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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

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

Plaintiffs,

vs.

NATIONAL MARINE FISHERIES  
SERVICE ET AL.,

Defendants.

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

**DECLARATION OF DR.  
JAMES W. BALSIGER**

I, DR. JAMES W. BALSIGER, declare:

1. I am the Administrator for the Alaska Region of the National Marine Fisheries Service ("NMFS"), National Oceanic and Atmospheric Administration ("NOAA"), within the United States Department of Commerce.

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2. As part of my official duties, I assist the Secretary of Commerce, Wilbur Ross (“Secretary”), in carrying out his responsibilities for complying with the Magnuson-Stevens Fishery Conservation and Management Act (“Magnuson-Stevens Act”), as that statute applies to the implementation of fishery management plans (“FMPs”) and FMP amendments for fisheries in the exclusive economic zone (“EEZ”) off Alaska. I am responsible for coordinating the development and implementation of policies governing the management of salmon fisheries off Alaska under the “Fishery Management Plan for the Salmon Fisheries in the EEZ Off Alaska” as amended through Amendment 13 (“Salmon FMP”). As a result, I am familiar with the Salmon FMP, its amendments, and its implementing regulations. I serve on the North Pacific Fishery Management Council (“Council”) as NMFS’ representative for the Alaska Region.

3. I am familiar with the issues in this litigation and I have read Plaintiffs’ Motion to Enforce Judgment, [Proposed] Order of Final Judgment on All Claims, the Declarations of Mr. Fox, Mr. Huebsch, and Mr. Morgan, and all attachments and exhibits.

4. The following paragraphs explain: (1) the considerable effort made to date by the North Pacific Fishery Management Council to develop an FMP amendment to the Salmon FMP; (2) the delay formation of a Salmon Committee (a committee expressly requested by Plaintiffs and contemplated in the Court’s judgment) has caused; and (3) an estimate for completion of the FMP amendment.

**Efforts made to date by the Council in developing the FMP amendment**

5. On August 3, 2017, this Court entered the proposed judgment jointly submitted by Plaintiffs and Federal Defendants. Prior to entry of the judgment, the Council had already begun work to develop an FMP amendment. At its April 2017 meeting, the Council reviewed a 123-page discussion paper prepared by staff from NMFS, the Alaska Department of Fish and Game (ADF&G), and the Council.

6. Since entry of the judgment, the Council has held ten regularly scheduled meetings.<sup>1</sup> For reasons explained in paragraph 14 below, six of these were meetings at which the Council would consider the FMP amendment. At four of these six meetings, the FMP amendment was a specific agenda item and considered by the Council. The FMP amendment will be a specific agenda item at the Council's upcoming October 2019 meeting. The Council also has advanced work on the FMP amendment at other Council meetings by calling for additional nominations, and announcing appointments, to the Council's Salmon Committee. Furthermore, the Council has dedicated considerable staff time, in collaboration with NMFS, to the development of analytical products in support of the Salmon Committee between scheduled Committee meetings.

7. The Council held a public outreach meeting on the FMP amendment in Anchorage, Alaska, in conjunction with its October 2017 meeting. The Council is

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<sup>1</sup> In March 2019, the Council held a special telephonic meeting to address a single issue which could not have been considered at its February 2019 meeting due to complications created by the five-week government shutdown and which had to be decided before the Council's April 2019 meeting.

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scheduled to hold another public outreach meeting on the FMP amendment in Homer, Alaska, on September 30, 2019, in conjunction with its October 2019 meeting.

