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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

UNITED COOK INLET DRIFT ASSOCIATION, INCORPORATED, Plaintiff, v. GARY LOCKE, in his official capacity as the United States Secretary of Commerce, Defendants.	Case No. 3:09-cv-241-TMB **STATE OF ALASKA'S MOTION TO INTERVENE AS A DEFENDANT, AND MEMORANDUM IN SUPPORT OF MOTION**

The State of Alaska (State) moves, pursuant to Rule 24(a)(2) of the Federal Rules of Civil Procedure, for intervention as a matter of right as a defendant in this action. The State seeks to participate fully in the briefing and other proceedings in this case in order to protect the State's sovereign interests in its fisheries and habitat – interests that stand to be significantly impacted by rulings requested by plaintiff United Cook Inlet Drift Association (UCIDA) in this case. Alternatively, Alaska moves pursuant to Fed. R. Civ. P. 24(b) for permissive intervention. Points and authorities in support of this motion follow.

I. INTRODUCTION AND FACTUAL AND PROCEDURAL BACKGROUND

At issue in this case is whether federal requirements under the Magnuson-Stevens Fisheries and Conservation Act[1] apply to salmon fisheries in the Upper Cook Inlet conducted predominantly in waters of the State of Alaska and managed by the State, and whether the federal requirements supersede state regulations.[2] Also in question is whether the plaintiff must exhaust its State administrative remedies before bringing this action, and if so what the outcome of State administrative action will be.

Plaintiff United Cook Inlet Drift Association (UCIDA) petitioned defendant Gary Locke, Secretary of Commerce (Secretary), for the adoption of emergency or interim federal rules to regulate salmon fisheries in Upper Cook Inlet. In its petition, UCIDA claimed that State management of the fisheries is inconsistent with the MSA and

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[1] The Magnuson-Stevens Fisheries and Conservation Act (Magnuson-Stevens Act or MSA), enacted by Congress in 1976 and codified as amended at 16 U.S.C. § 1801 et seq., created a national program for the conservation and management of fishery resources in the federal exclusive economic zone (EEZ), the waters from 3 to 200 miles offshore of the coast of the United States.

[2] The MSA, with one narrow exception, explicitly provides that it does not preempt state management. 16 U.S.C. § 1856(a). Federal preemption of state management within state boundaries is allowed under the MSA only where, after providing notice to the State and opportunity for an adversary adjudicative hearing under the Administrative Procedure Act, the Secretary of Commerce makes specific findings that state actions will substantially and adversely affect the carrying out of a federal fishery management plan for a fishery "engaged in predominately within the exclusive economic zone and beyond such zone," and adopts regulations governing a fishery, pursuant to a fishery management plan. 16 U.S.C. § 1856(b). Pursuant to the MSA, the Secretary of Commerce has adopted a "Fishery Management Plan for the Salmon Fisheries in the EEZ off the Coast of Alaska" (Alaska Salmon FMP). This plan applies to fishing in the EEZ and does not extend into the State territorial sea or internal waters. The plan is found at Administrative Record 60 in Docket 10-2, and is referred to by plaintiff as Tab 60. *See* Plaintiff's Opening Brief at 7, n. 30.

with the federal fishery management plan adopted under authority of the MSA. UCIDA asserted, *inter alia*, that the Secretary should preempt Alaska management of salmon fisheries within State waters.

The National Marine Fisheries Service (NMFS), acting on behalf of the Secretary, denied the petition on various grounds, including that UCIDA failed to exhaust its State remedies as required by the federal fishery management plan.[3] As to plaintiff's request for preemption of State management of salmon fisheries within State waters, NMFS found that the salmon fishery does not occur "predominately within the EEZ," as the Magnuson-Stevens Act requires for a preemption proceeding.[4]

UCIDA then filed this action. Among its claims, UCIDA again argues that Magnuson-Stevens Act preemption provisions require federal regulation of fisheries within State waters for the purposes of conservation and management of salmon and other anadromous species.[5] Ultimately, UCIDA seeks to have restrictions placed on personal-use salmon fisheries in State waters to increase the number of fish available to fishermen participating in the Upper Cook Inlet drift gillnet fishery.[6]

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[3] Docket 10-2, Tab 148.02 at 3-4.

[4] *Id.* at 5-6. *See also* 16 U.S.C. § 1856(b), n. 2, *supra.*

[5] *See, e.g.*, Amended Complaint Seeking Expedited Judicial Review of Final Agency Action and Declaratory Relief at 14, 17.

[6] *Id.* at 5 (alleging that "State salmon regulations substantially and adversely affect[] the ability of UCIDA members to viably participate in the Upper Cook Inlet EEZ salmon fishery") and at 18 (requesting that the Court "remand Defendant Locke's Petition Denial to NMFS, with an order to immediately undertake appropriate review of State salmon regulations affecting the Upper Cook Inlet EEZ for consistency with Magnuson-Stevens and other applicable law, with particular emphasis on whether the personal-use salmon fisheries authorized in State

The State of Alaska has a right to intervene under Fed. R. Civ. Proc. 24(a)(1) because the State has significant interests relating to the subject of the action; the disposition of the action may impair or impede the State's ability to protect its interest; this motion is timely; and the existing parties may not adequately represent the State's interest. Alternatively, permissive intervention should be granted under Fed. R. Civ. Proc. 24(b).

