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NORTHERN DISTRICT OF CALIFORNIA

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24 **UNITED STATES DISTRICT COURT**  
25 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
26 **SAN FRANCISCO DIVISION**

MEJ

CV 10 4790

27 PACIFIC COAST FEDERATION OF  
28 FISHERMEN'S ASSOCIATIONS; PORT  
ORFORD OCEAN RESOURCE TEAM; and  
SAN FRANCISCO CRAB BOAT OWNERS  
ASSOCIATION,

Case No.: \_\_\_\_\_

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

**(ADMINISTRATIVE PROCEDURE ACT  
CASE)**

Plaintiffs,

vs.

GARY LOCKE, in his official capacity as  
Secretary of the United States Department of  
Commerce; NATIONAL MARINE  
FISHERIES SERVICE; and NATIONAL  
OCEANIC AND ATMOSPHERIC  
ADMINISTRATION,

Defendants.

## INTRODUCTION

1  
2 1. This lawsuit challenges actions by the Defendant federal fishery agencies to  
3 restructure the Pacific Coast groundfish fishery by creating and distributing individual fishing  
4 quota ("IFQ") shares to qualifying trawl permit owners, locking into place the dominance of  
5 bottom trawl fishing in this major ocean fishery. The IFQ shares will bestow on each trawl  
6 permittee an exclusive and long-term fixed share – collectively, 90 percent – of the total  
7 allowable catch for the groundfish fishery.

8 2. This IFQ program purports to implement a 2006 amendment of the Magnuson-  
9 Stevens Fishery Conservation and Management Act ("MSA," 16 U.S.C. § 1801 *et seq.*; §  
10 1853a) authorizing the use of IFQs to manage United States fisheries, but the program instead  
11 violates numerous requirements of the 2006 law and represents a wholesale abandonment of  
12 Congressional priorities for conservation of marine resources and for inclusiveness in IFQ  
13 program participation.

14 3. The challenged actions by the Defendants are (i) the promulgation, on October 1,  
15 2010, of final rules to implement the IFQ program, and (ii) the underlying approvals of  
16 Amendments 20 and 21 of the Pacific Coast Groundfish Fishery Management Plan, which  
17 describe the IFQ program. On January 1, 2011, the IFQ program will go into effect and  
18 Defendants are already processing share requests from the trawlers.

19 4. Plaintiffs in this action are organizations representing over 700 fishing men and  
20 women on the Pacific Coast who harvest groundfish primarily with non-trawl gear such as  
21 hook-and-line and traps. With implementation of the IFQ Program, these Plaintiffs will suffer  
22 serious and unwarranted injuries including, *inter alia*, loss of fishing opportunity to increasingly  
23 powerful bottom trawl vessels, damage to fishery resources, upset of established markets,  
24 impacts on fishing-dependent communities and infrastructure, and exclusion from  
25 Congressionally mandated measures to offset these and other adverse impacts.

26 5. In numerous ways, this Program fails to carry out Congressional purpose and  
27 directive to promote the conservation of fishery resources, prevent the privatization of public  
28 trust fisheries, and ensure inclusiveness in IFQ programs. The Program's allocation of long-

1 term, fixed quotas to licensees using bottom trawl, the type of gear with the worst record of  
2 bycatch (catch of non-target species) and fish habitat damage, is not supported by the best  
3 scientific information available, as required by the MSA. In contrast, that scientific information  
4 demonstrates that the non-trawl fishing methods used by Plaintiffs' members result in  
5 substantially less bycatch than bottom trawling and minimal to no environmental damage. The  
6 Program elevates efficiency and profitability in the trawl sector over conservation of fishery  
7 resources. The Program ignores statutory constraints on control and transferability of IFQs, and  
8 allows essentially unrestricted transfer of these interests in public trust fisheries.

9 6. The Program also fails to adhere to requirements for participation of fishing  
10 communities, including participation in initial allocation of quota shares, and does nothing to  
11 mitigate adverse impacts on fishing businesses, jobs, and hard-hit communities. The Program  
12 fails to adhere to mandatory requirements concerning the minimization of bycatch, prompt  
13 rebuilding of depleted stocks, and monitoring of catch and landings.

14 7. This complaint also challenges the Defendants' approval of two Environmental  
15 Impact Statements ("EISs"), one for each of the plan amendments. These impact statements fail  
16 to comply with requirements of the National Environmental Policy Act ("NEPA," 42 U.S.C. §  
17 4321, *et seq.*), including requirements pertaining to purposes and scope of the quota program,  
18 consideration of a reasonable range of alternatives, disclosure and analysis of the program's  
19 impacts, and adoption of measures to mitigate impacts.

#### 20 PARTIES

21 8. Plaintiff Pacific Coast Federation of Fishermen's Associations ("PCFFA") is a  
22 California 501 (c)(4) trade organization based in San Francisco, California. PCFFA is the  
23 largest commercial fishing organization on the West Coast. PCFFA is composed of 14  
24 different organizations, representing working men and women in the West Coast commercial  
25 fishing fleet. Individual members fish primarily with non-trawl gear under limited entry and  
26 open access regimes, targeting rockfish, sablefish, and other groundfish, as well as a variety of  
27 non-groundfish species. PCFFA deals with resource protection and policy issues of importance  
28 to the fishing industry and advocates concerning these matters in state and federal legislative

1 forums. In 1993, PCFFA established the Institute for Fisheries Research, which studies and  
2 seeks to implement environmentally responsible fishing practices. PCFFA and its members  
3 have a direct interest in maintaining a healthy marine ecosystem through good stewardship of  
4 public fisheries. Throughout development of the IFQ Program, representatives of PCFFA  
5 provided oral and written comments and proposals which reflected these purposes of the  
6 organization. The IFQ Program directly and adversely affects PCFFA and its members by  
7 elevating economic returns to the bottom trawl fleet over conservation of public fishery  
8 resources, by excluding fishing-dependent communities and non-trawl sectors from  
9 participation in the program, by allowing conversion of quota shares in public fisheries into de  
10 facto private property, and by failing to provide full disclosure and analysis of adverse  
11 environmental effects – all contrary to requirements of the MSA and NEPA. These interests of  
12 PCFFA have been, and – unless the relief sought in this complaint is granted – will continue to  
13 be adversely affected and irreparably injured by the Defendants’ implementation of the  
14 groundfish IFQ Program. PCFFA brings this action on behalf of itself, its member  
15 organizations, and their adversely affected members.

