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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

OCEANA, Inc., a non-profit organization, Plaintiff, v. JOHN E. BRYSON, in his official capacity as Secretary of Commerce; NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION; and NATIONAL MARINE FISHERIES SERVICE, Defendants.	Case No. COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Plaintiff Oceana hereby challenges a Final Rule, promulgated on November 14, 2011, by Defendants Commerce Secretary John E. Bryson, the National Oceanic and Atmospheric Administration, and the National Marine Fisheries Service (hereinafter "Defendants" or "Fisheries Service") entitled *Fisheries off West Coast States; Coastal Pelagic Species; Amendment 13 to the Coastal Pelagic Species Fishery Management Plan; Annual Catch Limits*, 76 Fed. Reg. 70362-64 (Nov. 14, 2011) ("Coastal Pelagic Species Fishery Management Plan"). This Final Rule violates the Magnuson-Stevens Fishery Conservation and Management Act ("Magnuson-Stevens Act"), the National Environmental Policy Act ("NEPA"), and the Administrative Procedure Act ("APA").

2. The Final Rule, implementing management measures in Amendment 13 to the Coastal Pelagic Species Fishery Management Plan, concerns the management of Pacific sardine, Pacific mackerel, northern anchovy, jack mackerel, and market squid, among others. These species are generally known as "forage species" because they constitute a critical part of the diets of marine predators and are vital to the health of the entire marine ecosystem.

3. The Final Rule for Amendment 13 is unlawful for several reasons. In violation of the Magnuson-Stevens Act, the Final Rule: 1) fails to assess and specify optimum yield in a way that accounts for the ecological importance of the species it manages; 2) fails to specify, for all stocks in the fishery, legally adequate objective and measurable criteria for identifying when those stocks are overfished and triggering conservation measures; 3) fails to base management measures on the best scientific information available, particularly with respect to Pacific sardine management; and (4) fails to account for all sources of scientific uncertainty in setting management measures. In addition, in violation of NEPA, Defendants failed to complete an Environmental Impact Statement ("EIS") analyzing a reasonable range of alternatives and associated impacts for the Final Rule, failed to issue a final environmental assessment ("EA") before promulgating the regulations to implement Amendment 13, and failed to provide a reasonable response to public comments on the Draft EA for the proposed rule. Each of these actions and omissions fails to comply with the statutory requirements of the Magnuson-Stevens Act and NEPA and is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law, in violation of the APA. These actions and

failures to act by the Defendants have harmed Plaintiff's interest in healthy and sustainable populations of forage species such as Pacific sardine, Pacific mackerel, jack mackerel, northern anchovy, and market squid, and have also harmed their interest in maintaining a healthy ocean ecosystem. This harm will continue in the absence of action by this Court.

JURISDICTION AND VENUE

4. This action arises under the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. §§ 1801-1884; the National Environmental Policy Act, 42 U.S.C. §§ 4321-4370f; and the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

5. This Court has jurisdiction over this action pursuant to the Magnuson-Stevens Act, which provides that "[t]he district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under" the Magnuson-Stevens Act. 16 U.S.C. § 1861(d). The Magnuson-Stevens Act also provides that actions taken by the Secretary of Commerce under regulations implementing a fishery management plan shall be subject to judicial review "if a petition for such review is filed within 30 days after the date on which the regulations are promulgated or the action is published in the Federal Register, as applicable." 16 U.S.C. § 1855(f). Defendants published the final rule implementing Amendment 13 on November 14, 2011 in the Federal Register. Plaintiff is filing this Complaint within thirty (30) days of publication of the Final Rule.

6. This Court, further, has jurisdiction over this action pursuant to the APA, which provides that final agency action is subject to judicial review. 5 U.S.C. §§ 701-706. Defendants' issuance of its Final Rule implementing measures in Amendment 13 to the Coastal Pelagic Species Fishery Management Plan and its associated draft Environmental Analysis ("EA") is an "agency action" subject to judicial review under the APA.

7. This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction), which grants the district courts "original jurisdiction of all civil actions arising under the . . . laws . . . of the United States," and 28 U.S.C. § 1361, which grants the district courts "original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff."

8. This Court has the authority to grant declaratory relief pursuant to the Declaratory

Judgment Act, 28 U.S.C. §§ 2201–02, and may also grant relief pursuant to the Magnuson-Stevens Act, 16 U.S.C. §§ 1861(d) and 1855(f), as well as the APA, 5 U.S.C. §706.

9. Venue is properly vested in this judicial district under 28 U.S.C. § 1391(e), because a substantial part of the events and omissions which gave rise to this action occurred in this district.

INTRADISTRICT ASSIGNMENT

10. This action should be assigned to the San Francisco or Oakland Division pursuant to Civil L.R. 3-2(d) because a substantial part of the events or omissions giving rise to the claim occurred in San Francisco County.

PARTIES

11. Plaintiff OCEANA is a non-profit international advocacy organization dedicated to protecting and restoring the world's oceans through policy, advocacy, science, law, and public education. Oceana has over 86,000 members worldwide, including 23,942 members in California, Oregon, and Washington. Oceana maintains an office in Monterey, California. The conservation and sound management of forage species, such as the species managed under Amendment 13, is a central focus of Oceana's work. Oceana has devoted considerable resources to studying and communicating the ecological and economic importance of sound management of forage species in the California Current Large Marine Ecosystem off the U.S. West Coast. These efforts include producing a report in October 2011, titled "Forage Fish: Feeding the California Current Large Marine Ecosystem" and advocating for state legislation aimed at managing fisheries in a way that conserves sufficient forage for the rest of the ecosystem. Oceana has been deeply involved in the development of Amendment 13 since it was initiated in 2009. Oceana staff have regularly attended and presented testimony at Pacific Fishery Management Council meetings. An Oceana staff member has also served as a "conservation representative" on the Coastal Pelagic Species Advisory Subpanel, which is comprised of members of the fishing industry and public appointed by the Council to review proposed management actions. Oceana also submitted eight comment letters from 2009 to 2011 discussing the range of alternatives that should be considered in developing Amendment 13 and presenting scientific and legal analyses of proposed management measures.

12. Oceana's members use and enjoy the oceans for numerous activities, including

fishing, scuba diving, snorkeling, boating, swimming, beach walking, research, and study. Oceana's members value a healthy marine environment. Oceana's members also consume seafood. They are concerned about and directly affected by environmental injury caused by unsustainable fishing practices in the U.S. West Coast fisheries resulting from the implementation of Amendment 13. Such injuries include injury to their consumption and recreational and commercial use of fish populations, including populations of forage species that are or may become depleted as a result of unsustainable management under Amendment 13.

