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Cook Inlet Fishermen's Fund*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

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

Plaintiffs,

v.

NATIONAL MARINE FISHERIES
SERVICE ET AL.,

Defendants.

Civil Action No.: 3:21-cv-00255-JMK

DECLARATION OF DAVID MARTIN

I, David Martin, hereby declare and state:

1. I am over the age of 18 and not a party to this action. I know these facts of my own personal knowledge and would competently testify to them if called as a witness.

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2. I am a commercial fisherman and live near the town of Ninilchik, Alaska, a small fishing community on the east coast of Cook Inlet. I own and operate a drift gillnet fishing boat and a limited entry permit that allows me to participate in the Cook Inlet drift gillnet salmon fishery. I fish predominately in Cook Inlet and have done so since 1971. The federal waters in Cook Inlet, in the Exclusive Economic Zone (“EEZ”), have been opened to commercial salmon fishing since commercial fishing started in the inlet more than 135 years ago. The majority of my salmon fishing occurs within the federal waters in Cook Inlet in the EEZ, and I rely on fishing in the EEZ for my livelihood. Commercial fishing in Cook Inlet provides my income and allows me to live a seasonal lifestyle around which I have organized my life. Closure of commercial fishing in the EEZ will prevent me from being able to utilize my fishing operation, being able to earn income from commercial fishing, and will disrupt my entire way of life.

3. I am a member of and currently serve on the Board of Directors and as the President for the United Cook Inlet Drift Association (“UCIDA”), one of the plaintiffs in the above captioned litigation. I am a member and serve on the Board of Directors of the Cook Inlet Fishermen’s Fund (“CIFF”), the other plaintiff in the above captioned litigation. CIFF is a non-profit corporation registered under the laws of the State of Alaska. CIFF has represented 446 members, including commercial fishermen of all gear types (including 201 driftnet fishermen and 224 set net fishermen), seafood processors, and community members. The majority of CIFF’s members are from Alaska, but CIFF also has members from 21 other states, including Washington, Oregon, Utah, California

Minnesota, Iowa, Wisconsin, New York, Arizona, Delaware, Texas, Colorado, Florida, Indiana, New Mexico, Oklahoma, South Dakota, Virginia, Vermont, and Wyoming.

4. CIFF's mission is to advocate on behalf of all commercial fishermen of Cook Inlet and for the coastal community more generally. CIFF's members and volunteers are fueled by the desire to save the commercial fishing industry in Cook Inlet as well as all of Alaska, and to protect the habitat and ecosystems that those species depend on. When necessary, CIFF has filed suit in court to protect its member's interests.

5. CIFF's members have long been concerned with the State of Alaska's mismanagement of salmon fisheries in Cook Inlet. When the Magnuson Stevens Fishery Conservation and Management Act ("MSA") was first passed, the State initially managed the Cook Inlet salmon fishery in a manner consistent with the MSA by setting escapement goals that were scientifically sound and intended to achieve the maximum sustainable harvestable surplus. The results were highly productive with the sockeye salmon returns as high as 12 million in the mid 1980's and 1990's and averaging between four to nine million. But things changed after that as the State moved away from MSA based management and started applying its own Sustainable Salmon Policy. Ever since that time, yields have been lower, sporadic, unpredictable, and more salmon were wasted because of allocative restrictions preventing the commercial harvest of the surplus salmon. The 10-year average annual commercial catch from 2008 to 2017 was 2.7 million sockeye. The commercial sockeye harvest was about 1.8 million in 2017 and 2019, and the commercial sockeye harvest in 2018 was only 814,516—the worst harvest

in over 40 years. In 2020, the commercial salmon harvest in Cook Inlet reached a new low, below 2018, with 669,751 sockeye harvested and 1.2 million total commercial harvest of all five salmon species. The low commercial harvest was not because of a lack of salmon but because of the State's management plans that have severely restricted the commercial fishery in time and area resulting in millions of surplus salmon going unharvested each year and grossly over-escaping the salmon systems. These declines have all occurred under the exclusive management, control, and direction of the State of Alaska.

6. CIFF sought to turn the tide on the state mismanagement in 2010 by appealing to the National Marine Fisheries Service ("NMFS") and the North Pacific Fishery Management Council (the "Council") to manage the Cook Inlet Salmon fishery in a manner consistent with the MSA. NMFS refused, and instead issued Amendment 12 to the Fishery Management Plan for Salmon Fisheries in the EEZ off the Coast of Alaska. CIFF initiated a lawsuit in 2013 to challenge Amendment 12, and ultimately prevailed before the Ninth Circuit Court of Appeals. In September 2016, the court ordered that NMFS and the Council were required to create a management plan for the EEZ off the Coast of Alaska, including for the Cook Inlet salmon fishery. The Ninth Circuit instructed that NMFS could not wriggle out of its duties or shirk the statutory command to produce a fishery management plan that is compliant with the MSA for the Cook Inlet salmon fishery.