16 9. Plaintiff POORT is an Oregon non-profit corporation based in the southern  
17 Oregon town of Port Orford. POORT engages local fishing men and women and other  
18 community members in working toward the long-term sustainability of the Port Orford ocean  
19 ecosystem and the social and economic systems dependent on it. POORT is guided by a five-  
20 fisherman board of directors. POORT activities are focused on selective and sustainable  
21 fishing; reducing bycatch; avoiding marine habitat degradation; and marketing high quality,  
22 high value fish to consumers. Port Orford’s fishing fleet has about 35 non-trawl vessels.  
23 Groundfish is approximately 31 percent of their landings, with the balance made up of crab,  
24 tuna, halibut, urchin, and salmon. About 30 percent of the town’s labor force is employed in  
25 commercial fishing or marine-related businesses. POORT has developed a stewardship plan  
26 for nearby ocean and adjacent land. The plan seeks to protect marine resources while allowing  
27 sustainable uses to continue. In 2010, POORT received NOAA’s Award of Excellence for  
28 Non-Governmental Organization of the Year. Throughout development of the IFQ Program,

1 representatives of POORT provided oral and written comments and proposals, objecting to  
2 provisions of the program that would effectively convert the fishery into private property,  
3 undermine POORT's efforts to maintain sustainable use of its fishing grounds, and leave its  
4 members with an uncertain future. POORT joined in requests for the Council to help offset the  
5 adverse impacts by adopting criteria for fishing communities to qualify for allocations under  
6 the program, as required by the MSA. The IFQ Program directly and adversely affects POORT  
7 by failing to consider effects of the program on Port Orford and nearby fishing grounds and by  
8 failing to include criteria to allow this fishing community and/or its fishing fleet to participate  
9 in fish allocations under the program. The IFQ Program further affects POORT directly and  
10 adversely by allowing trawl vessels, including those in nearby ports, to switch temporarily to  
11 fixed gear to catch their quota, regardless of adverse effects including competition for access to  
12 fishing grounds, depletion of targeted stocks, and undermining of established markets for Port  
13 Orford-landed fish. These deficiencies of the IFQ Program are all contrary to requirements of  
14 the MSA and NEPA. These interests of POORT have been and – unless the relief sought in  
15 this complaint is granted – will continue to be adversely affected and irreparably injured by  
16 Defendants' implementation of the groundfish IFQ Program. POORT brings this action on  
17 behalf of itself and its adversely affected board of directors and staff, and the fishing  
18 community whose interests they represent.

19 10. Plaintiff San Francisco Crab Boat Owners Association ("CBOA") is a California  
20 non-profit corporation based in San Francisco, California. CBOA was established in 1907 and  
21 is the oldest commercial fishing organization on the West Coast. The CBOA fleet is made up  
22 of approximately 35 family-owned boats under 50 feet. Historically CBOA boats focused on  
23 crab fishing, but for many years they have fished for rock fish, salmon, herring, halibut, and  
24 albacore, as well as crab. When fishing for rock fish (part of the groundfish complex covered  
25 by the Program), CBOA members use vertical hook and line, avoiding bycatch of non-targeted  
26 species and bringing in top quality fish that have a ready local market. In this way, the CBOA  
27 fishing men and women long have operated a sustainable, community-based fishery. Because  
28 of regulatory restrictions, stock rebuilding area closures, and competition from large visiting

1 boats, the CBOA boats' access to rockfish has declined, making it ever more important to  
2 maintain access to a full range of fisheries for now and in the future when rockfish stocks have  
3 rebuilt. During development of the IFQ Program, representatives of CBOA appeared before  
4 the Council and submitted written testimony objecting to the proposed long-term commitment  
5 of almost all of the groundfish fishery to the gear sector that bears principal responsibility for  
6 depletion of groundfish stocks, to the gifting and privatization of valuable interests in a public  
7 resource, and to the harsh impacts these actions by the Defendants would have on CBOA  
8 members and others in non-trawl sectors of the fishery, as well as on fish habitat and stock  
9 abundance. CBOA representatives sought guidance on how to establish a community fishing  
10 association that would qualify for an allocation of some of the groundfish quota. CBOA's  
11 requests went unanswered, but CBOA nevertheless helped establish the recently incorporated  
12 San Francisco Community Fishing Association in order to be prepared to receive quota under  
13 the IFQ Program. The Defendants' decision to implement the IFQ Program directly and  
14 adversely affects CBOA and its members through the long-term commitment of fishing power  
15 to the trawl sector with the resulting adverse impacts on fish habitat and abundance, increased  
16 competition from larger trawlers in a consolidated fleet, and curtailment of opportunity for  
17 CBOA members to maintain economically viable allocations of fish, while failing to provide  
18 full disclosure and analysis of the adverse environmental effects. These deficiencies of the IFQ  
19 Program are all contrary to requirements of the MSA and NEPA. These interests of CBOA  
20 have been and – unless the relief sought in this complaint is granted – will continue to be  
21 adversely affected and irreparably injured by Defendants' implementation of the groundfish  
22 IFQ Program. CBOA brings this action on behalf of itself and its adversely affected members.

23 11. Members of each of the Plaintiff organizations also use and enjoy the Pacific  
24 Ocean for activities other than commercial fishing, including recreational fishing, scuba diving,  
25 snorkeling, boating, swimming, research, and study, that depend on or are enhanced by an  
26 abundance of healthy marine life. Additionally, Plaintiffs' members live and work in  
27 communities whose long-term health and viability depend upon a successful commercial  
28 fishing sector. As a result of their activities, Plaintiffs' members receive economic,

1 recreational, and aesthetic benefits from the Pacific Ocean and Pacific groundfish. None of the  
2 claims asserted nor the relief requested herein requires the participation of individual members  
3 of the Plaintiff organizations. Each of the Plaintiffs has no adequate remedy at law for the  
4 injuries they suffer as a result of the Defendants' unlawful actions in approving and  
5 implementing the IFQ Program.

6 12. Defendant Gary Locke is Secretary of the United States Department of  
7 Commerce ("Secretary"). He is sued in his official capacity as the chief officer of the  
8 Department charged with overseeing the proper administration of the MSA.

9 13. Defendant National Marine Fisheries Service ("NMFS") is the federal agency  
10 that approved Amendments 20 and 21, promulgated a final rule partially implementing those  
11 amendments, and prepared and approved a final Environmental Impact Statement on each of  
12 those amendments.