13. The above-described aesthetic, conservation, recreational, scientific, educational, wildlife and fisheries preservation, and other interests of Oceana and its members have been, are being, and, unless the relief prayed for herein is granted, will continue to be adversely affected and irreparably injured by the Defendants' unlawful regulations promulgating Amendment 13 under the Magnuson-Stevens Act and their failure to complete adequate analysis of Amendment 13's impacts under NEPA. These injuries are actual and concrete and would be redressed by the relief sought herein. Plaintiff has no adequate remedy at law.

14. The Defendants in this action are:

a. JOHN E. BRYSON. Mr. Bryson is sued in his official capacity as Secretary of Commerce. He is ultimately responsible for overseeing the proper administration and implementation of the Magnuson-Stevens Act in connection with federal fisheries management actions, including provisions related to the duty to end and prevent overfishing and achieve optimum yield. He is also responsible for his agency's compliance with NEPA.

b. NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION. The National Oceanic and Atmospheric Administration ("NOAA") is an agency of the United States Department of Commerce with supervisory responsibility for the National Marine Fisheries Service. The Secretary of the Department of Commerce has delegated responsibility to ensure compliance with the Magnuson-Stevens Act to NOAA, which in turn has sub-delegated that responsibility to the National Marine Fisheries Service.

c. NATIONAL MARINE FISHERIES SERVICE. The National Marine Fisheries Service ("Fisheries Service") is an agency of the United States Department of Commerce

that has been delegated the primary responsibility to ensure that the requirements of the Magnuson-Stevens Act and other applicable laws are followed and enforced, including the requirements to prevent and end overfishing, to rebuild overfished populations of fish, and to achieve optimum yield. In that capacity, the Fisheries Service must review fishery management plans and amendments to those plans, and issue implementing regulations.

LEGAL BACKGROUND

Magnuson-Stevens Fishery Conservation and Management Act

15. The Magnuson-Stevens Act is designed to conserve and manage fish populations in the United States territorial waters and in the exclusive economic zone, which extends from the boundaries of state waters (3 miles from shore) to 200 miles offshore or to an international boundary with neighboring countries. 16 U.S.C. § 1801(b)(1). The Magnuson-Stevens Act creates eight regional Fishery Management Councils ("Councils") and requires them to prepare fishery management plans for all fisheries under their authority that require conservation and management. 16 U.S.C. §1852(h)(1).

16. All fishery management plans and regulations implementing fishery management plans are subject to final review and approval by the Fisheries Service to ensure that they comply with the requirements of the Magnuson-Stevens Act, as well as with other applicable laws and requirements. 16 U.S.C. § 1854(a), (b).

17. The Magnuson-Stevens Act requires that fishery management plans, fishery management plan amendments, and any regulations promulgated to implement such fishery management plans, must be consistent with the "National Standards" for fishery conservation and management, and certain other requirements. 16 U.S.C. § 1851(a). National Standard One of the Magnuson-Stevens Act requires that "[c]onservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery . . . ." 16 U.S.C. § 185l(a)(1). National Standard Two of the Magnuson-Stevens Act requires that "[c]onservation and management measures shall be based upon the best scientific information available." 16 U.S.C. § 1851(a)(2).

18. While the Fisheries Service has a degree of discretion to balance among seemingly

competing interests such as economic impact and allocation, the agency must always place first priority on the conservation objectives embodied in National Standard One.

19. In 2006, Congress passed the Magnuson-Stevens Reauthorization Act ("2006 Amendments"), which added a number of new requirements for federal fishery management plans aimed at finally fulfilling the imperative of National Standard One to prevent and end overfishing and achieve optimum yield in the Nation's fisheries. These new provisions require, among other things, that each fishery management plan "establish a mechanism for specifying annual catch limits in the plan (including a multiyear plan), implementing regulations, or annual specifications, at a level such that overfishing does not occur in the fishery, including measures to ensure accountability." 16 U.S.C. § 1853(a)(15).

20. In addition, each fishery management plan must "specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished" and must include an analysis of how those criteria were determined and their relationship to the reproductive potential of stocks in that fishery. 16 U.S.C. § 1853(a)(10). These criteria also help fishery managers to identify when a stock is approaching an overfished condition, and trigger the development of management and conservation measures to prevent overfishing and rebuild the stock. *Id*.

21. Congress also required each Council's Scientific and Statistical Committee to recommend an acceptable biological catch level for stocks in the fishery. 16 U.S.C. § 1852(g)(1)(B).

22. Fishery management plans for stocks that have not been determined to be overfished, like those managed under the Coastal Pelagic Species Fishery Management Plan, must come into compliance with these provisions of the Magnuson-Stevens Act by 2011. *See* 16 U.S.C. § 1853 (note).

23. The Magnuson-Stevens Act requires the Secretary of Commerce (acting through the Fisheries Service) to establish guidelines for achieving the National Standards. 16 U.S.C. § 1851(b). The guidelines constitute the Secretary's interpretation of the National Standards. 50 C.F.R. § 600.305(a)(3).

24. The Fisheries Service revised its guidelines for National Standard One in 2009 in order to provide guidance on how to comply with the new requirements in the reauthorized

Magnuson-Stevens Act regarding annual catch limits and accountability measures, and related measures such as objective and measurable criteria for identifying overfishing and acceptable biological catch levels. All of these requirements are necessary to facilitate compliance with the agency's continuing National Standard One duty to prevent overfishing, rebuild overfished stocks, and achieve optimum yield. *Magnuson-Stevens Act Provisions; Annual Catch Limit; National Standard Guidelines,* 74 Fed. Reg. 3178, 3178 (Jan. 16, 2009). The revised National Standard One guidelines also provide "a summary of items that Councils must include in their [fishery management plans or fishery management plan] amendments in order to address [annual catch limits], [accountability measures], and other aspects of the NS1 guidelines." 50 C.F.R. § 600.310(c).

25. National Standard One guidelines specify that a fishery management plan must evaluate and describe the following items for all stocks that are "in the fishery" (50 C.F.R. § 600.310(c)):

a. Maximum sustainable yield (50 C.F.R. § 600.310(c)(1));

b. Objective and measurable criteria for determining when a fishery is overfished (otherwise known as Status Determination Criteria), including a minimum stock size threshold, maximum fishing mortality threshold, and overfishing limit (50 C.F.R. § 600.310(c)(1));

c. Optimum yield (50 C.F.R. § 600.310(c)(2));

d. Acceptable biological catch control rule (50 C.F.R. § 600.310(c)(3));

e. Mechanisms for specifying annual catch limits in relationship to acceptable biological catch (50 C.F.R. § 600.310(c)(4)); and

f. Accountability measures (50 C.F.R. § 600.310(c)(5)).

