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8. **IN THE UNITED STATES DISTRICT COURT**
9. **FOR THE DISTRICT OF ALASKA AT ANCHORAGE**

9. UNITED COOK INLET DRIFT)
10. ASSOCIATION, et al.,)
11.)
12. Plaintiffs,)
13. v.)
14. NATIONAL MARINE FISHERIES)
15. SERVICES, et al.,)
16. Defendants.)
17.)
18. WES HUMBYRD, et al.,)
19.)
20. Plaintiffs,)
21. v.)
22. NATIONAL MARINE FISHERIES)
23. SERVICES, et al.,)
24.)
25. Defendants.)
26.)

Case No 3:21-cv-00255-JMK
3:21-cv-00247-JMK

23. **AMICUS BRIEF OF THE CITY OF KENAI SUPPORTING UCIDA**
24. **PLAINTIFFS' CLAIMS**

26. CITY OF KENAI AMICUS
UCIDA, et al. v. NMFS, et al.
Case No. 3:21-cv-00255-JMK
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1. **INTRODUCTION**

2. Amendment 14 to the Fishery Management Plan (FMP) for the salmon
3. fisheries in the Exclusive Economic Zone (EEZ) will have an unacceptable impact
4. to the City of Kenai, a fishing community.¹ The City Council of Kenai recognizes
5. that commercial and sport salmon fisheries have played a key role in the history,
6. society, and economy of the City.² The Council has received public testimony
7. from industry participants that the closure of the EEZ could require local
8. processors to shut their doors affecting the viability of all commercial salmon
9. fisheries in Cook Inlet.³ National Standard 8 requires that the National Marine
10. Fisheries Service (“NMFS”) take into account the importance of fishery resources
11. to fishing communities to provide for sustained participation and minimize
12. adverse impacts.⁴ NMFS’s conclusion that Amendment 14 is an acceptable
13. alternative under the framework of the Magnuson- Stevens Fishery Conservation
14. and Management Act⁵ that would allow for sustained participation and minimize
15. adverse impacts to the City and its fishing fleet, without ever consulting with or
16. analyzing the impact to the City is arbitrary and capricious and this Court should
17. invalidate NMFS’s action in this regard.

18. **ARGUMENT**

19. **I. Legal Framework**

20.
21.
22. _____
23. ¹ See. Letter From Mayor Gabriel at AKR001345.

24. ² See. Resolution No. 2021-52 at AKR0001417.

25. ³ *Id.* §16 U.S.C. 1851(a)(8).

26. ⁴ See. Letter From Mayor Gabriel at AKR001345.

⁵ §16 U.S.C. 1851 *et. Seq.*

1. The FMP is required to meet ten National Standards.⁶ Central to the City's
2. argument in this matter is National Standard 8. National Standard 8 requires:

3. Conservation and management measures . . . take into account the
4. importance of fishery resources to **fishing communities** by utilizing
5. **economic and social data** that meet the requirements of paragraph
6. (2), in order to (A) provide for the sustained participation of such
7. communities, and (B) to the extent practicable, minimize adverse
8. economic impacts on such communities.⁷

9. A fishing community is one that is substantially dependent or engaged in
10. the harvest or processing of fishery resources to meet social and economic
11. needs.⁸ The City of Kenai clearly meets the definition of a fishing
12. community, with commercial, sport, and personal use fisheries playing a
13. critical role in its history, culture and economy.⁹ FMPs are required to
14. examine the social and economic importance of fisheries to affected
15. communities.¹⁰ The examination must include data relevant to particular
16. fishing communities and not simply generalized data that is unable to
17. describe an impact to a particular community.¹¹

18. Under the Administrative Procedures Act,¹² agency actions, findings
19. and conclusions must be held unlawful and set aside if they are arbitrary,
20. capricious, an abuse of discretion or otherwise not in accordance with
21. law.¹³ Agency action must have a cogent explanation, particularly when

22. ⁶ §16 U.S.C. 1851(a).

23. ⁷ §16 U.S.C. 1851(a)(8).

24. ⁸ 50 C.F.R. § 600.345(b)(3).

25. ⁹ AKR000138.

26. ¹⁰ 50 C.F.R. § 600.345(c)(1).

¹¹ *N. Carolina Fisheries Ass'n, Inc. v. Daley*, 27 F. Supp. 2d 650, 661-665 (E.D. Va. 1998).

¹² 5.U.S.C. §706(2)(A)-(D).

¹³ *Groundfish Forum v. Ross*, 375 F. Supp. 3d 72, 81(D.D.C. 2019).