13 14. Defendant National Oceanic and Atmospheric Administration ("NOAA") is an  
14 agency of the United States Department of Commerce with supervisory responsibility for  
15 NMFS. The Secretary of Commerce has delegated responsibility to ensure compliance with the  
16 MSA and NEPA to NOAA, which in turn has sub-delegated that responsibility to NMFS.

17 15. Defendants' actions challenged in this complaint are final, and the legal wrongs  
18 alleged herein are within the zone of interests protected by the MSA, APA and NEPA.

19  
20 **JURISDICTION AND VENUE AND INTRADISTRICT ASSIGNMENT**

21 16. This court has jurisdiction over this action under 28 U.S.C. § 1331 (federal  
22 question); 28 U.S.C. §§ 2201-2202 (declaratory judgment); 16 U.S.C. §§ 1855 (f), and 1861 (d)  
23 (MSA); 5 U.S.C. §§ 701-706 (Administrative Procedure Act) ("APA"); and 42 U.S.C. § 4321  
24 *et seq.* (NEPA).

25 17. Venue in this Court is proper under 28 U.S.C. § 1391(e). Plaintiffs PCFFA and  
26 CBOA are headquartered in San Francisco and many of the fishing men and women  
27 represented by these organizations reside in and fish offshore from the Northern District of  
28 California, including the San Francisco Division. Further, the Pacific Coast Groundfish

1 Fishery Management Plan (hereinafter "Groundfish FMP") regulates the fishing of groundfish  
2 in federal waters off the coasts of California, Oregon, and Washington, including the federal  
3 waters off the coast of the California counties of Del Norte, Humboldt, Mendocino, Marin, San  
4 Francisco, San Mateo, Sonoma, Monterey, and Santa Cruz.

## 6 MSA STATUTORY AND REGULATORY BACKGROUND

### 7 **Statutory Background – Fishery Management Plans**

8 18. The MSA establishes an elaborate system for conserving and managing fish  
9 populations and fisheries in United States territorial waters and the exclusive economic zone.  
10 The MSA creates eight regional fisheries management councils and charges them with  
11 preparing fishery management plans ("FMPs") for all managed fisheries. The Pacific Fishery  
12 Management Council ("Council") manages ocean fisheries off the coast of California, Oregon,  
13 and Washington.

14 19. Councils submit proposed FMPs and FMP amendments together with proposed  
15 implementing regulations to the Secretary for review and approval. 16 U.S.C. § 1854. The  
16 Secretary, acting through NMFS, must disapprove an FMP amendment to the extent it is  
17 inconsistent with provisions of the MSA or with any other applicable law. 16 U.S.C. § 1854  
18 (a). The Secretary must disapprove proposed regulations to the extent they are inconsistent  
19 with the FMP, FMP amendment, the MSA, or other applicable law. 16 U.S.C. § 1854 (b).

20 20. Approvals of FMPs, FMP amendments, and implementing regulations are  
21 subject to the requirements of the NEPA, 42 U.S.C. § 4321 *et seq.*; 16 U.S.C. § 1854 (i).

### 22 **Statutory Background – Individual Fishing Quotas**

23 21. One measure for managing fisheries involves allocation of quotas in a fishery.

24 22. The MSA defines an "individual fishing quota" ("IFQ") as a Federal permit  
25 under a limited access system to harvest a quantity of fish, expressed by a unit or units  
26 representing a percentage of the total allowable catch of a fishery that may be received or held  
27 for exclusive use by a person. 16 U.S.C. § 1802 (23).

1           23.     In 1996, Congress enacted the Sustainable Fisheries Act, extensively amending  
2 the MSA. See Pub. L. 104-297, 110 Stat. 3559 (1996). The act imposed a four-year  
3 moratorium on submittal of IFQ programs for Secretarial approval, in order to allow time for  
4 study of the controversial IFQ concept. § 303(d), 110 Stat. at 3576 (codified at 16 U.S.C. §  
5 1853(d), repealed by Pub. L. 109-479, 121 Stat. 3575, 3586 (2007)).

6           24.     In 2006, Congress further amended the MSA, authorizing councils to adopt  
7 “limited access privilege” (“LAP”) programs, including IFQ programs. Pub. L. 109-479, §  
8 303(a), codified as 16 U.S.C. § 1853a. The enactment stated requirements for LAP programs  
9 and provided for the Secretary to approve a program only if it meets the requirements. 16  
10 U.S.C. § 1802 (27).

#### 11                   **Statutory Background – Conservation of Fisheries Under the MSA**

12           25.     MSA requires any fishery management plan and any regulation promulgated to  
13 implement such a plan to be consistent with the National Standards set forth at 16 U.S.C.  
14 section 1851. These National Standards state principles, priorities, and requirements relating,  
15 *inter alia*, to conservation, resource utilization and allocation, use of scientific information,  
16 economic impacts, fairness, competition, efficiency, and fishing communities.

#### 17                   **DEVELOPMENT AND APPROVAL OF FMP AMENDMENTS 20 AND 21,** 18                   **THE REGULATIONS, AND ENVIRONMENTAL IMPACT STATEMENTS**

19           26.     In or about 2003, the Council began considering amendment of the Groundfish  
20 FMP in order to “rationalize” the trawl gear sector of the fishery through imposition of a  
21 system of individual fishing quotas. The proposal was the subject of several Council meetings,  
22 input from Council subcommittees, written and oral testimony from interested agencies and  
23 persons, and a great deal of controversy. The resulting Groundfish FMP Amendment 20  
24 establishes, *inter alia*, an IFQ Program for the shoreside trawl sector, and Amendment 21  
25 allocates to that sector fixed quotas amounting to approximately 90 percent of the groundfish  
26 fishery resources.

1           27.     The Council submitted Amendments 20 and 21 to the Secretary, and NMFS  
2 purported to partially approve those amendments by a letter dated August 9, 2010 and signed  
3 by the NMFS Regional Administrator for the Northwest Region. The Defendants prepared a  
4 draft EIS for Amendment 20, and another draft EIS for Amendment 21, invited comments on  
5 each, and reported in the October 1, 2010 Federal Register (75 Fed. Reg. 60893) that it had  
6 issued a record of decision for each amendment identifying the selected alternatives. The  
7 Council also submitted proposed regulations to the Secretary. A first set of proposed  
8 regulations was published in the Federal Register on June 10, 2010 (75 Fed. Reg. 32994), and a  
9 second set was published on August 31, 2010 (75 Fed. Reg. 53380). On October 1, 2010,  
10 Defendants promulgated a partial final rule (the "October 1 implementing regulations") which  
11 omitted some components necessary for lawful implementation of the program. (75 Fed. Reg.  
12 60868).