26. A "stock of fish" is defined to include "a species, subspecies, geographical grouping, or other category of fish capable of management as a unit." 16 U.S.C. § 1802(42).

27. National Standard One guidelines state that "[a]s a default, all stocks in [a fishery management plan] are considered to be 'in the fishery,' unless they are identified as [Ecosystem Component] species (see Sec. 600.310(d)(5)) through [a fishery management plan] amendment process." 50 C.F.R. § 600.310(d)(1). An Ecosystem Component species "should: (A) [b]e a non-

target species; (B) [n]ot be determined to be subject to overfishing, approaching overfished, or overfished; (C) [n]ot be likely to become subject to overfishing or overfished, according to the best available information, in the absence of conservation and management measures; and (D) [n]ot generally be retained for sale or personal use." *Id.* § 600.310(d)(5)(A)-(D).

28. Stocks in the fishery can include both "target" stocks, which are defined as stocks that fishermen seek to catch for sale or personal use, and "non-target" stocks, which are fish caught incidentally during the pursuit of target stocks. *Id.* § 600.310(d)(3), (4).

29. The Magnuson-Stevens Act requires that any fishery management plan prepared by a Council or the Secretary shall specify "annual catch limits" and measures to ensure accountability that prevent overfishing. 16 U.S.C. §1853(a)(15). When preparing fishery management plans, regional Councils must develop annual catch limits for each of their managed fisheries that may not exceed fishing level recommendations of their Scientific and Statistical Committee or the peer review process. 16 U.S.C. §1852(h)(6).

30. The Magnuson-Stevens Act also requires that the relevant Council specify the "acceptable biological catch" in each fishery taking into consideration scientific uncertainty, upon recommendation from the Council's Science and Statistical Committee. 16 U.S.C. § 1852(g)(1)(B), (h)(6); *see also* 50 C.F.R. § 600.310(b)(2)(v)(B), (D). The acceptable biological catch must account for all retained catch and all discard mortality. 50 C.F.R. § 600.310(f)(2).

31. Management measures and thresholds such as acceptable biological catch and annual catch limits are determined using "control rules." National Standard One guidelines explain that "A control rule is a policy for establishing a limit or target fishing level that is based on the best available scientific information and is established by fishery managers in consultation with fisheries scientists. Control rules should be designed so that management actions become more conservative as biomass estimates, or other proxies, for a stock or stock complex decline and as science and management uncertainty increases." 50 C.F.R. § 600.310(f)(1).

32. The acceptable biological catch control rule is the "specified approach to setting the [acceptable biological catch] for a stock or stock complex as a function of the scientific uncertainty in the estimate of [the overfishing limit] and any other scientific uncertainty." *Id.* at §

600.310(f)(2)(iii).

33. The National Standard One guidelines generally require that the annual catch limit for a stock must be set below the acceptable biological catch for that stock. The acceptable biological catch level, in turn, must generally be set below the stock's overfishing limit. Where these levels are set equal to one another, the Fisheries Service may assume that the measures are inadequate to prevent overfishing. 50 C.F.R. §600.310(f)(5).

34. The Magnuson-Stevens Act requires that each fishery management plan "specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished." 16 U.S.C. § 1853(a)(10); *see also* 50 C.F.R. § 600.310(c). These criteria, known as status determination criteria, include a minimum stock size threshold, maximum fishing mortality threshold, and overfishing limit. 50 C.F.R. § 600.310(e)(2)(i)(A).

35. The minimum stock size threshold is defined as "the level of biomass below which the stock or stock complex is considered to be overfished." 50 C.F.R. § 600.310(e)(2)(i)(F). The Magnuson-Stevens Act defines the terms "'overfishing' and 'overfished' [to] mean a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis." 16 U.S.C. § 1802(34).

36. According to the Fisheries Service's interpretation in the National Standard One guidelines, the minimum stock size threshold for a species should equal the greater of two levels: one-half the stock size that would support maximum sustainable yield, or the minimum stock size at which rebuilding to maximum sustainable yield would be expected to occur within ten years, assuming that the stock were fished at the maximum fishing mortality threshold. 50 C.F.R. § 600.310(e)(2)(ii)(B).

37. The overfishing limit is defined as an estimate of the catch level (expressed in numbers or weight of fish) above which overfishing is occurring. 50 C.F.R. § 600.310(e)(2)(i)(D). The overfishing limit corresponds to the estimate of a stock's maximum fishing mortality threshold that is applied to a stock's abundance.

38. The maximum fishing mortality threshold is the annual level of fishing mortality (including catch that is retained and catch that is discarded) above which overfishing is occurring.

50 C.F.R. § 600.310(e)(2)(i)(C).

39. The Magnuson-Stevens Act requires the Fisheries Service to identify fish populations that are overfished – or approaching an overfished condition – and to manage those populations by attaining the optimum yield that will rebuild them to a healthy population level. 16 U.S.C. § 1802(33)(C) (optimum yield for an overfished fishery provides for rebuilding the population); 16 U.S.C. § 1853(a)(10) (fishery management plans must "specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished" and "contain conservation and management measures to prevent overfishing or end overfishing and rebuild the fishery"); 16 U.S.C. § 1854(e) (requirements to identify overfished fisheries, to end overfishing immediately, and to rebuild overfished fisheries as soon as possible).

40. The Magnuson-Stevens Act and its implementing regulations highlight the importance of protecting marine ecosystems. "Optimum yield" is defined as the amount of fish which "will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems," and "is prescribed as such on the basis of the maximum sustainable yield from the fishery, as reduced by any relevant economic, social, or ecological factor." 16 U.S.C. § 1802(33).

41. An important factor that the Fisheries Service must consider in the context of protecting marine ecosystems is "maintaining adequate forage for all components of the ecosystem." 50 C.F.R. § 600.310(e)(3)(iii)(C). Ecological factors that the Fisheries Service must consider when determining the appropriate level for optimum yield include the fishery's "impacts on . . . forage fish stocks, other fisheries, predator-prey or competitive interaction, marine mammals, threatened or endangered species, and birds. . . . In addition, consideration should be given to managing forage stocks for higher biomass than B_{msy} [stock size that would be achieved by fishing at a rate that would result in maximum sustainable yield] to enhance and protect the marine ecosystem." 50 C.F.R. § 600.310(e)(3)(iv)(C).

