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

GROUND FISH FORUM INC.,
Plaintiff,

v.

NATIONAL MARINE FISHERIES
SERVICE, *et al.*,
Defendants,

and

CENTRAL BERING SEA FISHERMAN'S
ASSOCIATION, *et al.*,

Intervenor-Defendants.

Case No. 3:23-cv-00283-JMK

BRIEF OF *AMICI CURIAE*, CITY OF
SITKA, CORDOVA DISTRICT
FISHERMAN UNITED, AND
INDIVIDUALS AVERY AULT, DANIEL
DONICH, GREG SUTTER, RICHARD
BALTZER, AND EMILY AULT, IN
SUPPORT OF DEFENDANTS AND
INTERVENOR-DEFENDANTS

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INDIVIDUALS AVERY AULT, DANIEL DONICH, GREG SUTTER, RICHARD BALTZER, EMILY
AULT, IN SUPPORT OF DEFENDANTS AND INTERVENOR-DEFENDANTS**

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I. PREFACE: Halibut fishing in International Pacific Halibut Commission regulatory area 3A

It's 7:15AM, nearly 1,000 miles from the Pacific Halibut's nursery waters, visibility stretches hundreds of miles and the bay's surface is still as glass. Captain Avery of the F/V "Whistler," looks out on the clouded horizon towards Mt. Saint Augustine, his deckhands behind him, ready to collect passengers' fishing licenses and prep the fishing rods. Avery's four year old son, Gray, snoozes in his life jacket to the sound of the Whistler's roaring engines—in the very same place Avery used to snooze every summer morning when *his* father captained the Whistler. And not so much has changed from how it was when Avery's father ran things: passengers arrive to the office at 6:30AM; the captain greets and walks them to the boat; he goes over safety procedures, points out the life vests, the life-raft, and discusses in-case-of-fire procedures; he starts the Whistler's engines, leaves the harbor, and heads out towards the mouth of the bay, towards Augustine. The passengers, mainly non-local tourists, are the same as they've always been, though sometimes a repeat customer, the passengers come from all over the country and world, hoping to catch some halibut during their often 'once-in-a-lifetime' trip to Alaska. These passengers—*tourists*—leave a tip not only with the Whistler's deckhands, but with bartenders after the fishing trip ends, and with local restaurants that cook their freshly caught fish. Local processors package what is left of the tourists' catch, and tourists spend money at the gift shops, and local campgrounds, and gas

stations, and museums, and it is now, as it has long been, that summertime fishing tourism drives the economy of Captain Avery's, and many other Alaskan coastal towns.¹

And here in this town, like other municipalities of the *Amici*, a drastic change has taken place since the days when Captain Avery's dad ran the Whistler: the halibut are smaller² and less abundant.³ It is not hyperbole to suggest that the tourism industry that supports captain Avery's way of life may not exist to support his son's. Amendment 123,⁴ challenged by Plaintiff, is purposed to protect the collective futures of the *Amici curiae* as it relates to this vital resource.

II. Interests of Amici Curiae

The City of Sitka, Cordova District Fisherman United, and individuals Avery Ault, and Daniel Donich Greg Sutter, Richard Baltzer, Emily Ault (collectively, "*Amici curiae*") respectfully submit this *amicus* brief in the above-captioned proceeding. Collectively, the *Amici curiae* are Alaskan coastal cities, organizations, and individuals,

¹ Barabara Hutniczak, *Assessing cross-regional flows of economic benefits: A case study of Pacific halibut commercial fishing in Alaska*, 255, Fisheries Research (2022) <https://doi.org/10.1016/j.fishres.2022.106449>

² *Fishery, Climate, and Ecological Effects on Pacific Halibut Size-at-age*, Gordon Kruse, University of Alaska Fairbanks, <https://www.uaf.edu/cfos/research/projects/fishery-climate-and-eco/#:~:text=Despite%20their%20reputation%20as%20a,than%2045%20pounds%20in%202013>. (Last visited June 8, 2024).