13           28.     As reflected in the foregoing documents, the stated objective of the IFQ Program  
14 is to increase net economic benefits to the trawl sector, create individual economic stability  
15 within the trawl sector, provide full utilization of the trawl sector allocation, consider  
16 environmental impacts, and achieve individual accountability of catch and bycatch. The quota  
17 shares are freely transferable, and program documents explain the expectation of rapid  
18 consolidation of fishing power within the trawl sector and rapid escalation of value for the  
19 quota shares.

20           29.     The IFQ Program makes no direct provision concerning the non-trawl sectors of  
21 the fishery, but participants in those sectors will suffer adverse effects by, *inter alia*, the loss of  
22 opportunity to gain access to increased allocations; the harm to marine ecosystems and  
23 fisheries from continued damage by bottom trawling; the loss of incentive for development of  
24 less damaging gear; the de facto privatization of 90 percent of the groundfish fishery; the  
25 increased trawl fishing power in relation to non-trawl power; the program's gear-switching  
26 provision which allows trawlers to temporarily use fixed gear to catch their quota, thereby  
27 competing and depleting stocks on fixed-gear fishing grounds and disrupting markets for high  
28 quality fish caught by fixed gear; the impacts on mixed-gear fishing communities where fishing

1 infrastructure (such as processors and suppliers) disintegrates because the trawlers receive  
2 insufficient quota to remain in business or quota is sold out of port; and the failure of the  
3 Program to make provision for fishing communities in order to help offset these adverse  
4 impacts by receiving quota allocations, as required by law.

5 **CLAIMS FOR RELIEF**

6 **FIRST CLAIM FOR RELIEF:**

7 **VIOLATIONS OF MSA RESTRICTIONS ON WHO CAN HOLD, USE,  
8 AND ACQUIRE QUOTA SHARES**

9 30. Plaintiffs reallege and incorporate by reference each of the preceding paragraphs.

10 31. In Section 1853a (c) of the MSA Congress established requirements and  
11 limitations on who may hold, acquire, use, or receive an allowance of fishing quota. A council  
12 may authorize limited access privileges (LAPs, which includes IFQs) to be held, acquired, used  
13 by, or issued to only "persons who substantially participate in the fishery, including in a  
14 specific sector of such fishery, as specified by the Council." 16 U.S.C. § 1853a (c)(5)(E).  
15 "Person" is defined to include entities. 16 U.S.C. § 1852 (36). In addition to substantially  
16 participating in the fishery, any person or entity acquiring a LAP must also be a United States  
17 citizen, corporation, partnership, or other entity established under federal or state law. 16  
18 U.S.C. § 1853a (c)(1)(D). These restrictions also apply to any person that acquires a LAP for  
19 the purpose of perfecting or realizing on a security interest in the LAP. 16 U.S.C. § 1853a  
20 (c)(1)(D). A council must adopt transferability criteria consistent with section 1853a (c)(5)(E).  
21 16 U.C.S. § 1853a (c)(7)(A).

22 32. Under section 1853a (a) of the MSA, the Secretary has authority to approve a  
23 LAP program only if it meets requirements of the section. The Secretary must disapprove an  
24 FMP amendment to the extent it is inconsistent with provisions of the MSA or with any other  
25 applicable law. 16 U.S.C. § 1854 (a). The Secretary must disapprove proposed regulations to  
26 the extent they are inconsistent with the FMP, FMP amendment, the MSA, or other applicable  
27 law. 16 U.S.C. § 1854 (a) and (b).

1           33.     Amendments 20 and 21 and the implementing regulations do not comply with  
2 the statutory requirements and limitations on who may hold, acquire, use, or receive in transfer  
3 shares of quota in the Pacific groundfish fishery. Section 660.25(b)(2) of the regulations  
4 provides that any person or entity eligible to own and control a United States fishing vessel  
5 may hold, acquire, use, or receive in transfer quota shares. 50 C.F.R. § 660.25(b)(ii), 75 Fed.  
6 Reg. 32998. Under 46 U.S.C. section 12113, this is essentially anyone other than an entity  
7 with less than 75 percent United States ownership. Furthermore, the Groundfish FMP  
8 amendments and implementing regulations allow acquisition of quota share for purposes of  
9 perfecting or realizing on a security interest, in further contravention of 16 U.S.C. section  
10 1853a (c)(1)(D).

11           34.     These provisions of the IFQ Program violate the limitations of section 1853a  
12 (c)(5)(E) and effectively convert shares in public fishery resources into private property to be  
13 bought, sold, leased, and used as security, with the only restriction being at least partial  
14 involvement of United States citizens.

15           35.     In approving the provisions of Amendments 20 and 21 on acquisition and use of  
16 quota share, and in approving and promulgating regulation 660.25(b)(2), the Defendants  
17 abused their discretion and acted arbitrarily and capriciously and in violation of their  
18 mandatory duties under 16 U.S.C. sections 1853a (a), 1854 (a) and (b), and in violation of  
19 section 706 (2) of the APA, 5 U.S.C. sections 701-706.

20           36.     Defendants' violations of the MSA cause irreparable harm to Plaintiffs and  
21 damage their interest in maintaining their livelihood as fishing men and women and in good  
22 stewardship of marine ecosystems on which their fishing depends. They have no adequate  
23 remedy at law.

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**SECOND CLAIM FOR RELIEF:**

**FAILURE TO PROVIDE FOR FISHING COMMUNITIES AND  
NON-TRAWL SECTORS TO PARTICIPATE IN THE  
IFQ PROGRAM AND RECEIVE INITIAL ALLOCATIONS OF FISH**

37. Plaintiffs reallege and incorporate by reference each of the preceding paragraphs.

38. Section 1853a(c)(3)(A) of the MSA, 16 U.S.C. section 1853a(c)(3)(A), states the requirements for fishing community participation in an IFQ program and specifies that such a fishing community is eligible to participate if it meets criteria developed by the Council and approved by the Secretary.

39. Section 1853a (c)(3)(B) of the MSA (16 U.S.C. § 1853a(c)(3)(B)), states factors that a council must consider in developing the participation criteria for eligible communities.