42. As mentioned above, the Magnuson-Stevens Act requires the Council to assess and specify optimum yield in the fishery management plan itself, and summarize the information used to make that specification. 16 U.S.C. § 1853(a)(3). The National Standard One guidelines state that as

part of this process a fishery management plan must identify ecological, social, and economic factors relevant to managing each particular stock, and evaluate them to determine optimum yield. 50 C.F.R. § 600.310(e)(3)(ii).

43. The Secretary has the responsibility to carry out any fishery management plan or plan amendment approved or prepared by him in accordance with the Magnuson-Stevens Act. 16 U.S.C. § 1855(d). The Secretary may promulgate such regulations, pursuant to APA rulemaking procedures, as may be necessary to carry out this responsibility or to carry out any other provisions of the Magnuson-Stevens Act. *Id.*

44. The Secretary may only approve a fishery management plan or fishery management plan amendment if such plan or amendment complies with the provisions of Magnuson-Stevens Act and all other applicable law, including the National Environmental Policy Act. 16 U.S.C. § 1854(a)(1).

National Environmental Policy Act

45. Congress enacted the National Environmental Policy Act ("NEPA") to "promote efforts which will prevent or eliminate damage to the environment . . . ." 42 U.S.C. § 4321. To achieve this goal, NEPA requires federal agencies, including the Fisheries Service, to fully consider and disclose the environmental consequences of an agency action before proceeding with that action. *See id*. § 4332(2)(C); 40 C.F.R. §§ 1501.2, 1502.5. An agency's evaluation of environmental consequences must be based on scientific information that is both "[a]ccurate" and of "high quality." 40 C.F.R. § 1500.1(b). In addition, federal agencies must notify the public of proposed projects and allow the public the chance to comment on the environmental impacts of their actions. *See id.* § 1506.6.

46. The cornerstone of NEPA is the environmental impact statement ("EIS"). An EIS is required for all "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1501.4. It must provide a "full and fair discussion of significant environmental impacts and . . . inform decision-makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment." 40 C.F.R. § 1502.1.

47. The Council on Environmental Quality's NEPA regulations describe numerous factors indicating that an action significantly affects the environment, including, but not limited to, the degree to which the action sets precedent for future actions, affects ecologically critical areas, has unknown effects, impacts endangered or threatened species, or involves a high level of controversy. 40 C.F.R. § 1508.27. An action may have significant effects on the environment that trigger the completion of an EIS regardless of whether those impacts are negative or beneficial impacts. *Id.*

48. After an agency has completed an initial EIS, it must prepare a supplemental EIS when the agency makes substantial changes in the proposed action that are relevant to environmental concerns, or when there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. 40 C.F.R. § 1502.9(c)(1).

49. NEPA regulations make clear that an agency must prepare an EIS "if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by . . . breaking [an action] down into small component parts." 40 C.F.R. § 1508.27(b)(7).

50. In an EIS, the federal agency must identify the direct, indirect, and cumulative impacts of the proposed action, and consider alternative actions and their impacts. *See* 42 U.S.C. § 4332(C); 40 C.F.R. § 1502.16. Agencies must consider "[c]onnected actions," "[c]umulative actions," and "[s]imilar actions" together in one environmental impact statement. 40 C.F.R. § 1508.25(a)(1)-(3). Actions are "connected actions" if they: a. "[a]utomatically trigger other actions which may require environmental impact statements," b. "[c]annot or will not proceed unless other actions are taken previously or simultaneously;" or c. "[a]re interdependent parts of a larger action and depend on the larger action for their justification." *Id.* § 1508.25(a)(1)(i)-(iii).

51. An agency may determine, after preparing an environmental assessment ("EA") and finding of no significant impact ("FONSI"), that preparation of an EIS is unnecessary. However, an agency may rely on an EA/FONSI only if its proposed action will not have significant environmental effects. 40 C.F.R. § 1508.13. Moreover, the agency may not rely upon the analysis performed in a prior EIS regarding the agency action if "the agency makes substantial changes in the proposed action that are relevant to environmental concerns," or "[t]here are significant new circumstances or

information relevant to environmental concerns and bearing on the proposed action and its impacts." 40 C.F.R. § 1502.9(c).

FACTUAL ALLEGATIONS

Role of Forage Species

52. The species managed under the Coastal Pelagic Species Fishery Management Plan as amended by Amendment 13 – Pacific sardine, northern anchovy, Pacific mackerel, jack mackerel, market squid, and krill – are vital components of the California Current Large Marine Ecosystem off the U.S. West Coast. These species are known as "forage species" because they form an important part of the diets of other fish, sea birds, and marine mammals. An estimated 19 species of marine mammals, 33 species of sea birds, and over 40 species of marine fish rely on forage species managed under this Fishery Management Plan.

53. A number of threatened and endangered species rely on the forage species managed under the Coastal Pelagic Species Fishery Management Plan as amended by Amendment 13. These predators include endangered Chinook and coho salmon; sea birds such as the endangered short tailed albatross, endangered California least tern, and threatened marbled murrelet; and marine mammals such as the endangered humpback whale, endangered fin whale, and threatened Steller sea lion.

54. Abundant forage species populations are vital to the ecological and economic health of the California Current ecosystem. For example, forage species sustain economically important fisheries, such as Chinook salmon, albacore tuna, and California halibut, as well as depleted fish stocks currently in rebuilding, such as yelloweye rockfish and canary rockfish. Sardine, northern anchovy, market squid, and krill are described as prey species that comprise part of the essential fish habitat in the U.S. West Coast Groundfish Fishery Management Plan for a host of managed groundfish species such as arrowtooth flounder, black rockfish, chillipepper rockfish, cowcod, Pacific hake, sablefish, yelloweye rockfish, and yellowtail rockfish.

55. Forage species also support marine wildlife like whales, sea lions, dolphins, and sea birds, and thus are critical to the tourism associated with seeking and watching these animals. Ocean-based tourism and recreation are estimated to have contributed over 400,000 jobs and $18

billion in Gross Domestic Product to California, Oregon, and Washington in 2009.

56. Declines in forage species lead to declines in the predators that rely on them. Over the past decade, insufficient supplies of ocean forage species (along with destruction of upstream freshwater habitat due to dams and water diversions) have played a role in the decline of Sacramento River fall Chinook salmon and coho salmon off California and Oregon. Declines in forage species have also resulted in reproductive failures and population declines in sea birds and marine mammal mortality events in California waters. In addition, predatory fish populations in the California Current have declined by more than 75 percent since 2003.