³ *Scientists Report Declines in Pacific Halibut Mortality*, NOAA Fisheries, <https://www.fisheries.noaa.gov/feature-story/scientists-report-declines-pacific-halibut-mortality>

⁴ Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Halibut Abundance Based Management of Amendment 80 Prohibited Species Catch Limit, 88 Fed., Reg. 82,740, 42 (Nov. 24, 2023) (codified at 50 C.F.R. § 679.21(b)(1)(i)(A)-(C) and 50 C.F.R. § 679.91).

whose economies and ways of life depend on the Pacific Halibut. After decades of depletion of the Pacific Halibut's nursery,⁵ *Amici curiae*, to varying degrees, now rely on the implementation and enforcement of sustainable fishing regulations for protection from the continued depletion of *Amici curiae*'s economies and ways of life.

Amendment 123, approved and implemented by Defendant National Marine Fisheries Services ("NMFS") ensures bycatch reductions which provide *Amici Curiae* such protection. Plaintiff, a non-profit representing the interests of five companies and seventeen trawler catcher-processors, seeks to eliminate the protections provided by Amendment 123 by having it vacated. As beneficiaries of Amendment 123, *Amici curiae* submit this *amicus* brief in support of Defendant and Intervenor-Defendant.

Amicus curiae City of Sitka is an Alaskan coastal city. The halibut fishery is vital to Sitka's economy, its local fisherman and working families and crews, its social fabric and well-being, and local subsistence users and beneficiaries. To maximize the benefits of the halibut fishery to Sitka, the City of Sitka has invested infrastructure that support the community's local halibut fisherman and families, including a recent 8.3 million dollar investment in a vessel haul out and boat yard. Revocation of Amendment 123

⁵ Int'l Pac. Halibut Comm'n, *Distribution and Abundance of Juvenile Halibut in the Southern Bering Sea*, Scientific Report No. 62, at 4 (1977), (Stating "The southeastern Bearing Sea is a vast nurse area for halibut. The International Pacific Halibut Commission (IPHC) has studied the juveniles inhabiting this area since 1963. . . . *The abundance of juveniles varied inversely with the estimates of incidental catch of halibut by the trawl fishery*" (emphasis added)).

would impair Sitka's immediate economic interests through reduced revenues, depressed quota values, increased economic uncertainty, and reduced tax revenues from businesses either participating in or providing services to the halibut fishery.

Amicus curiae Cordova District Fishermen United (CDFU) is a membership organization representing the interests of roughly 900 Alaska commercial fishermen and their individual fishing businesses. The halibut fishery is vital to CDFU members and non-members who rely on healthy Pacific halibut stocks in the state waters of Prince William Sound and the federal northern-central waters of the Gulf of Alaska for their sustained business operations and personal livelihoods, either as primary business income or as supplemental income to family halibut fishing operations which have become increasingly less profitable in recent years.

Amicus curiae Daniel Donich is an individual and charter fisherman living in Homer, Alaska. Daniel Donich is captain of the F/V "THE OPTIMIST" and has lived in Homer, Alaska since 1988. Daniel Donich relies on a healthy Pacific halibut stock for his livelihood and well-being.

Amicus curiae Avery Ault is an individual and charter fisherman living in Homer, Alaska. Avery Ault is captain of the F/V "Whistler" and has lived in Homer, Alaska his entire life. Avery Ault has worked on halibut charters his whole life, and he relies on a healthy Pacific halibut stock for his livelihood and well-being.

Amicus curiae Greg Sutter is an individual and charter fisherman living in Homer, Alaska. Greg Sutter is captain of the F/V “Tomahawk II” and has lived in Homer, Alaska since 1995. Greg Sutter has been a charter captain since 1978 and relies on a healthy Pacific halibut stock for his livelihood and well-being.

Amicus curiae Richard Baltzer is an individual and charter fisherman living in Homer, Alaska. Richard Baltzer has been an active participant in the commercial and sport fisheries of South Central and Western Alaska for 50 years. He believes there are many factors in the population fluctuations of our fish, but that factory trawlers play an ever increasing role in this fluctuation and that Amendment 123 assists in stopping these dangerous fluctuations.