8. The Council decided to establish a Salmon Committee at its April 2018 meeting and announced the initial membership of the Salmon Committee at its June 2018 meeting. Prior to its April 2018 meeting, the Council received a number of comment letters from Cook Inlet salmon fishermen, many of whom represent the Plaintiffs, requesting that the Council establish a Salmon Committee to assist in the development of the FMP amendment. At its April 2018 meeting, the Council accepted the request for a Salmon Committee by stakeholders, including Plaintiffs, and voted to establish a Cook Inlet Salmon Committee. The Council stated that the Committee's primary functions will be to (1) review and provide comments on specific, Council-identified issues; (2) develop options for fishery management measures for specific, Council-identified management needs, and (3) provide perspectives on potential social and economic impacts of proposed fishery management measures. At its June 2018 meeting, the Council announced the five stakeholders originally appointed as members of the Committee. The Council has since added two more stakeholders to the Committee, bringing stakeholder committee membership to seven members. All of the originally-appointed members were appointed because they hold Cook Inlet draft gillnet permits and fish for salmon in Federal waters of Cook Inlet. One of the two members appointed recently represents the salmon processing sector in Cook Inlet; the other member represents new or recent entrants to the Cook Inlet commercial salmon driftnet fishery. Four of the seven Committee members

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identify themselves as members of the United Cook Inlet Drift Association and are representatives of Plaintiffs. Since establishment, the Salmon Committee has met three times,<sup>2</sup> and is scheduled to meet for a fourth time on September 30, 2019, in Homer.

9. The Council's Scientific and Statistical Committee (SSC) reviewed the work done to date on the preliminary status determination criteria and reference points for the FMP amendment as well as an analysis prepared for the FMP amendment titled, "Exploration of Overcompensation and the Spawning Abundance Producing Maximum Sustainable Yield for Upper Cook Inlet Sockeye Salmon Stocks." At its December 2018 meeting, the Salmon Committee asked that the preliminary status determination criteria and reference points as well as the analysis on overcompensation and spawning abundance be vetted by the SSC. The SSC reviewed these at its April 2019 meeting and provided its comments to the Council. The Council considered the SSC's comments and asked staff to address the comments in the initial draft analysis.

#### **Additional Process with the Salmon Committee**

10. I submitted a Declaration to this Court in January 2017. ECF No. 88. In that Declaration, NMFS estimated that it would take approximately two years for the Council to develop and adopt an FMP amendment, and approximately one year for NMFS to review, decide, and implement the adopted amendment. *Id.* ¶¶ 21-26. I also

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<sup>2</sup> The Salmon Committee has met on December 4, 2018, March 6, 2019, and April 2, 2019.

correctly acknowledged that NMFS does not control the Council or its scheduling of actions. *Id.* ¶ 27.

11. In reaching the initial estimate of two years for the Council to complete its work, I explained the following:

NMFS bases its estimate on the expectation that it will likely take the Council a year or more to develop alternatives and an initial draft analysis of those alternatives for Council and public review. ... To prepare the initial draft analysis, the Council will need to identify its suite of alternatives for consideration, craft measures necessary to address each requirement in 16 U.S.C. 1853(a) of the Magnuson-Stevens Act, coordinate with State managers if the Council is considering the delegation of management aspects to the State, and possibly hold stakeholder meetings or establish a Council committee to address specific issues.

*Id.* ¶ 22.

12. I also stated the following:

Once the initial draft analysis is ready, the Council reviews it and receives comments on the analysis and alternatives from its Scientific and Statistical Committee, its Advisory Panel, and the public. Based on its review and the comments received, the Council may modify the alternatives and measures under consideration, request additional analysis, or make other recommendations for revisions. The Council will continue to review and receive public comment on the revised analysis until it determines the analysis is sufficient and the Council can take a final action to select a preferred alternative as the new Salmon FMP amendment. Because the Council typically meets about every two months (for a total of 5 regularly-scheduled meetings a year), NMFS expects the Council's review, comment, and revision period to take 6 to 12 months.

*Id.* ¶ 24.

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13. For several reasons explained in the following paragraphs, there has been additional process that was not contemplated in my prior declaration.

