

would not be able to move inshore in response to weather conditions. This restriction would force a participant to forgo fishing or face harsh weather in small vessels typically 42 ft or less.”¹⁴⁶ Amendment 16 does not promote the safety of human life at sea to the extent practicable.

D. The Court should vacate Amendment 16 and its implementing regulations, including the harvest specifications.

Although the courts must never forget that our constitutional system gives the Executive Branch a certain degree of breathing space in its implementation of the law, we cannot countenance maneuvering that merely maintains a facade of good faith compliance with the law while actually achieving a result forbidden by court order. . . . At some point, we must lean forward from the bench to let an agency know, in no uncertain terms, that enough is enough.^[147]

This resonates with particular force here. NMFS has again failed to comply with its unambiguous statutory mandate to manage the Cook Inlet salmon fishery as has been required by the MSA since it was enacted in 1976 and despite a Ninth Circuit order and an order from this Court that both affirm and clarify this obligation. At some point, enough is enough.

In light of the errors identified above, Plaintiffs request that the Court immediately issue an order vacating Amendment 16, its implementing regulations, and the harvest specifications, which were issued pursuant to an unlawful FMP amendment. Vacatur is the presumptive remedy for agency actions that are arbitrary, capricious, or contrary to law.¹⁴⁸

¹⁴⁶ COUN00711.

¹⁴⁷ *Pub. Citizen Health Rsch. Grp. v. Brock*, 823 F.2d 626, 627 (D.C. Cir. 1987).

¹⁴⁸ *Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 413–14 (1971).