Amicus curiae Emily Ault is an individual and owns the tourism booking company, Inlet Charters. Emily has been an active participant in the sport fisheries of South Central for her entire life, and has lived in Homer, Alaska for her entire life. Emily Ault relies on on a healthy Pacific halibut stock for his livelihood and well-being.

Through this *amicus* brief and attached resolutions, the *amici* wish to share their experiences, highlight the importance of the Pacific Halibut on their economy and ways of life, and encourage this Court to weightily consider the downstream implications revoking Amendment 123’s Halibut bycatch limit would place on those communities and individuals.

III. Background

The Pacific halibut is a large flatfish which represents one of the northeastern Pacific Ocean's most valuable fishery resources.⁶ "Identifying spawning behavior in Pacific halibut . . . is particularly challenging because they occupy a deep, remote environment during the spawning season."⁷ However, recent meta-analysis suggests Halibut spawn in the Gulf of Alaska, and "[f]rom spawning grounds in the Gulf of Alaska, eggs and larvae are transported westward, some crossing Aleutian Island[s] passes into the Bering Sea."⁸ Once there, "[m]ost young halibut spend from five to seven years in rich, shallow nursely grounds like the Bering Sea."⁹ This is the Pacific halibut's nursery.

Even before scientific data could show that halibut nursed in the Bering Sea, governmental bodies understood that the species needed management and protecting. Therefore, the International Pacific Halibut Commission (IPHC) was formed under a

⁶ Timothy Loher and Andrew Seitz, *Characterization of Active Spawning Season and Depth for Eastern Pacific Halibut (*Hippoglossus stenolepis*), and Evidence of Probable Skipped Spawning*, J. Northw. Atl. Fish. Sci., 41, 23-36 (2008) (discussing spawning patterns of tagged Pacific halibut).

⁷ Andrew Sietz, Branda Norcross, Derek Wilson, and Jennifer Nielsen, *Identifying Spawning Behavior in Pacific Halibut, *Hippoglossus stenolepis*, using electronic tags*, Environmental Biology of Fishes, 73, 445-451 (2005).

⁸ See Carpi, et al., *Ontogenetic and spawning migration of Pacific halibut: a review*, Reviews in Fish Biology and Fisheries, 31, 879-908 (2021).

⁹ Alaska Department of Fish & Game, *Pacific Halibut: Wildlife Notebook Series*, (2007).

treaty between Canada and the United States. For a century now, the IPHC understood that while

[f]ormerly there was a huge supply of halibut on the banks, and an abundance of spawners. Overfishing cut this down to a very serious point. This decline in the amount of fish on the banks have been dealt with in previous reports of the Commission. There was not only a decline in the catch per unit of gear, but also in the total catch taken from the banks. The catch per unit of standard size fell from 272 pounds in 1906 to about 36 pounds in 1930 on the grounds of British Columbia. Off Southeastern Alaska the catch fell from 180 pounds per unit in 1915 to 65 pounds in 1930.

It was reasonable to expect that regulation to stop this decline should seriously affect the catch of fishing fleet. The boats might have been required to reduce their landings greatly. Yet this has not occurred...

If there were unrestricted fishing, nearly the entire annual addition might be removed in one year and there might never be much more on the grounds at any one time than the young which had been added in that year...

There is accumulated stock, actually some 60 per cent greater than when the Commission began [in 1923]. Accordingly the catch per unit of gear is much greater, and an amount equal to the annual additions is more quickly taken. But if the take of fish should be more than the annual addition, the stock would quickly decrease again, just as a reservoir of water would empty if more were taken out than came in.¹⁰

The intake of the Pacific halibut's reservoir *is its nursery*—the place where juveniles reach sexual maturity and become able to replenish the stock. The Pacific halibut's nursery is the Bering Sea. The Bering Sea is also the place where companies and boats represented by Plaintiff cast *very* wide nets, attempting to secure their target fish, but incidentally and yet systematically they remove millions of pounds juvenile Pacific

¹⁰ Report of the International Fisheries Commission, *Life History of the Pacific Halibut*, vol. 9, at 3 (1936).

halibut annually¹¹—*before they can reproduce*. This incidental catching by the trawling industry is termed “bycatch.” It is now well understand that the “[m]ortality of discarded Pacific halibut bycatch from Pacific cod fisheries in the Bering Sea leads to significant losses in the halibut setline . . . fisheries.”¹²