40. Section 1853a (c)(5) directs the Secretary, in developing a LAP program, to establish procedures: (A) to ensure fair and equitable initial allocations, including consideration of the current and historical participation of fishing communities; (B) to consider the basic cultural and social framework of the fishery, especially through the development of policies to promote the sustained participation of small owner-operated fishing vessels and fishing communities that depend on the fisheries; and (C) to include measures to assist fishing communities through set-asides of harvesting allocations, including providing privileges.

41. Under these provisions of the statute, the Defendants were required to develop criteria for participation of fishing communities in the IFQ Program, including in initial allocations under the program. The Defendants failed to carry out this duty or to otherwise make provision for fishing communities' timely participation in the Program, including in the initial allocations of quota shares. These arbitrary and unlawful omissions by the Defendants have denied fishing men and women and fishing-dependent business in small fishing communities the opportunity intended under the law for them to participate in the IFQ Program. Defendants' failure to carry out these duties has also deprived fishing communities of means to help mitigate adverse impacts the Program will have on many fishing communities.

1 42. Furthermore, Defendants arbitrarily and unlawfully failed to act in accordance  
2 with MSA Section 1853a (c)(5)(E), 16 U.S.C. § 1853a(c)(3)(E), by failing to include in the  
3 IFQ Program all substantial participants in the fishery, thereby denying the intended benefits of  
4 such a program to non-trawl participants in the Pacific groundfish fishery, including the  
5 members of fishing communities.

6 43. For the forgoing reasons, the Defendants' approvals of Amendments 20 and 21  
7 and their implementing regulations were arbitrary, capricious, an abuse of discretion, and  
8 otherwise not in accordance with law in that they violate sections 1854 (a), 1854 (b), and  
9 1853a(c) of the MSA (16 U.S.C. §§ 1854 (a), 1854 (b) and 1853a (c)), and Section 706 (2) of  
10 the APA, 5 U.S.C. §§ 701-706.

11 44. Defendants' violations of the MSA cause irreparable harm to Plaintiffs and the  
12 fishing communities they represent, damaging their interest in maintaining their livelihood as  
13 fishing men and women and in the well being of their communities. They have no adequate  
14 remedy at law.

### 15 **THIRD CLAIM FOR RELIEF:**

#### 16 **MSA VIOLATIONS BASED ON INCONSISTENCIES WITH THE MSA'S NATIONAL** 17 **STANDARDS AND RELATED PROVISIONS OF LAW AUTHORIZING IFQ** 18 **PROGRAMS**

19 45. Plaintiffs reallege and incorporate by reference each of the preceding paragraphs.

20 46. Section 1851 (a) of the MSA sets forth National Standards for fishery  
21 conservation and management and requires that any FMP and any regulation to implement an  
22 FMP must be consistent with those standards. 16 U.S.C. § 1851 (a). The MSA provisions  
23 governing IFQ programs contain certain requirements that are closely related to several of the  
24 National Standards.

25 47. National Standard 1 requires the **prevention** of overfishing and Standard 9  
26 requires the **prevention** of bycatch where practicable, while Standard 5 requires merely the  
27 **consideration** of efficiency in utilizing fishery resources. Defendants' IFQ Program inverts  
28 these priorities by adopting as its main purpose the achieving of efficiency in the trawl sector,

1 while merely considering conservation. The IFQ Program is thus inconsistent with Standards  
2 1, 5, and 9.

3 48. The IFQ Program fails to carry out requirements of the IFQ-authorizing  
4 legislation that reflect the policies underlying National Standards 1, 5 and 9. An IFQ program  
5 is required to promote fishery conservation (16 U.S.C. § 1853a (c)(1)(C)(ii)), but this IFQ  
6 program does not do so. As shown by Defendants' statements of the IFQ Program's purposes,  
7 conservation was merely considered. An IFQ program is required to assist in rebuilding  
8 overfished stocks (16 U.S.C. § 1853a (c)(1)(A)), but this Program does not do so. Instead, the  
9 Program fails to promote fishery conservation and undermines the rebuilding of overfished  
10 stocks by allocating approximately 90 percent of the total allowable catch of Pacific groundfish  
11 to permittees who fish with trawl, the gear most damaging to fish habitat and most prone to  
12 bycatch. The Program also is required to monitor catch by using observers or electronic  
13 monitoring systems, which are to be financed by the permit holders (16 U.S.C. §§ 1853a  
14 (c)(1)(H) and (e)(2)), but the October 1 implementing regulations fail to include provisions to  
15 meet these requirements.

16 49. Under National Standard 4, allocations of fishing privileges must be fair and  
17 equitable to all fishermen, and under National Standard 5, no measure may have economic  
18 allocation as its sole purpose. The IFQ Program, in giving long-term, fixed fishery shares only  
19 to trawl permittees, while imposing new hardships on non-trawl participants and fishery-  
20 dependent communities, fails to meet the fair and equitable requirement. The economic  
21 allocation prohibition is also violated, as shown by Defendants' declarations that the main  
22 purpose of the Amendments 20 and 21 actions is to improve efficiency and profitability and  
23 facilitate better business planning for the trawl sector. In the same ways that National  
24 Standards 4 and 5 are violated, IFQ program requirements for a fair and equitable initial  
25 allocation of groundfish quota also are violated. 16 U.S.C. § 1853a(c)(5).

26 50. National Standard 2 requires management measures to be based on the best  
27 scientific information available. This requirement was violated by Defendants in singling out  
28 the trawl sector for an award of long-term, fixed shares in the fishery while ignoring the

1 abundant research and data demonstrating the adverse effects of bottom trawling on marine  
2 ecosystems and species.

3 51. Because of the inconsistency of Amendments 20 and 21 and the implementing  
4 regulations with National Standards 1, 2, 4, 5, and 9 and with the IFQ program requirements  
5 cited in the preceding paragraphs, Defendants were required to disapprove these proposals. 16  
6 U.S.C. §§ 1854 (a), 1854 (b), and 1853a (a). Defendants' actions in approving the proposals  
7 were arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law.

8 52. Defendants' violations of the MSA cause irreparable harm to Plaintiffs and the  
9 communities and individuals they represent, damaging their interests in maintaining their  
10 livelihoods, in good stewardship of marine resources, and in the well being of their  
11 communities. They have no adequate remedy at law.

#### 12 **FOURTH CLAIM FOR RELIEF:**

##### 13 **VIOLATIONS OF THE NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)**

14 53. Plaintiffs reallege and incorporate by reference each of the preceding paragraphs.