57. The forage species managed under the Coastal Pelagic Species Fishery Management Plan and Amendment 13 are the preferred prey of many predators due to their high fat content and superior nutritional value. Pacific sardine and northern anchovy, for instance, are preferred food for sea birds like the brown pelican and elegant tern. When the birds' preferred prey is not available, they must switch to prey that provides substantially less energy, which can result in reduced survival and reproductive success. As an example, decreased availability of forage species is thought to be partly responsible for poor marbled murrelet reproduction and may have contributed to the need to list the species under the Endangered Species Act.

58. Fishing pressure exerts significant effects on the population levels of forage species. These populations often fluctuate more widely than other species in response to changing ocean conditions. These fluctuations make these species more vulnerable to overfishing and population crashes. Even relatively moderate changes in fishing pressure can result in significant changes in forage species abundance, particularly during times when the species' productivity is already low due to environmental conditions. These effects could also be magnified by long-term changes in ocean conditions caused by climate change and ocean acidification.

59. Forage species caught in commercial fisheries are used for human consumption, bait, and as feed for aquaculture operations and livestock. For example, northern anchovy are often reduced to fish meal or oil for agricultural or aquaculture feed, while Pacific sardines are often frozen and shipped to Australia to feed penned tuna, and Pacific mackerel are often canned for pet food. The amount of forage fish used to feed predatory fish raised in aquaculture operations has

more than doubled over the past decade. As the practice of farming predatory fish through aquaculture continues to grow, demand for forage fish is expected to grow.

60. Scientific studies recommend that fishery managers set catch limits that leave most, if not all, of a forage species' virgin biomass (the level of biomass that would exist without any fishing) in the ecosystem to provide for the needs of predators and maintain ecosystem health.

Amendment 13 to the Coastal Pelagic Species Fishery Management Plan

61. The Coastal Pelagic Species Fishery operates in federal waters off the coasts of California, Oregon, and Washington. The fishery removed over 270 million pounds of forage species in 2009 and has removed an estimated 250 to 450 million pounds of forage species annually over the last decade.

62. Vessels in this fishery primarily use purse seines or lampara nets (nets that surround schools of fish swimming close to the surface) to catch small, schooling finfish and squid. Most finfish caught by this fleet are sold as relatively high volume/low value products, such as fish meal, fish oil, or pet food.

63. Vessels in this fishery incidentally capture, injure, or kill threatened and endangered species protected under the Endangered Species Act, including southern sea otters and Chinook salmon.

64. The Fisheries Service and the Pacific Fishery Management Council ("Council") manage six species of fish and invertebrates as "stocks in the fishery" under the Coastal Pelagic Species Fishery Management Plan. These species are Pacific sardine, northern anchovy, Pacific mackerel, jack mackerel, market squid, and krill (also known as euphausiids). Amendment 13 to the Coastal Pelagic Species Fishery Management Plan added two species, jack smelt and Pacific herring, as "ecosystem component species."

65. From 1978 to 2000, northern anchovy were managed under the Northern Anchovy Fishery Management Plan. Amendment 8 to that plan expanded it to manage the entire coastal pelagic species fishery along the U.S. West Coast, including Pacific sardine, northern anchovy, Pacific (chub) mackerel, jack mackerel, and market squid. Amendment 8 also changed the name of the plan to the Coastal Pelagic Species Fishery Management Plan, which went into effect on January

1, 2000.

66. Amendment 13 to the Coastal Pelagic Species Fishery Management Plan was initiated in 2009 to bring the plan into compliance with provisions of the reauthorized Magnuson-Stevens Act related to annual catch limit and accountability measures and to ensure that the plan was consistent with the revised National Standard One guidelines.

67. Amendment 13 sets forth new formulae for calculating annual harvest guidelines and catch limits for stocks in the Coastal Pelagic Species fishery in coming years. The Fisheries Service and the Council set harvest guidelines and annual catch limits each year based on stock assessments and using the formulae set forth in the fishery management plan. The Coastal Pelagic Species Fishery Management Plan notes that "The NMFS Regional Administrator would be responsible for setting the [harvest guidelines] based on the estimated biomass and the standards set in the [fishery management plan]. . . . The formulas used to set [harvest guidelines] for [coastal pelagic species] are straightforward and provide little latitude for judgment, therefore, there is less discretion involved in setting annual specifications for [coastal pelagic species] than for other fisheries." Coastal Pelagic Species Fishery Management Plan as Amended by Amendment 13 at A-44. The Fisheries Service does not undertake an environmental assessment or environmental impact statement analyzing the effects of the harvest guidelines and catch limits specified during this annual process.

68. Amendment 13 explicitly reaffirmed that all stocks categorized in the Coastal Pelagic Species Fishery Management Plan as actively managed species, monitored species, and prohibited harvest species are stocks "in the fishery."

Optimum Yield and Overfishing Issues

69. Despite the Magnuson-Stevens Act's requirement that fishery management plans be amended to include objective and measurable criteria for all stocks "in the fishery" to determine when they are overfished, Amendment 13 fails to establish a minimum stock size threshold or reasonable proxy for that threshold for the northern subpopulation of northern anchovy, jack mackerel, or market squid. As a result, there is no lower population floor specified for these species that would clearly alert fishery managers that the species are being overfished or that would trigger measures to end overfishing and rebuild the stocks.

70. Amendment 13 establishes a minimum stock size threshold for Pacific sardine that is an order of magnitude lower than the minimum threshold that should be established using the methodologies set forth in the National Standard One guidelines. The Fisheries Service has estimated that the maximum sustainable yield stock size of Pacific sardine is between 1,005,000 metric tons and 2,250,000 metric tons. Using the methodology established in the National Standard One guidelines, the minimum stock size threshold should be set as at least one-half of this estimate, or somewhere between 500,250 metric tons and 1,125,000 metric tons. Amendment 13 sets the minimum stock size threshold at 50,000 metric tons.

71. Similarly, Amendment 13 sets the minimum stock size threshold for Pacific mackerel more than three times lower than recommended by the Fisheries Service's National Standard One guidelines. Using an estimated maximum sustainable yield stock size of 115,000 metric tons, which was used when originally setting the current minimum stock size threshold, the minimum stock size threshold should be at least 57,500 metric tons. Amendment 13 sets the threshold at 18,200 metric tons.

72. The Coastal Pelagic Species Fishery Management Plan as amended by Amendment 13 does not adequately assess and specify optimum yield for each species or adequately take into account the critical role of the species it manages as key forage for the California Current ecosystem, including commercially important species like salmon and tuna, as well as threatened and endangered fish, marine mammals and sea birds. Instead, Amendment 13 simply concludes that optimum yield for a Coastal Pelagic Species stock is defined to be the level of harvest less than or equal to acceptable biological catch.