In recognition of the problems caused by bycatch, and over the years, various legal frameworks have been implemented to reduce bycatch. The North Pacific Fishery Management Council, created by the Magnuson-Stevens Fishery Conservation and Management Act,¹³ is tasked with creating a Fishery Management Plan (FMP) for groundfish of the Bering Sea and Aleutian Islands. This plan must promote the following goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act:

It is therefore declared to be the purposes of the Congress in this chapter—

(1) *to take immediate action to conserve and manage the fishery resources found off the coasts of the United States, and the anadromous species and Continental Shelf fishery resources of the United States, by exercising (A) sovereign rights for the purposes of exploring, exploiting, conserving, and managing all fish, within the exclusive economic zone established by Presidential Proclamation 5030, dated March 10, 1983, and (B) exclusive*

¹¹ Alaska Wildlife Alliance, *November 18. 2021 Help Reduce Halibut Bycatch*, <https://www.akwildlife.org/news/2021/11/17/reducing-halibutbycatch#:~:text=About%203.3%20million%20pounds%20of,other%20non%2Dfish%20species>) (last visited June 8, 2024).

¹² Alderstein, Trumble, *Pacific Halibut bycatch in Pacific cod fisheries in the Bering Sea: an analysis to evaluate area-time management*, *Journal of Sea Research* 39, 153-166 (1998).

¹³ 16 U.S.C. §§ 1801–1891d.

fishery management authority beyond the exclusive economic zone over such anadromous species and Continental Shelf fishery resources;

(2) *to support and encourage the implementation and enforcement of international fishery agreements for the conservation and management of highly migratory species*, and to encourage the negotiation and implementation of additional such agreements as necessary;

(3) to promote domestic commercial and recreational fishing under sound conservation and management principles, including the promotion of catch and release programs in recreational fishing;

(4) to provide for the preparation and implementation, in accordance with national standards, of fishery management plans which will achieve and maintain, on a continuing basis, the optimum yield from each fishery;

(5) *to establish Regional Fishery Management Councils to exercise sound judgment in the stewardship of fishery resources through the preparation, monitoring, and revision of such plans under circumstances (A) which will enable the States, the fishing industry, consumer and environmental organizations, and other interested persons to participate in, and advise on, the establishment and administration of such plans, and (B) which take into account the social and economic needs of the States;*¹⁴

The Fishery Management Plan, or plan amendment, created by the North Pacific Fishery Management Council, in accordance with the above objectives of the MSA, is reviewed by the Secretary of Commerce who must either “remand such plan or plan amendment to the Council with comments if it does not meet the requirements of [the Magnuson-Stevens Fishery Conservation and Management Act], or (B) publish [it] in the Federal Register proposed regulations for implementing such plan or plan amendment.”¹⁵

These Fishery Management Plans, which are reviewed by the Secretary of Commerce and implemented through Defendant National Marine Fishery Services,

¹⁴ 16 U.S.C. §§ 1801 (b)(1)-(5) (emphases added).

¹⁵ 16 U.S.C § 1862 (c).

require the submission of “conservation and management measures to lower, on an annual basis for a period of not less than four years, the total amount of economic discards occurring in the fisheries under its jurisdiction.”¹⁶ That is, federal law mandates a continuous review of the Pacific halibut stock, including the effects of bycatch, and the proposal and implementation of amendments to the Fishery Management Plan which will limit bycatch.

In alignment with this requirement Amendment 123 was proposed, reviewed, approved, and implemented for the purposes of reducing bycatch. Despite Amendment 123 having met the requirements of the Magnuson-Stevens Fishery Conservation and Management Act by limiting bycatch, and despite the widespread destruction which will result from revoking the Amendment, Plaintiff now seeks to have Amendment 123 vacated.

IV. Law and Facts

a. Standard of Review

The MSA states that so long as regulations promulgated by the Secretary of Commerce is challenged within 30 days of their promulgation, then the judiciary may review the regulation under the standards provided for in 5 U.S.C. § 706(2)(A), (B), (C), or (D).¹⁷ The Ninth Circuit Court of Appeals has stated that

¹⁶ 16 USC 1862(f), referencing 16 USC 1853(a)(11).