15 54. In approving fishery management actions for the Pacific groundfish fishery,  
16 Defendants are bound not only by the MSA, but also by the requirements of NEPA and the  
17 APA. NEPA requires Defendants to prepare a comprehensive EIS complying with all of the  
18 requirements of NEPA for any fishery management action that may significantly affect the  
19 human environment, including the FMP amendments and implementing regulations challenged  
20 in this litigation. 42 U.S.C. § 4321 *et. seq.*; 16 U.S.C. § 1854(i).

21 55. NEPA requires federal agencies to "consider every significant aspect of the  
22 environmental impact of a proposed action . . . [and] inform the public that it has indeed  
23 considered environmental concerns in its decisionmaking process." *Earth Island Inst. v. U.S.*  
24 *Forest Serv.*, 351 F.3d 1291, 1300 (9th Cir. 2003) (citation omitted). "[T]o accomplish this,  
25 NEPA imposes procedural requirements designed to force agencies to take a 'hard look' at  
26 environmental consequences." (*Id.*) and "provide a full and fair discussion of significant  
27 environmental impacts" for the public's review. 40 C.F.R. § 1502.1. NEPA review must be  
28 done "objectively and in good faith, not as an exercise in form over substance, and not as a

1 subterfuge designed to rationalize a decision already made.” *Metcalf v. Daley*, 214 F.3d 1135,  
2 1142 (9th Cir. 2000). NEPA regulations require an EIS to be “concise, clear, and to the point  
3 and . . . be supported by evidence that [the agency] has made the necessary environmental  
4 analyses.” 40 C.F.R. §§1500.2; 1502.1.

5 56. The APA provides that courts shall “hold unlawful and set aside agency action,  
6 findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise  
7 not in accordance with law,” 5 U.S.C. § 706(2)(A), which includes actions, findings and  
8 conclusions in violation of NEPA. *See* 16 U.S.C. § 1855(f).

9 57. NEPA regulations require that an EIS provide a statement of “the underlying  
10 purpose and need to which the agency is responding in proposing the alternatives including the  
11 proposed action.” 40 C.F.R. § 1502.13.

12 58. Contrary to this duty, in the EISs NMFS arbitrarily limited the scope of its  
13 proposal and applied an impermissibly narrow statement of purpose and need, which  
14 artificially limited the consideration of alternatives to those involving the fixed, long-term  
15 allocation of groundfishing rights to environmentally-damaging trawlers. (*E.g.*, Amendment  
16 21 EIS at xii). This threshold statement of purpose and need arbitrarily truncated the analysis in  
17 the Amendment 20 and 21 EISs. By arbitrarily limiting the scope of its proposal and its  
18 statement of purpose and need to consideration of improved efficiency and profitability within  
19 the trawl sector, NMFS failed adequately to analyze or consider the environmental and other  
20 benefits of shifting a greater proportion of the allocation of groundfish to vessels that use less  
21 environmentally damaging types of gear. Non-trawl participants in the fishery, including the  
22 members of Plaintiffs’ organizations, stand ready, willing and able to take on a much larger  
23 share of Pacific groundfish with gear and fishing practices significantly less damaging than  
24 bottom trawl fishing.

25 59. FMP Amendments 20 and 21 and the October 1, 2010 implementing regulations  
26 will disadvantage and weaken the non-trawl sectors and impair the ability of those participants  
27 in the fishery to take their allocations using environmentally superior techniques by, *inter alia*:

- a. Making long-term, fixed proportional allocations of most of the Pacific Coast groundfish to trawlers, with those allocations being incorporated into FMP amendments that can only be changed through complex and time-consuming procedures;
- b. Granting substantial economic value in the form of relatively stable, transferrable IFQs to trawlers, thereby giving them a significant competitive advantage over the non-trawlers without providing any such economic value or security to fixed gear and open access fishermen;
- c. Allowing trawlers to switch intermittently to fixed gear without obtaining a fixed gear permit, while precluding the ability of fixed gear and open access participants to increase their fishing efforts without purchasing one or more of a very limited number of existing trawl permits;
- d. Failing to adopt restrictions for trawler trips using fixed gear that would keep them from depleting fishing grounds used by the much smaller fixed gear and open access vessels;
- e. Enabling trawlers, through intermittent gear-switching, to compete in fixed gear markets where the higher quality of fish caught by hook and line or trap brings higher prices, further weakening the non-trawl sectors; and
- f. Pooling the groundfish allocations to the non-trawl and recreational fishing sectors, subject to bi-annual sub-allocations, thereby increasing the economic uncertainty for the non-trawl sectors and potentially reducing their actual shares below those assumed and analyzed in the EISs (*E.g.*, Amendment 21 FEIS at 11).

60. NEPA and its implementing regulations require federal agencies to study, develop and describe a reasonable range of alternatives that might avoid or mitigate a project's adverse environmental impacts. 42 U.S.C. § 4332(C)(iii), (E); 40 C.F.R. §§1502.14, 1500.2(e), 1508.9, 1502.16. An EIS must identify a reasonable range of alternatives to an agency's proposed action and present this information in a manner that "foster[s] both informed

1 decision-making and informed public participation.” *Ilio’Ulaokalani Coalition v. Rumsfeld*,  
2 464 F.3d 1083, 1094 (9th Cir. 2006) (citation omitted); “[T]he alternatives analysis section is  
3 the heart of the [EIS].” *Ilio’Ulaokalani*, 464 F.3d at 1095. “The existence of reasonable but  
4 unexamined alternatives renders an EIS inadequate.” *Id.* (citation omitted). The NEPA  
5 regulations demand that the EIS “[d]evote substantial treatment to each alternative considered  
6 in detail including the proposed action so that reviewers may evaluate their comparative  
7 merits.” 40 C.F.R. § 1502.14(b). Furthermore, the EIS must provide “a clear basis for choice  
8 among the options.” 40 C.F.R. § 1502.14.

