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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

STATE OF ALASKA,

Plaintiffs,

v.

JANE LUBCHENCO, *et al.*

Defendants.

Case No.: 3:10-cv-00271-TMB

ALASKA SEAFOOD COOPERATIVE, et al.,

Plaintiffs,

v.

NATIONAL MARINE FISHERIES
SERVICE; *et al.*

Defendants.

Case No.: 3:11-cv-00001-TMB

FREEZER LONGLINE COALITION,

Plaintiff,

v.

JANE LUBCHENCO, *et al.*

Defendants.

Case No. 3:11-cv-00004-TMB

DECLARATION OF TODD M. LOOMIS

I, Todd M. Loomis, hereby declare and state as follows:

1. I am director of government and industry affairs at Cascade Fishing, Inc. and Ocean Peace, Inc. and represent the F/T Seafisher and F/T Ocean Peace. I received an M.S. in Fisheries from South Dakota State University in 1997. That same year I served as a National Marine Fisheries Service (“NMFS”) certified fisheries observer in the Gulf of Alaska and Bering Sea groundfish fisheries and then worked as a fisheries biologist at NMFS from 1998 – 2006. Since 2006, I have worked for Cascade Fishing, Inc. (and Ocean Peace, Inc., since 2011) where I have been involved with cooperative management of our fisheries, the North Pacific Fishery Management Council process, and a variety of research projects with NMFS and the North Pacific Fisheries Foundation (“NPF”).

2. Cascade Fishing, Inc. is a Washington State corporation that owns and operates the F/T Seafisher. Ocean Peace, Inc. is a Washington State corporation that owns and operates the F/T Ocean Peace. Since 2008, both vessels have operated as part of a catch share program where we harvest groundfish, including Atka mackerel and Pacific cod, in the Bering Sea-Aleutian Islands (“BSAI”) as members of the Alaska Seafood Cooperative (“AKSC”).

3. Since January 1, 2011, the F/T Seafisher and F/T Ocean Peace and all other AKSC members have operated according to NMFS’s Reasonable and Prudent Alternative (“RPA”), as implemented by the agency’s Interim Final Rule at issue in this lawsuit (the “IFR”). Among other things, the IFR closed Atka mackerel and Pacific cod fisheries in Fishery Management Area 543 in the western Aleutian Islands, and restricted those fisheries in the adjacent Areas 542 and 541 in the central and eastern Aleutian Islands. The adverse impacts on AKSC and its member companies and vessels resulting from the IFR that are described in the Declaration of William R. Orr (Docket No. 91) are continuing to occur.

4. I am on the Board of Directors for NPPF, a Washington non-profit, private foundation founded in 2006 to support research activities in the North Pacific.

5. NPPF's mission is to provide funding and project support for research and education in fisheries and marine mammal science in the North Pacific. The foundation has provided support for a variety of research projects including: seabird interactions with commercial fishing vessels, Atka mackerel movement and abundance, halibut bycatch discard survival, and evaluating unmanned aircraft for Steller sea lion population monitoring.

6. The F/T Seafisher has conducted the Atka mackerel tag recovery under the direction of NMFS scientists in each year the study has been conducted (2000 pilot work, 2002, 2003, 2006, 2007, and 2011) and is scheduled to conduct another tag recovery in 2012. The NPPF has been a partner in this research since 2006, and is a partner to a NMFS research proposal for 2013 and 2014 that is pending funding. In all previous research (except 2011 and 2012) NMFS has permitted tag releases and recoveries both inside and outside of the trawl exclusion zones ("TEZs"). In 2011, NMFS permitted tag releases inside the TEZs, but did not permit tag recoveries in the TEZs. *See* Letter from the NPPF to NOAA Alaska Regional Administrator James Balsiger, dated September 21, 2011 at 1-2, a true and correct copy of which is attached hereto as Exhibit A; *see also* Original proposal for 2011 tag recovery effort, a true and correct copy of which is attached hereto as Exhibit C (proposing recoveries inside and outside of critical habitat and TEZs, and in areas 541, 543 and 543).

7. In 2010, the NMFS' Alaska Fisheries Science Center ("AFSC") in cooperation with NPPF was funded to conduct an Atka mackerel tag and recovery study in the western Aleutians (the "2011-12 Atka mackerel study"). The objective of the 2011-12 Atka mackerel study is to advance understanding of: the availability of Atka mackerel prey to local Steller sea

lion populations on a local scale, the potential for localized depletion of Atka mackerel, and the effectiveness of existing Steller sea lion protection measures – including those implemented by the IFR. NMFS describes the “benefits from conducting this research” as “to estimate fish abundance near Steller sea lion rookeries and haulouts, identify essential fish habitat for Steller sea lion prey species, and increase our understanding of the underlying causes of the near Steller sea lion population decline.” Memorandum from Galen Tromble to Kaja Brix, dated April 27, 2011, Re: Section 7 ESA Consultation on Scientific Research Permits for the 2011 and 2012 AI Atka Mackerel Tagging Study at 8, a true and correct copy of which is attached hereto as Exhibit E-5.

8. In the IFR and 2010 Biological Opinion, NMFS has expressed concerns about the impacts of fisheries on a local scale. In order to understand those impacts, scientists must determine how much fish is present locally, and how much remains after fishing has occurred. *See Ex. A* at 1-2.

9. Research such as the 2011-12 Atka mackerel study allows NMFS to estimate Atka mackerel movement and local biomass. The methods employed by the Fisheries Interaction Team at the AFSC are the only reliable estimates of small scale abundance available for Atka mackerel. Ex. A at 1.