73. Despite the Magnuson-Stevens Act's requirement that each fishery management plan "assess and specify" optimum yield for stocks in the fishery, including identifying relevant ecological concerns in the plan, Amendment 13 defers any assessment or specification of "[optimum yield] considerations" (e.g., ecological considerations) to future actions, stating that such considerations will be used to set future catch limits or harvest guidelines on an annual or multiyear basis, and that optimum yield will be set less than the overfishing limit or acceptable biological catch (which under Amendment 13 may be equal to one another) "to the degree required to prevent

overfishing." Coastal Pelagic Species Fishery Management Plan as Amended by Amendment 13 at A-35.

74. In addition, Amendment 13 fails to specify – or even to establish a method for specifying – maximum sustainable yield or optimum yield for the northern subpopulation of northern anchovy.

Best Available Science Issues

75. The management measures for Pacific sardine that are set forth in Amendment 13 are based on at least two assumptions that conflict with best available science. First, Amendment 13's revised formula for setting Pacific sardine catch levels, as well as its formula for setting the overfishing limit for Pacific sardine, relies on an outdated assumption that Pacific sardine recruitment (a key part of reproductive success) is directly related to ocean temperature. Recent peer-reviewed, published analyses of this assumption have found that it no longer holds true – a finding that has been endorsed by the Council's Scientific and Statistical Committee and Coastal Pelagic Species Management Team. The fact that temperature no longer predicts the recruitment of Pacific sardine represents a fundamental flaw of the basis for the entire harvest guideline, which was built around the temperature-recruit relationship, and permits fishing vessels to catch significantly higher levels of Pacific sardine than they would otherwise.

76. Second, Amendment 13 adopts a formula for setting catch levels that specifically includes a parameter based upon the assertion that 87 percent of the Pacific sardine stock is found in U.S. waters and thus available for U.S. harvest, with the remaining 13 percent found in Mexican waters. This parameter, which is used as a component of the harvest guideline, is invalid on its face as it states that no portion of the stock exists in Canadian waters. In 2010, however, 15 percent of the catch occurred in Canadian waters, while 39 percent of the catch occurred in Mexican waters. The 87 percent figure adopted in Amendment 13 conflicts with previous estimates that 59 percent of the biomass occurs in U.S. waters. This flawed assumption permits the U.S. fleet to catch more Pacific sardines than it would if the Fisheries Service and the Council assumed a lower percentage of the population were distributed in U.S. waters and has potentially caused or contributed to coastwide overfishing of the Pacific sardine population.

77. The use of these invalid assumptions prevents fishery managers from being able to accurately determine when Pacific sardine are experiencing overfishing or achieving optimum yield.

78. Amendment 13 changed management measures for Pacific sardine in ways that significantly increased overfishing levels and acceptable biological catch. Overall, the changes to Pacific sardine measures enacted in Amendment 13 result in a 69 percent increase in the U.S. overfishing level.

79. Recent stock assessments indicate that the Pacific sardine population has undergone dramatic fluctuations while the exploitation rate has been increasing over the last two decades.

Accounting for Uncertainty

80. Amendment 13 establishes an acceptable biological catch control rule that accounts for only one source of scientific uncertainty: uncertainty in estimates of population size within and among stock assessments. However, several sources of uncertainty are known and can be addressed through the acceptable biological catch calculation, including uncertainty associated with the maximum sustainable yield exploitation rate, uncertainty associated with forecasting stock biomass or abundance, uncertainty associated with estimating the optimal exploitation rate, uncertainty with respect to oceanographic conditions and their effects on the stock's productivity, and uncertainty in ecological factors relating to calculating optimum yield. Amendment 13's acceptable biological catch control rule does not address these additional sources of uncertainty.

81. Instead of analyzing and accounting for this uncertainty, the Fisheries Service by default has set that uncertainty at zero.

NEPA Issues

82. The Fisheries Service and the Council prepared a draft environmental assessment regarding the effects of Amendment 13.

83. To the best of Plaintiff's knowledge, neither the Fisheries Service nor the Council issued a final environmental assessment or finding of no significant impact before issuing the final rule implementing Amendment 13.

84. Nor did the Fisheries Service or the Council issue an EIS and Record of Decision before issuing the final rule implementing Amendment 13.

85. The draft environmental assessment concluded that the action was "not expected to have substantial direct or indirect impacts on managed stocks because specific harvest limits and management measures that may affect managed stocks are not specifically established under the range of alternatives considered." Amendment 13 to the Coastal Pelagic Species Fishery Management Plan, Draft EA (January 2011) at 26.

86. The Fisheries Service and the Council have not completed an EIS analyzing the effects of the Coastal Pelagic Species Fishery since finalizing Amendment 8 to the fishery management plan in 1998.

87. The Fisheries Service and the Council have not completed any environmental assessments or environmental impact statements analyzing the effects of management measures undertaken pursuant to the provisions of the Coastal Pelagic Species Fishery Management Plan, including annual specifications of harvest guidelines, since 1998.

88. The draft environmental assessment for Amendment 13 did not consider or respond to a number of alternatives that Plaintiff and others recommended, including assessing, specifying and incorporating ecological considerations used to determine optimum yield in the fishery management plan itself; establishing minimum stock size thresholds and other required status determination criteria for northern anchovy, jack mackerel, and market squid; alternatives to the Pacific sardine harvest rule that used scientifically supported assumptions regarding distribution and recruitment; alternatives to address scientific and management uncertainty in control rules, harvest guidelines, and overfishing levels; establishing a "maximum catch" value for species in the fishery; and prohibiting harvest of ecosystem component species.

89. Plaintiff filed a detailed commented letter on the Fisheries Service's proposed rule to implement Amendment 13, which identified and analyzed approximately a dozen flaws in the proposed rule. In its Final Rule implementing Amendment 13, the Fisheries Service declined to respond to most of these comments, asserting that they had to do with the Coastal Pelagic Species Fishery Management Plan itself and that they would provide a separate response to Plaintiff on those matters. Plaintiff has received no such response.

90. The Fisheries Service did not undertake consultation regarding the effects of

Amendment 13 on threatened and endangered species pursuant to Section 7 of the Endangered Species Act, 16 U.S.C. § 1536(a)(2).[1]

FIRST CLAIM FOR RELIEF
Violation of the Magnuson-Stevens Act – Failure to Properly Assess and Specify Optimum Yield
(16 U.S.C. §§ 1851(a)(1), 1853(a)(3))

91. Plaintiff re-alleges, as if fully set forth herein, each and every allegation contained in the preceding paragraphs.

92. National Standard One of the Magnuson-Stevens Act requires that "[c]onservation and management measures shall prevent overfishing while achieving on a continuing basis, the optimum yield from each fishery…" 16 U.S.C. 1851(a)(1).