¹⁷ 16 U.S.C 1855 (f)(1)(B).

Section 706(2) of the APA provides that an agency action must be upheld on review unless it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). As a reviewing court, we "must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment." . . . Although our inquiry must be thorough, the standard of review is highly deferential; the agency's decision is "entitled to a presumption of regularity," and we may not substitute our judgment for that of the agency. Where the agency has relied on "relevant evidence [such that] a reasonable mind might accept as adequate to support a conclusion," its decision is supported by "substantial evidence." Even "[i]f the evidence is susceptible of more than one rational interpretation, [the court] must uphold [the agency's] findings."¹⁸

b. The Regulation

As explained in the preamble promulgated with Amendment 123, the Amendment

establishes a process to set the annual halibut PSC limit [i.e., the bycatch limit] for the Amendment 80 sector . . . The halibut PSC limit for the Amendment 80 sector is determined annually . . . The halibut PSC limits range from 1,745 mt when abundance is characterized as "high" for the IPHC index, down to 1,134 mt (35 percent reduction) when abundance is characterized as "very low."¹⁹

As for the determining how to characterize halibut abundance

[a]n index of abundance is a relative measure of the abundance of the halibut population (or subpopulation—e.g., size) calculated using an accepted scientific data collection method (e.g., survey with standardized stations and bait) and calculation method for the indices. This action

¹⁸ San Luis & Delta-Mendota Water Authority v. Jewell, 747 F. 3d 581, 601 (internal citations omitted).

¹⁹ Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Halibut Abundance Based Management of Amendment 80 Prohibited Species Catch Limit, 88 Fed., Reg. 82,740, 42 (Nov. 24, 2023) (codified at 50 C.F.R. § 679.21(b)(1)(i)(A)-(C) and 50 C.F.R. § 679.91).

specifies halibut PSC limits for the Amendment 80 sector based on fishery-independent indices of halibut abundance derived from scientific survey data. The two survey indices recommended by the Council and implemented in this final rule are the International Pacific Halibut Commission (IPHC) setline survey index in Area 4ABCDE and the NMFS Alaska Fisheries Science Center (AFSC) Eastern Bering Sea (EBS) shelf trawl survey index.^{20, 21}

²⁰ Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Halibut Abundance Based Management of Amendment 80 Prohibited Species Catch Limit, 88 Fed., Reg. 82,740, 42 (Nov. 24, 2023) (codified at 50 C.F.R. § 679.21(b)(1)(i)(A)-(C) and 50 C.F.R. § 679.91).

²¹ See also, the regulation itself, 50 C.F.R. § 679.21(b)(1)(i)(A)-(C):

(b) *BSAI halibut PSC limits*—(1) *Establishment of BSAI halibut PSC limits*. Subject to the provisions in paragraphs (b)(1)(i) through (iv) of this section, the following three BSAI halibut PSC limits are established, which total 1,770 mt: BSAI trawl limited access sector—745 mt; BSAI non-trawl sector—710 mt; and CDO Program—315 mt (established as a PSQ reserve). An additional amount of BSAI halibut PSC limit for the Amendment 80 sector will be determined for each calendar year according to the procedure in paragraph (b)(1)(i) of this section.

(i) *Amendment 80 sector*. The PSC limit of halibut caught while conducting any fishery in the Amendment 80 sector is an amount of halibut equivalent to 1,745 mt of halibut mortality. Halibut PSC limits within the Amendment 80 sector will be established for Amendment 80 cooperatives and the Amendment 80 limited access fishery according to the procedure and formulae in § 679.91(d) and (f). If halibut PSC is assigned to the Amendment 80 limited access fishery, it will be apportioned into PSC allowances for trawl fishery categories according to the procedure in paragraphs (b)(1)(ii)(A)(2) and (3) of this section.

(A) *General*. The Amendment 80 sector BSAI halibut PSC limit applies to Amendment 80 vessels while conducting any fishery in the BSAI and is an amount of halibut determined annually according to the procedure in paragraph (b)(1)(i)(B) of this section.