10. A large portion of the 2011-12 Atka mackerel study was originally proposed to occur in the Western Aleutians. *See Exs. A & C*. However—due apparently to NMFS’s concern about issuing a Scientific Research Permit (“SRP”) for tag recoveries in areas recently closed to commercial fishing by the IFR—NMFS only allowed tag recoveries in areas that remain open under the IFR to commercial fishing in the eastern and central Aleutians. Prior research and permits have allowed tag recoveries inside the TEZs. Internal agency memoranda analyzing the

permit request stated that “No tagging or recovery of Atka mackerel or any other species will occur in Area 543 from this study, due to recent prohibitions to retention of Atka mackerel in that area, resulting from 2011 Steller sea lion protection measures (75 FR 77535, December 13, 2010, corrected 75 FR 81921, December 29, 2010).” Ex. E-5 at 1; *see also* NOAA SRP #2011-4, dated April 28, 2011, allowing the tagging and releasing of Atka mackerel in the Central and Eastern Aleutian Island subareas 541 and 542 only (a true and correct copy of which is attached hereto as Exhibit E-1, along with supporting agency memoranda as Exhibits E-2 through E-6).

11. A true and correct copy of SRP #2011-5, dated May 2, 2011, allowing AFSC and NFPP to recover Atka mackerel previously tagged and released from areas 541 and 542, is attached hereto as Exhibit D, along with supporting agency memoranda.

12. NMFS issued SRPs 2011-4 and 2011-5 (Exhibits D and E) (together, the “2011-12 Atka mackerel study permits”) after determining, among other things, that the proposed removals would not likely result in disturbance or incidental take of Steller sea lions, and that “the proposed recapture-removals will be in such low quantities and intensity as to result in discountable effects on the availability of Steller sea lion prey in the sampling regions and within Steller sea lion designated critical habitat.” Ex. E-5 at 7-8. Ultimately, NMFS determined that 2011-12 Atka mackerel study is not likely to adversely affect the eastern or western distinct population segments of Steller sea lions or designated critical habitat.

13. In July, September, and October 2011, the NPFf contacted and wrote to NOAA Alaska Regional Administrator James Balsiger to explain the importance of tagging *and* recovering Atka mackerel throughout the Aleutians—in areas both open *and* closed to commercial fishing under the IFR. *See* Ex. A.

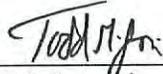
14. In the September 21 letter and related conversations, the NPFf explained to NMFS that the least is known about local abundance and movement of Atka mackerel in the areas closed by the IFR and inside the TEZs, yet NMFS is not allowing scientific research in precisely those areas. The NPFf explained to NMFS that study in those areas is particularly important in order to assess the effectiveness of Steller sea lion protective measures implemented by the IFR. *See Ex. A.*

15. In past experiments conducted between 2002 and 2007 by the AFSC that were similar to the 2011-12 Atka mackerel study, tags were both released and recovered inside and outside of TEZs, which allowed NMFS to estimate movement and local biomass. *Ex. A at 1.* If research is conducted only in areas 541, 542 and outside of TEZs (i.e., under the current 2011-12 Atka mackerel study permits), then NMFS will only be able to estimate: 1) movement from inside to outside the TEZs; and 2) biomass outside the TEZ. This is only half the story, and will provide data for the areas of least concern to NMFS. *See Ex. A.*

16. Based on my knowledge of fisheries biology, the best available methodology for Atka mackerel data collection, and the results of historical studies of Atka mackerel biomass and movements in the Aleutian Islands, data such as that collected in the 2011-12 and pending 2013-14 Atka mackerel studies needs to be collected from both outside and inside Steller sea lion critical habitat and from TEZs throughout the Aleutians, including Area 543. Such data would be essential to understanding the potential environmental impacts of proposals to open and close areas to commercial fishing for Atka mackerel and cod.

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

Dated this 4th day of Feb 2012 at Seattle, WA.



Todd M. Loomis

Alaska Seafood Cooperative
Declaration of Todd Loomis – Exhibit List

| Exhibit | Document Name |
|---------|--|
| A. | North Pacific Fisheries Foundation Letter to Dr. James Balsiger (NOAA) re: SRP #2011-5 for Atka mackerel abundance and movement research, dated September 21, 2011 |
| B. | NOAA Bering Sea Aleutian Islands Catch Report dated September 22, 2011 |
| C. | Original 541 & 543 proposal with inside/outside split, 2011 |
| D. | NOAA Scientific Research Permit #2011-5 re: F/V Seafisher, dated May 2, 2011 |
| E-1. | NOAA Scientific Research Permit #2011-4 re: F/V Pacific Explorer, dated April 28, 2011 |
| E-2. | NOAA memorandum from Douglas DeMaster to James Balsiger re: Request for Scientific Research Permits, dated April 26, 2011 |
| E-3. | Scientific Research Plan: Atka Mackerel Tag Release and Recovery Charter, 2011 |
| E-4. | Cruise Announcement: Vessel name: F/V Pacific Explorer, Atka Mackerel Tag Release Cruise, dated April 20, 2011 |
| E-5. | Memorandum from Galen Tromble to Kaja Brix, dated April 27, 2011, Re: Section 7 ESA Consultation on Scientific Research Permits for the 2011 and 2012 AI Atka Mackerel Tagging Study |
| E-6. | Memorandum from Kaja Brix to Galen Tromble, dated April 28, 2011, Re: Section 7 ESA Consultation on Scientific Research Permits for the 2011 and 2012 AI Atka Mackerel Tagging Study |

Certificate of Service

I hereby certify that on February 8, 2012, I electronically filed the foregoing Declaration of Todd M. Loomis via the CM/ECF system, which will send notification of the filing to attorneys of record, including as listed below:

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