93. National Standard Two of the Magnuson-Stevens Act requires that "[c]onservation and management measures shall be based upon the best scientific information available." 16 U.S.C. § 1851(a)(2).

94. The Magnuson-Stevens Act requires each fishery management plan to "assess and specify" the optimum yield from the fishery, including "a summary of the information utilized in making such specification." 16 U.S.C. § 1853(a)(3).

95. The Magnuson-Stevens Act defines "optimum yield" as the amount of fish which "will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems," and "is prescribed as such on the basis of the maximum sustainable yield from the fishery, as reduced by any relevant economic, social, or ecological factor." 16 U.S.C. § 1802(33)(A)-(B).

96. National Standard One guidelines make clear that managing forage species so as to maintain an adequate prey supply for the rest of the ecosystem is an important ecological consideration. 50 C.F.R. § 600.310(e)(3)(iii)-(iv).

97. Amendment 13 is required to bring the Coastal Pelagic Species Fishery Management Plan into compliance with Magnuson-Stevens Act requirements and National Standard One

[1] Pursuant to 16 U.S.C. § 1540(g), Plaintiff is submitting a 60-day notice of violation and intent to sue the Fisheries Service for its failure to consult under the Section 7 of the Endangered Species Act, 16 U.S.C. § 1536(a)(2). Plaintiff intends to amend this Complaint accordingly unless Defendants take action to cure the violation before the 60-day notice period expires.

Guidelines.

98. Amendment 13 unlawfully fails to adequately assess and specify optimum yield for the stocks in the Coastal Pelagic Species fishery. The amendment instead defers assessment of optimum yield to future annual specifications. Furthermore, Amendment 13 does not assess and adequately specify the ecological considerations, such as ecosystem forage needs, predator-prey relationships, or impacts to protected species, or provide a summary of information on these or other relevant ecological considerations that must be used in determining optimum yield.

99. Amendment 13 also fails to specify maximum sustainable yield for the northern subpopulation of northern anchovy.

100. The Secretary is required to disapprove a fishery management plan or fishery management plan amendment to the extent it is inconsistent with the National Standards or other applicable law. 16 U.S.C. §§ 1851(a), 1854(a)(1)(A), 1854(a)(3).

101. By approving the Final Rule implementing Amendment 13, Defendants violated the Magnuson-Stevens Act and the Administrative Procedure Act.

102. These actions and failures to act by the Defendants are arbitrary and capricious, violate the Magnuson-Stevens Act and the Administrative Procedure Act, and are causing irreparable injury to the Plaintiff for which it has no adequate remedy at law.

SECOND CLAIM FOR RELIEF
Violation of the Magnuson-Stevens Act – Failure to Specify Status Determination Criteria for All Stocks in the Fishery
(16 U.S.C. §§ 1851(a)(1), 1853(a)(10))

103. Plaintiff re-alleges, as if fully set forth herein, each and every allegation contained in the preceding paragraphs.

104. The Magnuson-Stevens Act requires that fishery management plans, including the Coastal Pelagic Species Fishery Management Plan, "specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished." 16 U.S.C. § 1853(a)(10)). These criteria, known as status determination criteria, include a minimum stock size threshold, maximum fishing mortality threshold, and overfishing limit. 50 C.F.R. § 600.310(c)(1).

105. This requirement applies to all stocks "in the fishery." 50 C.F.R. § 600.310(c).

106. National Standard One guidelines specify that the minimum stock size threshold for a

species should equal the greater of two levels: one-half the stock size that would support maximum sustainable yield, or the minimum stock size at which rebuilding to maximum sustainable yield would be expected to occur within ten years, assuming that the stock were fished at the maximum fishing mortality threshold. 50 C.F.R. § 600.310(e)(2)(ii)(B).

107. Amendment 13 affirms that northern anchovy, jack mackerel, market squid, Pacific sardine, and Pacific mackerel are all stocks "in the fishery."

108. Amendment 13 fails to specify a minimum stock size threshold – the number below which a stock of fish is considered overfished – or a reasonable proxy for that threshold for the northern subpopulation of northern anchovy, jack mackerel, and market squid.

109. Amendment 13 fails to specify an adequate minimum stock size threshold for Pacific sardine and Pacific mackerel that complies with the methodology set forth in the National Standard One guidelines and that is based on the best scientific information available.

110. By approving the Final Rule implementing Amendment 13, Defendants violated the Magnuson-Stevens Act and the Administrative Procedure Act.

111. These actions and failures to act by the Defendants are arbitrary and capricious and violate the Magnuson-Stevens Act and the Administrative Procedure Act, and are causing irreparable injury to the Plaintiff for which it has no adequate remedy at law.

THIRD CLAIM FOR RELIEF
Violation of the Magnuson-Stevens Act – Failure to Base Measures on Best Available Science (16 U.S.C. § 1851(a)(2))

112. Plaintiff re-alleges, as if fully set forth herein, each and every allegation contained in the preceding paragraphs.

113. Amendment 13 violates Magnuson-Stevens Act requirements to base conservation and management measures on the best scientific information available by basing its annual catch levels, harvest guidelines, overfishing levels, and associated measures for Pacific sardine on an invalidated assumption regarding the relationship between ocean temperature and sardine recruitment, as well as on an invalid assumption regarding both the distribution of Pacific sardine along the Canadian, U.S., and Mexican coasts, and the percentages of the Pacific sardine stock taken by Canada and Mexico.

114. As a result of these erroneous assumptions, Amendment 13 fails to prevent overfishing of Pacific sardine, and fails to promote the achievement of optimum yield.

115. By approving the Final Rule implementing Amendment 13, Defendants violated the Magnuson-Stevens Act and the Administrative Procedure Act.

116. These actions and failures to act by the Defendants are arbitrary and capricious and violate the Magnuson-Stevens Act and the Administrative Procedure Act, and are causing irreparable injury to the Plaintiff for which it has no adequate remedy at law.

FOURTH CLAIM FOR RELIEF
Violation of the Magnuson-Stevens Act – Failure to Account for Scientific Uncertainty in Calculating Acceptable Biological Catch
(16 U.S.C. §§ 1851(a)(1), 1852(g)(1)(B))

117. Plaintiff re-alleges, as if fully set forth herein, each and every allegation contained in the preceding paragraphs.