9 61. Contrary to this duty, NMFS dismissed feasible alternatives as infeasible and  
10 failed to consider other viable alternatives adequately. Specifically, *inter alia*, NMFS:

- 11 a. Failed to set forth and analyze a reasonable range of alternatives that would have  
12 allowed NMFS and the public to evaluate feasible options for undertaking the  
13 groundfish fishery in a less environmentally damaging manner, and arbitrarily  
14 declined to set forth and analyze several such viable alternatives recommended  
15 by commenters (E.g., Amendment 20 FEIS at 649-52);
- 16 b. Failed to set forth and analyze a reasonable range of alternatives that would have  
17 allowed NMFS and the public to evaluate the conservation and other  
18 environmental benefits of shifting a substantially greater proportion of the total  
19 Pacific groundfish harvest to participants who rely on fishing practices other than  
20 environmentally damaging bottom trawling, specifically the fixed gear and open  
21 access segments of the fishery;
- 22 c. Failed to set forth and analyze an alternative that did not involve the long-term  
23 fixed allocation of fishing rights to trawlers, despite NMFS’s recognition that  
24 “such fixed allocations could be adopted and modified periodically through the  
25 biennial specifications process . . . .” (Amendment 20 FEIS at 87);
- 26 d. Failed to set forth and analyze an alternative that would allocate fishing  
27 privileges geographically and assign fishing privileges to adjacent communities  
28 and their fishing men and women, who could be anticipated to have greater

1 stewardship values and fish in a more environmentally sustainable manner than  
2 more remote-based industrial-scale trawlers;

- 3 e. Failed to set forth and analyze an alternative that would have introduced  
4 incentives or requirements for bottom trawl licensees to transition into less  
5 damaging gear and fishing practices; and  
6 f. Failed to set forth and analyze a true “no project” alternative;

7 62. NEPA regulations require that “proposals which are related to each other closely  
8 enough to be, in effect, a single course of action shall be evaluated in a single impact  
9 statement.” 40 C.F.R. § 1502.4(a). The NEPA regulations likewise direct that “connected”  
10 actions be considered in the same NEPA document. 40 C.F.R. § 1508.25. Actions are  
11 “connected” as defined in the NEPA regulations if they, *inter alia*: “Are interdependent parts of  
12 a larger action and depend on the larger action for their justification.” *Id.* at (a)(iii).

13 63. NMFS improperly segmented the environmental review by separating what  
14 should have been a single EIS into two EISs, on Amendments 20 and 21, respectively, despite  
15 the fact that these two amendments are parts of the same action and connected actions as  
16 defined in the NEPA regulations. This relationship of the Amendment 20 and 21 actions is  
17 evidenced, *inter alia*, by numerous statements in the EISs. *E.g.*, Amendment 20 FEIS at 87  
18 (“The action alternatives for the trawl rationalization program are premised on the distribution  
19 of shares . . . .); Amendment 21 FEIS at 58 (“intersector allocation (Amendment 21) is needed  
20 to support Amendment 20 (trawl rationalization).” The relationship between Amendments 20  
21 and 21 is further evidenced by the fact that the amendments were approved in a single action  
22 and the implementing regulations were likewise adopted in a single action. NMFS has also  
23 maintained a consolidated docket for the two actions at:

24 [http://www.regulations.gov/search/Regs/home.html#docketDetail?R=NOAA-NMFS-2010-](http://www.regulations.gov/search/Regs/home.html#docketDetail?R=NOAA-NMFS-2010-0115)  
25 [0115](http://www.regulations.gov/search/Regs/home.html#docketDetail?R=NOAA-NMFS-2010-0115)

26 64. Based on this improper segmentation, NMFS understated the combined impacts  
27 of Amendments 20 and 21, impaired the ability of the agency and the public to evaluate,  
28 discuss and address the impacts of the combined actions, dismissed alternatives to the

1 combined actions such as establishing an IFQ for fixed gear or shifting quota from trawl to  
2 fixed gear and open access, and dismissed public comments on the basis that they were made  
3 on the wrong EIS (*E.g.*, Amendment 20 FEIS at 659, 660, 678 and 680; Amendment 21 FEIS  
4 at 193, 204).

5 65. NEPA regulations require that the EIS “describe the environment of the area(s)  
6 to be affected.” 40 C.F.R. § 1502.15. In order to evaluate the environmental consequences of  
7 the project, an accurate understanding of its current environmental setting must be developed  
8 and presented. NEPA regulations also require that the EIS evaluate the environmental  
9 consequences of the alternatives, including discussions of direct and indirect effects and their  
10 significance, including cumulative impacts. 40 C.F.R. §§ 1502.16, 1508.7.

11 66. The EISs Defendants relied upon in approving Amendments 20 and 21 and the  
12 implementing regulations did not include adequate discussion and analysis of the  
13 environmental setting or environmental consequences of the Amendments. Specifically, *inter*  
14 *alia*, NMFS:

- 15 a. Failed to discuss or analyze, other than through brief conclusory statements, the  
16 environmentally damaging effects of bottom trawling as compared to the  
17 generally less environmentally damaging effects of non-trawl fishing (*E.g.*,  
18 Amendment 20 FEIS at 599);
- 19 b. Disregarded readily available information about the environmental damage  
20 caused by bottom trawling, which is known to be associated with the highest  
21 bycatch ratios and causes the greatest habitat damage of any gear;
- 22 c. Relied upon two previous EISs on FMP Amendments 18 and 19, respectively,  
23 which NMFS purported to incorporate by reference (*E.g.*, Amendment 20 FEIS  
24 at 215, 601, 675), without adequately summarizing the relevant contents of those  
25 EISs, in particular those contents documenting the environmentally damaging  
26 effects of bottom trawling and the generally less environmentally damaging  
27 effects of fixed gear and open access fishing;

- 1 d. Failed to discuss or analyze, other than through brief conclusory statements, the  
2 blight and other impacts in communities that have emphasized fixed gear and  
3 open access fishing, and the environmental effects of reducing or eliminating the  
4 ability of environmentally-preferable non-trawl gears to participate in the  
5 groundfish fishery, given the economic disadvantages being imposed on them.  
6 (*E.g.*, Amendment 20 FEIS at 597);
- 7 e. Failed to discuss or analyze the effects on several specific fishing communities  
8 that will be adversely effected, including but not limited to Port Orford;
- 9 f. Failed to discuss or analyze the environmental effects of the incentives being  
10 created for environmentally damaging trawling, including the economic  
11 incentives alleged above, the rewarding of high levels of trawl harvest during the  
12 catch share allocation period of 1994-2003 during which significant damage to  
13 rockfish populations occurred, the anticipated transfer of catch shares to entities  
14 that do not participate directly in the fishery and therefore are less likely to have  
15 stewardship values, and the costs of purchasing quota which will in turn increase  
16 the economic pressures to fish particularly if those purchases are debt funded;
- 17 g. Failed to discuss or analyze the environmental and other consequences of the  
18 “spillover” effect from the reallocation of fishing assets to other fisheries; and
- 19 h. Generally and repeatedly emphasized the few potential environmental benefits of  
20 its proposed actions while downplaying or disregarding the substantial adverse  
21 effects, in the process failing to take a “hard look” at those adverse effects.