(B) *Annual procedure*. By October 1 of each year, the Alaska Fisheries Science Center will provide the Regional Administrator an estimate of halibut biomass derived from the most recent Alaska Fisheries Science Center Eastern Bering Sea shelf trawl survey index. Each year, NMFS will request that the International Pacific Halibut Commission provide to the Regional Administrator, by December 1 of that year, an estimate of halibut biomass derived from the most recent International Pacific Halibut Commission setline survey index. NMFS will apply both halibut biomass estimates to table 58 to this part, such that the value at the intercept of those survey indices in table 58 is the Amendment 80

Because there has always been issues with bycatch the preamble of Amendment 123 explains why earlier Amendments were insufficient to stop the damage:

The preamble to the proposed rule to implement Amendment 111 noted that the Council and NMFS believed that more stringent PSC limit reductions than those proposed as part of Amendment 111 were not practicable for the groundfish sectors at that time. *However, at the same meeting, the Council noted that additional halibut bycatch reduction would be needed in the future and initiated an analysis of the means to link halibut PSC limits to halibut abundance*, thereby indicating that additional efforts would be required beyond those established by Amendment 111, and utilized by the fisheries, to reduce halibut bycatch and mortality.²²

Other considerations of the council and Defendant included that

[i]n recommending Amendment 123, the Council intended to minimize halibut PSC to the extent practicable as required by section 303(a)(11) and National Standard 9 of the Magnuson-Stevens Act and to continue achieving optimum yield in the BSAI groundfish fisheries on a continuing basis under National Standard 1. The Council then weighed and balanced the Magnuson-Stevens Act's legal requirements and considerations, including the ten National Standards. Based on public comment, the EIS prepared pursuant to the National Environmental Policy Act (NEPA), and

sector halibut PSC limit for the following calendar year. NMFS will publish the new Amendment 80 sector halibut PSC limit in the annual harvest specifications.

(C) *Allocation of BSAI halibut PSC to Amendment 80 cooperatives and the Amendment 80 limited access fishery.* For Amendment 80 cooperatives and the Amendment 80 limited access fishery, BSAI halibut PSC limits will be allocated according to the procedures and formulas in § 679.91(d) and (f) (not paragraph (b)(1)(i)(B) of this section). If halibut PSC is assigned to the Amendment 80 limited access fishery, it will be apportioned into PSC allowances for trawl fishery categories according to the procedure in paragraphs (b)(1)(ii)(A)(2) and (3) of this section.

²² Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Halibut Abundance Based Management of Amendment 80 Prohibited Species Catch Limit, 88 Fed., Reg. 82,740, 42 (Nov. 24, 2023) (codified at 50 C.F.R. § 679.21(b)(1)(i)(A)-(C) and 50 C.F.R. § 679.91) (emphasis added).

analyses under E.O.s and related laws, the Council recommended Amendment 123 to NMFS.²³

c. State Considerations

Of great importance to the Amici is the following provision of Alaska's Constitution: "Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use,"²⁴ which Alaska's Supreme Court has explained as requiring "that natural resources be managed for the benefit of all people, under the assumption that both development and preservation may be necessary to provide for future generations, and that income generation is not the sole purpose of the trust relationship."²⁵ With, since the time of Statehood, the primary purpose of Article 8 being "to balance maximum use of natural resources with *their continued availability to future generations*. In keeping with that purpose, all replenishable resources are to be administered, insofar as practicable, on the sustained yield principle."²⁶

d. Facts Applied

Plaintiff challenges Amendment 123 on many fronts, but namely argues that by implementing Amendment 123, Defendant acted in an arbitrary and capricious, with

²³ Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Halibut Abundance Based Management of Amendment 80 Prohibited Species Catch Limit, 88 Fed., Reg. 82,740, 42 (Nov. 24, 2023) (codified at 50 C.F.R. § 679.21(b)(1)(i)(A)-(C) and 50 C.F.R. § 679.91).

²⁴ Alaska Const. Art. 8, §3.

²⁵ Sagoonick v. State, 503 P. 3d 777, 809 (2022).