118. The Magnuson-Stevens Act requires that the Council's Scientific and Statistical Committee recommend an acceptable biological catch level for stocks in the fishery. 16 U.S.C. § 1852(g)(1)(B). The National Standard One guidelines define acceptable biological catch as "a level of a stock or stock complex's annual catch that accounts for the scientific uncertainty in the estimate of [the overfishing level] and any other scientific uncertainty . . . and should be specified based on the [acceptable biological catch] control rule." 50 C.F.R. § 600.310(f)(2)(ii). The acceptable biological catch control rule is "a specified approach to setting the [acceptable biological catch] for a stock or stock complex as a function of the scientific uncertainty in the estimate of [the overfishing limit] and any other scientific uncertainty." *Id.* § 600.310(f)(2)(iii).

119. The National Standard One guidelines state that "[t]he [acceptable biological catch] control rule should consider uncertainty in factors such as stock assessment results, time lags in updating assessments, the degree of retrospective revision of assessment results, and projections." *Id.* § 600.310(f)(4). The acceptable biological catch control rule must also take into account any uncertainty in the estimate of maximum sustainable yield. *Id.* § 600.310(e)(1)(iv).

120. "Control rules should be designed so that management actions become more conservative as . . . scientific and management uncertainty increases." *Id.* § 600.310(f)(1).

121. The acceptable biological catch control rule established by Amendment 13 fails to

account for any uncertainty in the estimate of maximum sustainable yield, notwithstanding that Amendment 13 acknowledges that such uncertainty exists.

122. Further, the acceptable biological catch control rule in Amendment 13 accounts for only one source of uncertainty, variation among stock assessment results, in the estimate of the overfishing level. The acceptable biological catch control rule unlawfully fails to account for other known sources of uncertainty, such as uncertainty associated with forecasting stock biomass or abundance, uncertainty associated with estimating the optimal exploitation rate, uncertainty with respect to oceanographic conditions and their effects on the stock's productivity, and uncertainty in estimating the risk of overfishing.

123. By approving the Final Rule implementing Amendment 13, Defendants violated the Magnuson-Stevens Act and the Administrative Procedure Act.

124. These actions and failures to act by the Defendants are arbitrary and capricious and violate the Magnuson-Stevens Act and the Administrative Procedure Act, and are causing irreparable injury to the Plaintiff for which it has no adequate remedy at law.

FIFTH CLAIM FOR RELIEF
Violation of National Environmental Policy Act
(42 U.S.C. § 4332(2)(C)

125. Plaintiff re-alleges, as if fully set forth herein, each and every allegation contained in the preceding paragraphs.

126. NEPA requires all federal agencies to prepare an environmental impact statement for all major federal actions significantly affecting the quality of the human environment. *See* 42 U.S.C. § 4332(2)(C).

127. Amendment 13 is a major federal action that will significantly affect the quality of the human environment along the U.S. West Coast. Accordingly, Defendants were required to prepare an EIS prior to promulgating the Final Rule implementing Amendment 13.

128. NEPA requires that an agency rigorously explore and objectively evaluate a reasonable range of alternatives and their associated environmental impacts on the environment. 42 U.S.C. 4332(C); 40 C.F.R. 1502.14.

129. The APA requires that courts "hold unlawful and set aside agency action, findings,

and conclusions" that are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or that are "without observance of procedure required by law." 5 U.S.C. § 706(2)(A), (D).

130. The Defendants violated NEPA, its implementing regulations, and the APA by preparing an EA instead of an EIS to accompany Amendment 13, by failing to consider an adequate range of alternatives for meeting Magnuson-Stevens Act National Standard One requirements, including alternatives to assess and specify optimum yield in a way that accounts for the ecological importance of forage species and establish minimum stock size thresholds for all stocks in the fishery; by failing to consider the cumulative impacts of its action in an EIS; by failing to issue a final EA and finding of no significant impact for Amendment 13 before promulgating final regulations to implement Amendment 13, and by failing to provide a reasonable response to public comments regarding these issues.

131. These actions and failures to act by Defendants are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, and are causing irreparable injury to the Plaintiff, for which it has no adequate remedy at law.

SIXTH CLAIM FOR RELIEF
Violation of Magnuson-Stevens Fishery Conservation and Management Act
(16 U.S.C. § 1854(a)(1), (3))

132. Plaintiff re-alleges, as if fully set forth herein, each and every allegation contained in the preceding paragraphs.

133. For each of the reasons set forth above, and in each of the above outlined claims, Amendment 13 and its implementing regulations are not consistent with applicable law, particularly NEPA. Defendants' decision to finalize and implement Amendment 13 and promulgate its accompanying regulations in spite of the measures' inconsistencies with applicable law is arbitrary, capricious, an abuse of discretion, and not in accordance with law, contrary to the Magnuson-Stevens Act, 16 U.S.C. § 1854(a)(1).

134. These actions by Defendants are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, and are causing irreparable injury to the Plaintiff, for which it has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

A. Declare that Defendants have violated the Magnuson-Stevens Act and the APA as described above because the Final Rule fails to adequately assess and specify optimum yield for stocks in the Coastal Pelagic Species fishery; fails to establish legally sufficient minimum stock size thresholds for all stocks in the fishery; fails to establish conservation and management measures that are based on the best scientific information available, including harvest guidelines and overfishing limits for Pacific sardine; fails to establish a legally sufficient acceptable biological catch control rule for stocks in the fishery that accounts for scientific uncertainty; and otherwise fails to comply with all applicable law, including NEPA;

B. Declare that Defendants have violated NEPA and the APA as described above by failing to prepare an EIS to accompany Amendment 13, failing to consider a reasonable range of alternatives, failing to consider the impacts, including the cumulative impacts, of its actions, failing to issue a valid final EA and finding of no significant impact before promulgating the Final Rule for Amendment 13, and failing to provide a reasonable response to public comments regarding these issues;

C. Vacate the Final Rule implementing Amendment 13 to the Coastal Pelagic Species Fishery Management Plan;

D. Remand Amendment 13 and its EA to the Fisheries Service for completion of a new amendment to replace Amendment 13 and an EIS within no more than one year from the date of the entry of judgment that complies with the Magnuson-Stevens Act, NEPA, and the APA;

E. Maintain jurisdiction over this action until Defendants are in compliance with the Magnuson-Stevens Act, NEPA, the APA, and every order of this Court;

F. Award Plaintiff its costs of litigation, including reasonable attorney and expert witness fees.

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G. Grant Plaintiff such further and additional relief as the Court may deem just and proper.

DATED: December 13, 2011

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