1. deficiencies have little to do the agency’s scientific judgment or technical
2. expertise.¹⁴

3. **II. Amendment 14 Is Not Consistent With National Standard**

4. **8.**

5. Amendment 14 does not provide for sustained participation in the
6. fishery by drift gillnetters in Kenai, nor does it minimize adverse impacts.
7. To the contrary, it has the potential to eliminate participation and shut down
8. the fishery.¹⁵ NMFS itself acknowledged that Amendment 14 could lead to
9. fishermen no longer participating in the fishery and the closure of shore-
10. based processors.¹⁶ NMFS’s final conclusion that its analysis of National
11. Standard 8 supports a finding that Amendment 14 would provide for
12. sustained participation¹⁷ is arbitrary and contrary to the evidence.

13. The arbitrariness of the decision is clear when the community of
14. Kenai is considered specifically as a fishing community as required under
15. National Standard 8.¹⁸ While NMFS did consider general economic data,
16. the record does not show that it considered impacts specific to the City of
17. Kenai, or any other unique fishing community for that matter. NMFS’s
18. analysis does not describe how many boats based in Kenai would stop
19. fishing and compare it to the size of its fleet. The analysis also does not
20. provide information on how the closure would impact the society and

21. _____
22. ¹⁴ *Id.* citing *NRDC v. Daley*, 209 F.3d 747, 755-56 (D.C. Cir. 2000).

23. ¹⁵ *See*. Kenai City Council Resolution No. 2021 and Letter from Kenai Mayor,
AKR 0001417 and AKR0001345.

24. ¹⁶ AKR0001734.

24. ¹⁷ AKR0001770.

25. ¹⁸ *N. Carolina Fisheries Ass’n, Inc. v. Daley*, 27 F. Supp. 2d 650, 661-665 (E.D.
Va. 1998).

1. economy of Kenai. Likewise the record does not show consideration of the
2. impact to Kenai if its only remaining shore-based processor closed. The
3. record does not discuss the economic impact to the community if local boat
4. storage yards or marine service businesses closed. NMFS did not consider
5. the secondary impacts to the community's businesses if the fishing close
6. such as reduced purchase of goods and supplies. NMFS did not consider
7. whether the City of Kenai's dock and cranes would remain viable. NMFS
8. did not consider whether boats would still be able to get fuel or ice required
9. for fishing if infrastructure and services closed. NMFS's analysis provides
10. no specific analysis with regard to the impact of its decision on the City of
11. Kenai, as is required.¹⁹

12. Instead, the decision speculates that there would be additional
13. harvest opportunities in state waters and a redistribution of benefits.²⁰ But
14. the decision does not explain if Kenai would be a winner or a loser in this
15. redistribution of benefits. Nor does it explain how additional harvest
16. opportunities in state waters would make up for the approximately 48%
17. traditional harvest that came from the EZZ²¹ each fishing season. The
18. analysis does not even speculate whether the impact would be greater or
19. different from the various unique fishing communities along Cook Inlet and
20. adjacent waters. NMFS's analysis is not cogent and does not provide a
21. meaningful analysis to the community of Kenai.

23. ¹⁹ *N. Carolina Fisheries Ass'n, Inc. v. Daley*, 27 F. Supp. 2d 650, 661-665 (E.D.
24. Va. 1998).

25. ²⁰ AKR0001770.

26. ²¹ AKR001345.

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CONCLUSION

The City Council of Kenai and its Mayor have found the consequences of implementation of Amendment 14 unacceptable to the City²² concluding that “it is disingenuous of the North Pacific Management Council to suggest that closure of the fishery would provide any benefit to the fishery participants or the City of Kenai.”²³ NMFS analysis is not specific to the various fishing communities affected, it does not analyze what communities would benefit or be harmed in a redistribution of benefits. NMFS decision to close the EEZ is arbitrary and not cogent in light of National Standard 8.

DATED this 14th day of February, 2022.

CITY OF KENAI

/s/ Scott M. Bloom
Scott M. Bloom, City Attorney
AK Bar No. 0606038

I certify that this pleading contains 1091 words, in compliance with the Local Civil Rules

22 AKR001345 .
23 AKR0001417.
CITY OF KENAI AMICUS
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1. CERTIFICATE OF SERVICE

2. The undersigned certifies under penalty of perjury
3. of the laws of the State of Alaska that, on the 14th
4. day of February, 2022, the foregoing was
5. electronically filed with the Clerk of Court
6. using the CM/ECF system, which will send
7. notification of such filing to the following:

8. /s/ Cindy Herr
9. Cindy Herr

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