14. First, the Council has limited the number of meetings at which the Council considers the FMP amendment to accommodate attendance by affected stakeholders, including Plaintiffs' representatives. The Council regularly meets five times a year in February, April, June, October, and December. The February meeting is held in Seattle, WA, or Portland, OR. The June meeting is held in Alaska, but not in Anchorage, and typically occurs during the salmon driftnet fishing season in Cook Inlet. The April, October, and December meetings are typically held in Anchorage. Many of the affected stakeholders, including representatives of Plaintiffs, live in communities adjacent to Cook Inlet, and Anchorage is relatively close and easy to travel to for Council and Committee meetings. Council and Committee meetings held in Anchorage are also less costly for interested stakeholders to attend.<sup>3</sup> In order to facilitate attendance by interested stakeholders, which is a fundamental element of the Council process, the Council has considered the FMP amendment at its April, October or December meetings. However, this has significantly reduced the number of meetings at which the Council can consider the FMP amendment. Rather than having five meetings a year to consider the FMP amendment as originally contemplated, the Council has three, or possibly two,<sup>4</sup> meetings

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<sup>3</sup> At its October 2017 meeting, the Council received testimony from an interested stakeholder asking that the Council consider the FMP amendment at Council meetings held in Anchorage because they are easier and less costly for interested stakeholders to attend.

<sup>4</sup> At times, the October meeting is held at an Alaska location other than Anchorage. For example, the October 2019 Council meeting will be held in Homer. Because Homer and other communities in the Kenai Peninsula area are

a year at which to consider the FMP amendment. This decision by the Council has extended the time needed to develop the initial draft analysis for, and take final action on, the FMP amendment.

15. Second, when I submitted my Declaration to the Court in January 2017, the Council had not yet decided whether to establish a Salmon Committee. The Council's establishment of specific committees to provide focused input and recommendations to the Council on fishery management can be an extremely useful tool. However, Council committees take time to (1) establish, (2) find acceptable meeting dates, (3) allow members to review and consider the information and data presented by staff, and (4) allow members to develop, discuss, and adopt recommendations for options and elements to be included in the FMP amendment analysis and considered by the Council. The Salmon Committee was established, in large part, based on the request of Plaintiffs and includes Cook Inlet salmon fishery stakeholders, including Plaintiffs, as members. *See* ECF No. 102 ¶ 5. While providing the Council with information and input, the Salmon Committee has added significant time to the process due to all of these things, even for aspects of the FMP amendment that could be considered non-controversial by all involved. Thus, the Plaintiffs' request to establish a Salmon Committee has significantly increased the Council's process and in turn the amount of time to develop an FMP amendment.

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home to many Cook Inlet salmon fishermen, including representatives of Plaintiffs, the Council will be considering the FMP amendment at its October 2019 meeting.

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16. Third, the Committee also has allowed members of the public in attendance at the Committee meetings to make presentations to the Committee. For example, at the Committee's April 2019 meeting, the Committee Chairman, responding to requests from Committee members, permitted Mr. Jeff Fox, a representative with UCIDA, to make a presentation to the Committee on how State in-season management is adjusted using indices of run strength interpreted from driftnet vessel catches and assumed proportional catch by gear sector. At the request of Committee members and the public, the Committee Chairman also permitted Dr. Roland Maw, another representative with UCIDA, to make a presentation to the Committee on historic runs using brood tables for Kenai sockeyes that he provided and on his views on the range of factors involved in the success of a salmon run. These presentations were encouraged by the Committee, but add time to the process; again time that was incurred by plaintiffs' organizations. Additionally, at each Committee meeting, members of the public have been allowed to join the conversation whenever they have something to say. This process takes up considerable time and often moves the Committee away from the agreed-upon agenda. At the April 2019 Committee meeting, Chairman Jensen stated that the meeting would have designated public comment periods, similar to other Council ad hoc committee meetings, but the Committee members disagreed with this approach and supported open public participation during the entire Committee meeting. Given this direction from the Committee, Chairman Jensen allowed open public participation to continue.