22 67. NEPA regulations further require that, when an agency’s evaluation of the  
23 effects of its proposed action depends on incomplete or unavailable information, the agency  
24 must at least: (1) state that such information is incomplete or unavailable; (2) state the  
25 relevance of the missing information to the agency’s assessment of effects; (3) summarize  
26 existing credible scientific evidence that is relevant to evaluating those effects; and (4) evaluate  
27 those effects based upon theoretical approaches or scientific methods generally accepted in the  
28 scientific community. 40 C.F.R. § 1502.22(b). If the missing information is essential to a

1 reasoned choice among alternatives, and can be obtained without exorbitant costs, the agency  
2 must obtain and include that information in its NEPA analysis. *Id.* § 1502.22(a).

3 68. Defendants did not carry out their obligations regarding incomplete or  
4 unavailable information, in that NMFS, *inter alia*:

- 5 a. Failed to summarize existing credible scientific evidence or evaluate effects  
6 based upon approaches or methods generally accepted in the scientific  
7 community, in particular the scientific consensus regarding the environmentally  
8 damaging impacts of bottom trawling;
- 9 b. Rejected consideration of the available evidence based on extraneous factors not  
10 relevant to the evaluation of environmental effects, overstated the degree of  
11 uncertainty, and impermissibly attempted to shield the missing analysis behind a  
12 “complex array of spatial and temporal factors” (*E.g.*, Amendment 21 FEIS at  
13 196-97); and
- 14 c. Failed generally to take a “hard look” at the available information demonstrating  
15 the relative environmental benefits of fixed gear and other non-trawl fishing.

16 69. NEPA regulations require that the agency “[a]t the time of its decision” prepare a  
17 concise public record of decision, which among other things must “State whether all  
18 practicable means to avoid or minimize environmental harm from the alternative selected have  
19 been adopted, and if not, why they were not.” 40 C.F.R. § 1505.2(c). The NEPA regulations  
20 further define “mitigation” to include:

- 21 (a) Avoiding the impact altogether by not taking a certain action or parts of an action.
- 22 (b) Minimizing impacts by limiting the degree or magnitude of the action and its  
23 implementation.
- 24 (c) Rectifying the impact by repairing, rehabilitating, or restoring the affected  
25 environment.
- 26 (d) Reducing or eliminating the impact over time by preservation and maintenance  
27 operations during the life of the action.

1 (e) Compensating for the impact by replacing or providing substitute resources or  
2 environments.”

3 40 C.F.R. § 1508.20.

4 70. Contrary to this duty to adopt contemporaneous mitigation as defined in the  
5 NEPA regulations, NMFS failed to adopt available mitigation measures and relied, in part,  
6 upon measures that it has not yet adopted in order to avoid or minimize the environmental  
7 harms from the selected alternative. Specifically, NMFS impermissibly deferred mitigation,  
8 *inter alia*, by:

- 9 a. Relying upon the speculative future reallocation of effort by the trawl sector to  
10 fixed gear techniques in order to mitigate impacts;
- 11 b. Failing to adopt in the October 1, 2010, regulations a requirement for 100  
12 percent observer monitoring of catch in the trawl sector, despite the fact that such  
13 a mitigation measure had been assumed in the EISs, instead separating that  
14 measure into a separate, pending, rulemaking that has not yet been completed;
- 15 c. Deferring consideration of an allocation of quota to community fishing  
16 associations;
- 17 d. Deferring the creation of distribution formulas or other features of the “adaptive  
18 management program” being relied upon to address many of the actions’ adverse  
19 effects; and
- 20 e. Relying upon an open-ended “5-year program review” to address many of the  
21 actions’ adverse effects.

22 71. NEPA regulations state that “[E]conomic or social effects are not intended by  
23 themselves to require preparation of an environmental impact statement. When an  
24 environmental impact statement is prepared and economic or social and natural or physical  
25 environmental effects are interrelated, then the environmental impact statement will discuss all  
26 of these effects on the human environment.” 40 C.F.R. § 1508.14. The NEPA regulations also  
27 state that “Environmental impact statements shall be analytic rather than encyclopedic.” 40  
28

1 C.F.R. § 1502.2. The NEPA regulations also direct that “Impacts shall be discussed in  
2 proportion to their significance.” *Id.*

3 72. Contrary to this duty, NMFS substantially failed to address the relationship of  
4 the economic and social effects of its actions on the natural and physical environmental effects.  
5 In particular, the EISs failed to address how the economic and social impacts created by  
6 NMFS’ actions on non-trawl fishing businesses and the communities that support them will  
7 relate to, and result in, increased impacts to marine species and ecosystems.

8 73. For each of the foregoing reasons, NMFS’s FEISs on FMP Amendments 20 and  
9 21 violate NEPA, and Defendants’ approvals of FMP Amendments 20 and 21 and  
10 promulgation of the associated regulations were arbitrary, capricious, an abuse of discretion,  
11 and otherwise not in accordance with law.

12 74. Defendants’ violations of the NEPA cause irreparable harm to Plaintiffs and the  
13 fishing communities they represent, damaging their interests in informed participation, in  
14 maintaining their livelihood as fishing men and women and in the well being of their  
15 communities. They have no adequate remedy at law.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, the Plaintiffs respectfully request this Court to enter the following relief:

18 75. Enter a declaratory judgment that the Defendants’ approvals of Amendments 20  
19 and 21 and the implementing regulations promulgated October 1, 2010, violated the MSA;

20 76. Enter a declaratory judgment that the Defendants’ approvals of Amendments 20  
21 and 21 and the implementing regulations promulgated October 1, 2010, violated the APA;

22 77. Enter a declaratory judgment that the Defendants’ approvals of Amendments 20  
23 and 21 and the implementing regulations promulgated October 1, 2010, violated NEPA;

24 78. Issue an injunction invalidating Defendants’ approvals of Amendments 20 and  
25 21 and the implementing regulations of October 1, 2010;

26 79. Issue an injunction setting aside the two EISs on Amendments 20 and 21;

27 80. Remand to Defendants for further proceedings consistent with the requirements  
28 of the MSA, APA, and NEPA;