7. The Ninth Circuit's decision prompted a five-year administrative process that completely failed to accomplish what the court had directed or to follow the required procedures. CIFF, UCIDA, and stakeholders continually, over the five-year period, tried to steer the Council, NMFS, and the State of Alaska into developing a FMP for the Cook Inlet salmon fishery that complied with MSA and the Ninth Circuit's decision but to no avail. In fact, the State's mismanagement became ever more restrictive and punitive, resulting in record low commercial harvest while wasting millions of surplus salmon and putting numerous fishermen and processors out of business. At the last minute and at the urging of the State of Alaska, the Council completely abandoned its efforts to create a fishery management program for the Cook Inlet salmon fishery. Instead, on November 3, 2021, NMFS finalized its approval of Amendment 14 to the Cook Inlet Fisheries Management Plan. Amendment 14 immediately and permanently closes all commercial salmon fishing in the EEZ in Cook Inlet and defers all management for salmon in Cook Inlet to the State of Alaska. This closure, which closes the main fishing area to harvest salmon and is also the only area to effectively harvest some salmon species and some salmon runs, will completely disrupt my way of life. With the EEZ closed, it is impossible to manage the Cook Inlet salmon fishery for Maximum Sustained Yields and the other National Standards of the MSA as ordered by the Ninth Circuit Court. It will severely impact and irreparably harm my ability to fish this summer, causing me financial hardship from lost fishing opportunities. I have structured my life around the seasonal

Cook Inlet salmon fishery, and this fishery is central to my identity and way of life as a commercial fisherman.

8. CIFF filed the above captioned lawsuit to prevent the immediate and long-term harm that will occur if Amendment 14 is allowed to remain in place. While this is not CIFF's preferred strategy, it aligns with its organizational purpose and was the only available option to prevent irreparable harm to CIFF's membership and the fishery.

9. NMFS and the Council also failed to follow proper procedures in creating and implementing Amendment 14. To the limited extent allowed by NMFS and the Council, CIFF participated, directly and through its members, in the proceedings predating the decisions challenged in the above captioned lawsuit. CIFF submitted detailed written comments and testimony on Amendment 14 and its implementing regulations and the accompanying draft environmental assessment. The concerns, opinions, and wellbeing of CIFF members were not adequately considered by NMFS and the Council in creating Amendment 14. Other alternatives that did not so drastically impact the fishery and the lives of the stakeholders who rely on the fishery were cast aside in favor of allowing the State to have its way and to continue to manage the fishery. This is directly contrary to the Ninth Circuit's decision and the principles and procedures required by that decision. Amendment 14 does not comport with the principles the Ninth Circuit commanded NMFS and the Council to follow, including considering and relying on the best scientific evidence, the economic impacts of the alternative, and other principles established by the MSA and the National Environmental Policy Act ("NEPA")

for the continued health and viability of the fishery. Amendment 14 puts the future of the salmon fishery and of the salmon stocks in Cook Inlet at risk.

10. I will be directly and adversely impacted by Amendment 14 and its implementing regulations. The closure of the fishery will cause immediate havoc and irreparable harm this coming summer with the scheduled start of the fishery on June 20, 2022, and before. Harvest in the EEZ is essential for the proper management of the fishery. There has never been an attempt by the State of Alaska to manage the commercial fishery only in state waters without the benefit of commercial fishing and test-boat fishing in the EEZ, and the state has no present management measures in place to address this scenario. Amendment 14 will essentially put commercial fishing in Cook Inlet out of business, which will in turn put me out of business and make my current way of life unviable. Support businesses, fishing related jobs, and communities will be financially harmed. Hundreds of millions of pounds of protein rich salmon will be taken out of interstate commerce and the National food supply. Future generations will be deprived. Even the salmon resource itself will be harmed from the negative effects of gross over-escapements.

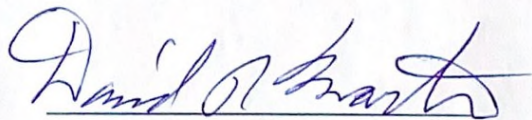
11. I cannot feasibly make up the lost harvest in the EEZ (where I have predominantly fished) by fishing only in state waters. The EEZ portion of Cook Inlet is the best commercial fishing location in Cook Inlet, and where I typically get most of my salmon every year. Amendment 14 will force hundreds of boats to fish in tiny near shore corridors which is impractical, insufficient, and creates potential safety and salmon

quality concerns. Amendment 14 will also make commercial fishing less viable by creating significant uncertainty for processors who rely on fishing in the EEZ to lengthen the season, provide premium quality salmon, and provide for a more orderly fishery. There are only two major processors left in Cook Inlet where there used to be dozens. Amendment 14 is likely to make one or both of those processors quit doing business in Cook Inlet, putting the entire commercial industry at risk,

12. If the court grants CIFF's requested relief, disallowing the closure of the EEZ, the immediate harm to my ability to fish this summer would be minimized. Further, NMFS, the Council, and the State would be required to follow proper procedures in creating an alternative to Amendment 14, considering and relying on the best scientific evidence, the economic impacts of the alternative, and other principles established by the MSA and NEPA for the continued health and viability of the fishery. If CIFF prevails in this lawsuit, and the court orders NMFS and the State to manage the fishery in line with the principles set out in the MSA, the health of the fishery can be preserved. The relief UCIDA and CIFF seeks is vital to my ability to fish this coming summer and years to come, my way of life, and the continued viability and health of the fishery and my fishing community and future generations.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: February 6, 2022.


David Martin

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CERTIFICATE OF SERVICE

I hereby certify that on February 7, 2022, I filed a true and correct copy of the foregoing document with the Clerk of the Court for the United States District Court, District of Alaska by using the CM/ECF system.

/s/ Jason T. Morgan

Jason T. Morgan, AK Bar No. 1602010