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17. Finally, finding a time when all Committee members can be present has been challenging. All members of the Committee were able to attend the first Committee meeting in December 2018. However, one Committee member was unable to attend the Committee's second meeting in March 2019, and one Committee member was unable to attend the Committee's third meeting in April 2019. At the end of the Committee's April 2019 meeting, all members of the Committee recommended that a two-day meeting be held the following month in May 2019. Council and NMFS staff were supportive of a two-day meeting, and on April 7, 2019, five days after the Committee meeting, Council staff proposed May 6-7, 2019, for the two-day meeting. However, three of the six Committee members, two of which represent the Plaintiffs, responded that they would not be able to attend a meeting on those dates, and identified a number of conflicts throughout May. Council staff then asked Committee members to let him know when would be the best time to meet after the salmon season is over. While some said a meeting in late September or early October would be good, one member who represents Plaintiffs expressed concern that such a meeting would conflict with hunting season. Without a clear consensus from the Committee, the Council scheduled a one-day Salmon Committee meeting for September 30, 2019, to coincide with the Council's October 2019 meeting in Homer. The Council also scheduled an evening outreach meeting on the same day at the Committee meeting in order to open discussion of the FMP amendment process with local stakeholders outside of the constraints of a Committee meeting

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agenda. Here again, members from plaintiffs' organizations contributed significantly to the delay in the development of an FMP amendment.

18. Given these attendance issues, some Committee members at the March 2019 Committee meeting requested that the Council Chairman allow alternates to serve on the Committee when the Committee members could not attend in person or by phone. The Council Chairman considered the request, but decided not to allow alternates to serve on the Committee because the Council does not typically allow ad hoc committees to have member-selected alternates serve for Council-appointed members, and he determined that the Committee would be less effective and less able to build on its prior work if the membership was constantly changing.

**Revised estimate for completion of the FMP amendment**

19. One day before Plaintiffs filed their motion to enforce judgment, Council staff circulated to members and staff of the Salmon Committee a draft agenda for the upcoming September 2019 Salmon Committee meeting. See Exhibit 1 attached to this Declaration. One of the topics for discussion is titled "Timeline for Completion of Amendment." Inclusion of this topic on the agenda indicates the Council's tangible interest in completing its work on the FMP amendment in a timely manner.

20. Although NMFS does not control the Council or its scheduling of actions, and assuming there is not further delay attributable to the Salmon Committee, NMFS estimates that the Council could be in a position to take final action on its preferred alternative for the FMP amendment by the Council's December 2020 meeting. This

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estimate is based on the Council having an initial draft analysis completed and ready for public and Council review at the Council's April or October 2020 meeting, with final action by the Council at its December 2020 meeting. This estimate does not include time that may be needed to resolve unforeseen issues or complications that may arise during the drafting of the analysis or to incorporate significant changes to the alternatives being considered.

21. Regardless of how much more time the Council may need to complete its work on the FMP amendment, NMFS has committed, and continues to commit, to taking final agency action, including the promulgation of a final rule, if required by the final agency action, within one year from the Council meeting at which the Council takes final action to adopt the FMP amendment. *See* ECF No. 102 at ¶ 4. In light of the substantial progress and on-going work, NMFS is currently committed to following the Council process as envisioned in the Magnuson Act and I believe that the Council should be allowed to finish its work with input from the Salmon Committee.

Pursuant to 28 U.S.C. § 1746, I swear under penalty of perjury that the foregoing is true and correct.

  
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DR. JAMES W. BALSIGER  
Administrator, Alaska Region  
National Marine Fisheries Service

September 27, 2019  
DATE

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Lauren Smoker - NOAA Federal <lauren.smoker@noaa.gov>