²⁶ Sagoonick v. State, 503 P. 3d 777, 809 (2022) (Emphasis retained).

abuse of discretion, and not in accordance with law, and without observance of procedure required by law. The contents of the 32-page Federal Register²⁷ herein cited are self-explanatory in so much as they describe the thoughtful considerations made and thoughtful actions taken by Defendant during the full course of the Amendment's creation and implementation. Included are twenty-one pages of public comments (91 of them) and Defendant's responses to those comments. Included is an explanation of the halibut fishery management plan going forward, as well as a detailed explanation of why the new abundance-based bycatch limits are necessary.

Although this Court's "inquiry must be thorough, the standard of review is highly deferential; the agency's decision is "entitled to a presumption of regularity," and [this Court] may not substitute [its] judgment for that of the agency. Where the agency has relied on "relevant evidence [such that] a reasonable mind might accept as adequate to support a conclusion," its decision is supported by "substantial evidence." Even "[i]f the evidence is susceptible of more than one rational interpretation, [the court] must uphold [the agency's] findings."²⁸

The bycatch limitations, which under Amendment 123 now slide between 1,745 metric tons (3,847,066 LBS) and 1,134 metric tons (2,500,042LBS) are implemented based

²⁷ Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Halibut Abundance Based Management of Amendment 80 Prohibited Species Catch Limit, 88 Fed., Reg. 82,740, 42 (Nov. 24, 2023) (codified at 50 C.F.R. § 679.21(b)(1)(i)(A)-(C) and 50 C.F.R. § 679.91).

²⁸ San Luis & Delta-Mendota Water Authority v. Jewell, 747 F. 3d 581, 601 (internal citations omitted).

on the annual assessment of halibut abundance based on two indices. That is a *direct* look into the abundance of halibut stock will made each year, and bycatch limitations will then be set accordingly. And in other words, Defendant is relying on relevant evidence such that a reasonable mind might accept as adequate to support a conclusion. Defendant, therefore, meets its burden.

And while these numbers and these regulations have a direct and lasting impact on the *Amici*, it is not the complex legal terminology or trawler bycatch pound limits that are held daily within their minds. Rather, it is their state constitution, and the words within which guarantee that natural resources be managed for the benefit of all people—not just those with the ability to extract halibut from their nursey, but also those who must wait until the halibut has grown and come closer to shore.

Recent declines in halibut stock and associated directed commercial harvest limits in IPHC regulatory area 3A have already greatly impacted the bottom lines of commercial groundfish fishermen. Because of observable stock declines, it takes twice as much time and twice the operational costs for vessel and crew to harvest the same number of halibut as just a few years ago. One of the northeastern Pacific Ocean's most valuable fishery resources is being actively depleted due to bycatch and the resulting

economic impact is drastic: Halibut fisheries all across the state of Alaska will only continue to lose revenue should Amendment 123 be vacated.²⁹

Alaskan coastal communities and those of the *Amici* are vulnerable not because they are timid or meek, but because their toughness and audaciousness allow them to make honest livings off the land and the sea. The *Amici* have prospered in that they can pass on livelihoods of hard work and sustained yield from this generation to the next, just as one was passed to them. But the yield is only sustained if there are limitations ensure the harvest will return year after year. Amendment 123 provides those limitations.

V. Conclusion

This lawsuit is about coastal Alaskan cities and the livelihoods of the individuals living therein. It is about whether they may enjoy unlimited years of sustained Pacific halibut yield by establishing responsible limitations on the annual yield. Amendment 123 is not a tool for reallocation as Plaintiff suggests, but instead it is one for preservation.

The *Amici* pray this Court find for Defendant and Intervenor-Defendants insomuch as Amendment 123 is left in place to protect the Pacific halibut stock.

²⁹ See recently signed resolutions from City and Borough of Sitka supporting Amendment 123; of the Petersburg Borough in support of Amendment 123; of the City of Cordova Supporting Amendment 123; of the City of Homer supporting amendment 123.

DATED: June 20, 2024

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Certificate of Service

I served a true and correct copy of the foregoing on:

This document was served by electronic mail to [].

Dated: June 20, 2024

Inlet Law, LLC

/s/