks cannot be managed as a unit throughout their range.

Plaintiffs' final argument is that the Fisheries Service violated National Standard 3. This argument is also wrong. National Standard 3 states that "[t]o the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination." 16 U.S.C. § 1851(a)(3). The FMP complies with this standard because the stocks cannot be managed through its range and because the agency will closely coordinate with the state on fisheries management.

The Cook Inlet salmon will not be managed as a single unit through its range because doing so is not practicable. The agency does not have management authority over the full extent of their range. Alaska has refused to accept delegated management. Finally, "[i]t is not practicable for [the agency] to manage salmon stocks into State waters where [the agency] has no management jurisdiction." 2-ER-247. But the Fisheries Service will coordinate with Alaska before, during, and after each fishing season to account for harvest in state waters when setting federal harvest limits. 2-ER-247, 5-ER-953. Thus, Amendment 16 is consistent with National Standard 3.

Plaintiffs also invoke 50 C.F.R. § 600.320(e)(3), which provides that when fishery management involves multiple jurisdictions, an FMP should "explain what state action is necessary to implement measures within state waters to achieve FMP objectives." Pls' Br. 44. But this regulatory guideline does not save their argument, for two reasons. First, the statute expressly provides that the guidelines "shall not have the force and effect of law," 16 U.S.C. § 1851(b), and therefore cannot override the statute's unambiguous preservation of state jurisdiction. Second, and more fundamentally, Amendment 16 satisfies the guideline's purpose. The Amendment identifies in detail the coordination framework with Alaska—including data sharing before, during, and after each fishing season—and explains specifically how state-water harvest will be accounted for in setting federal catch limits. 89 Fed. Reg. at 34,727. The guideline counsels a cooperative approach, not a requirement that the Fisheries Service issue unenforceable management directives for another sovereign's waters.

In arguing otherwise, Plaintiffs largely repeat their argument that the Fisheries Service was required to issue an FMP that extended beyond the EEZ to include state waters. Pls' Br. 43–44. But, as explained above, that argument is wrong. *See* supra 25–31.

The Fisheries Service provided a rational explanation of why it is not practicable to manage the Cook Inlet fish as one unit and included

measures in Amendment 16 to provide for close coordination with Alaska. The agency complied with National Standard 3.

V. If the Court finds any error in Amendment 16, it should remand to the Fisheries Service without vacating the entire rule.

To the extent the Court finds any error in Amendment 16, it should remand to the Fisheries Service to correct the error without vacatur. "Whether agency action should be vacated depends on how serious the agency's errors are 'and the disruptive consequences of an interim change that may itself be changed.'" *Cal. Cmtys. Against Toxics v. U.S. E.P.A.*, 688 F.3d 989, 992 (9th Cir. 2012) (quoting *Allied-Signal, Inc. v. U.S. Nuclear Regul. Comm'n*, 988 F.2d 146, 150-51 (D.C. Cir. 1993)).

Plaintiffs have not demonstrated why the Court should vacate all of Amendment 16 should it find any error. Amendment 16 implemented a detailed federal management scheme for the Cook Inlet EEZ salmon fishery. Plaintiffs are not entitled to vacatur of the entire rule when they have only challenged specific, severable aspects of the rule. Plaintiffs' arguments focus on the definitions of "fishery" and "optimum yield" in the rule. These definitions are distinct from the nuts and bolts of the management scheme that Amendment 16 implements, such as the Fisheries Service's permit and logbook requirements or harvest-specifications process. 2-ER-263. Thus, the seriousness of the errors in

Amendment 16 would be relatively minor and capable of correction were Plaintiffs to prevail. In contrast, vacating Amendment 16 would be very disruptive. Participants in the Cook Inlet EEZ fishery have relied on the Fisheries Service's management framework for several years, and vacating the entire amendment would throw their settled expectations out the window. Plaintiffs have not demonstrated that vacatur of the entire Amendment would be beneficial or necessary.

Vacating Amendment 16 would also create a concrete management vacuum. Before Amendment 16, the Cook Inlet EEZ had no operative federal management plan—a situation this Court held unlawful in *Cook Inlet I* and the district court held unlawful in *Cook Inlet II*. Vacatur of Amendment 16 would return the parties to that same unlawful condition, with no clear path forward given Alaska's repeated refusal to accept delegated management authority. Participants in the Cook Inlet EEZ fishery have organized their operations around Amendment 16's permit requirements, harvest specifications, and logbook procedures. Upending that settled framework based on a definitional objection that is remediable on remand would impose disruption wholly disproportionate to any error Plaintiffs have identified.

CONCLUSION

For these reasons, this Court should affirm the district court's judgment.

Respectfully submitted,

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