## Please review - Draft agenda for Sept 30 Cook Inlet Salmon Committee meeting

1 message

**Jim Armstrong** <james.armstrong@noaa.gov>

Tue, Sep 3, 2019 at 9:52 AM

To: Daniel Anderson <paragondan@sbcglobal.net>, Hannah Heimbuch <hannahheimbuch@gmail.com>, Mark Casseri <coachcasseri@yahoo.com>, Catherine Cassidy <cark1@att.net>, Dino Sutherland <dinosutherland@yahoo.com>, John Jensen <i.fishjensen@gmail.com>, "jeffb@eefoods.com" <jeffb@eefoods.com>, Georgeanna Heaverley <glheaverley@gmail.com>, Karla Bush <karla.bush@alaska.gov>, "gretchen.harrington@noaa.gov" <gretchen.harrington@noaa.gov>, "forrest.bowers@alaska.gov" <forrest.bowers@alaska.gov>, Jordan Watson - NOAA Federal <jordan.watson@noaa.gov>, "diana.evans@noaa.gov" <diana.evans@noaa.gov>, "ccunningham@alaskapacific.edu" <ccunningham@alaskapacific.edu>, "lauren.smoker@noaa.gov" <lauren.smoker@noaa.gov>, Doug Duncan <doug.duncan@noaa.gov>, "Munro, Andrew R (DFG)" <andrew.munro@alaska.gov>, Jason Gasper <jason.gasper@noaa.gov>, bill templin <bill.templin@alaska.gov>

Committee members,

Please review the attached draft agenda for our upcoming Committee meeting. The meeting will be on Sept 30 at the Best Western in Homer. Our staff workgroup is developing materials for discussion at the meeting regarding econ/community impacts outline and reporting and monitoring requirements and we'll distribute those materials by Sept 13. **Please send your comments on the agenda no later than Sept 10.**

Our first agenda item for discussion will be to pick up on the delegation of management measures to the State under Alternative 2. Recall from our meeting in April that we came up with a way to make Committee recommendations more efficient: "It was suggested that, from now on, Committee recommendations on issues addressed in the discussion paper, that are different from the draft measures in the paper, be presented as redline versions so that differences can be easily tracked." [Here's a link to the current discussion paper.](#)

Recall from emails I sent earlier this summer that our Committee membership has changed - we have a new stakeholder appointee, Georgeanna Heaverley, and we have two Co-Chairs from the Council - John Jensen and Karla Bush - at the head of the table. Committee membership and all of the information provided for past meetings and the upcoming meeting can be accessed through the Salmon Committee webpage.

As always, please contact me if you have questions. I will be out of the office for the rest of this week, but will have access to email.

Best regards,  
Jim Armstrong

James L. Armstrong  
Plan Coordinator/Analyst  
North Pacific Fishery Management Council  
605 W. 4th Ave, Suite 306  
Anchorage, AK 99501  
907-271-2809

**Agenda-Cook\_Inlet\_Salmon\_Committee\_2019-09-30\_draft.docx**  
109K

Exhibit 1 Page 1 of 2



# North Pacific Fishery Management Council

Simon Kinneen, Chair | David Witherell, Executive Director  
605 W. 4th Avenue, Suite 306, Anchorage, AK 99501  
Phone 907-271-2809 | [www.npfmc.org](http://www.npfmc.org)

## Cook Inlet Salmon Committee

### AGENDA

September 30, 2019, 9:00 am – 5:00 pm  
Best Western Hotel, 575 Sterling Hwy, Homer, AK

[Salmon Committee webpage](#)

[Meeting Webpage](#)

**9:00 - 9:30 am**      **Administrative (Co-Chairs John Jensen, Karla Bush)**

- Agenda, Rules of Order
- New Committee Members

**9:30 am - 4:00 pm**      **Discussions and Management Measure Recommendations**

- Time needed is approximate and includes breaks and a one hour lunch
- Materials listed below are posted on the [Meeting Webpage](#)
- Delegation of Management Measures under Alternative 2
  - Materials:
    - [Discussion Paper Chapter 2.4.2](#)
- Economic and Community Impacts Outline – Comm. recommendations needed
  - Identification of Affected Communities
    - Dependence
    - Engagement
  - Community Vulnerability Measures
  - Questions for the Committee
- Reporting and Monitoring Requirements – Comm. recommendations needed
  - Overview of Requirements and Key Issues
  - Questions for the Committee
- Timeline for Completion of Amendment – Comm. review
- New Business

**4:00 – 5:00 pm**      **Review of Committee Recommendations (Armstrong)**

**5:00 pm**      **Adjourn**

If you would like to submit a public comment, visit the [Meeting Webpage](#)