This motion is supported by the points and authorities discussed below. It is accompanied by a proposed order and the State's proposed Answer to UCIDA's Amended Complaint.

II. THE STATE'S INTERESTS IN THIS CASE

The desire for self-management of natural resources, and particularly for management of Alaska's fishery resources and salmon fisheries, were driving forces behind Alaska statehood.[7] Ownership of the submerged lands of the territorial sea and the fishery resources in those waters passed to Alaska upon statehood under the Submerged Lands Act of 1953[8] and the Alaska Statehood Act.[9] General management

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waters affect Optimum Sustained Yield for the drift gillnet fishery in the Upper Cook Inlet EEZ.").

[7] *See, e.g., Pullen v. Ulmer*, 923 P.2d 54, 57 n. 5 (Alaska 1996); *Metlakatla Indian Community v. Egan*, 369 U.S. 45, 47, 82 S.Ct. 552, 555 (1962); Claus-M. Naske, *An Interpretative History of Alaskan Statehood* at 97-102 (1973).

[8] 43 U.S.C. §§ 1301-1356a. Alaska's seaward boundaries extend three geographical miles from the coastline. 43 U.S.C. § 1301(a)(2); 43 U.S.C. § 1312; *Alaska v. United States*, 545 U.S. 75, 79, 125 S.Ct. 2137, 2144 (2005). Title and ownership of natural resources, including fish, of the lands and waters within the boundaries of a state are vested in and assigned to the respective States. *See* 43 U.S.C. § 1301(b); 43 U.S.C. § 1311(a); *see also Totemoff v. State*, 905 P.2d 954, 964 (Alaska 1995).

authority over fish and wildlife within Alaska passed from the federal government to Alaska shortly after Alaska's adoption of a comprehensive fish and game code.[10]

The Alaska Constitution requires the State to manage these resources for the maximum benefit and use for all Alaskans.[11] Under Alaska's Constitution, fish are reserved to the people for common use,[12] and must be "utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses."[13] Exclusive rights of fishery generally are prohibited,[14] and although limited entry is allowed, it must impinge as little as possible on the equal access clauses of the Alaska Constitution.[15]

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[9] Pub. L. No. 85-508, (1958), 72 Stat. 339.

[10] *See* Executive Order No. 10857, 25 Fed. Reg. 33 (Dec 29, 1959) (transferring management of fish and wildlife resources to the State of Alaska effective January 1, 1960); s*ee also Metlakatla Indian Community, supra*, 369 U.S. at 47 n.2, 82 S.Ct. at 555. State management is preempted only where clearly provided by statute or treaty, e.g. the Migratory Bird Treaty Act, 16 U.S.C. § 703 *et seq.*; the North Pacific Halibut Act, 16 U.S.C. 773; the Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.*; the Endangered Species Act, 16 U.S.C. § 1531 *et seq*.

[11] Alaska Const. Art. VIII, §§ 1-2.

[12] Alaska Const. Art. VIII, § 3.

[13] Alaska Const. Art. VIII, § 4.

[14] Alaska Const. Art. VIII, § 15.

[15] *See, e.g. Vanek v. State* 193 P.3d 283, 290 (2008); *State v. Ostrosky*, 667 P.2d 1184, 1191 (Alaska 1983).

Statewide salmon harvests in Alaska and off the coast of Alaska occur predominately in state waters, as the National Marine Fisheries Service acknowledges.[16] A very small percentage of sport harvest of salmon occurs in the EEZ, limited troll harvest occurs in the EEZ in the East Area (east of Cape Suckling, essentially offshore of Southeastern Alaska) and in the West Area (west of Cape Suckling), and some salmon harvest occurs in federal waters of the EEZ in three state commercial net fisheries.[17] The Alaska Salmon FMP defers the regulation of the commercial and recreational salmon fisheries in the EEZ off the coast of Alaska to the State of Alaska, although the Secretary, through the North Pacific Fishery Management Council, retains management authority.[18]

Under Alaska law, responsibility for fisheries management in Alaska is constitutionally vested in the Alaska legislature,[19] but regulatory authority has been statutorily delegated to the Alaska Board of Fisheries,[20] and administrative authority to the Commissioner of the Alaska Department of Fish and Game.[21] Subject to a subsistence priority,[22] the Alaska Board of Fisheries is authorized under state law to

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[16] Tab 148.02 at 5-6.

[17] Alaska Salmon FMP, *supra* n. 1, Tab 60 at 14, 15, 19, 23, 65-70.

[18] *Id.* at 41.

[19] Alaska Const. Art. VIII, § 2.

[20] *See, e.g.*, AS 16.05.221; AS 16.05.241; AS 16.05.251.

[21] *See, e.g.*, AS 16.05.010; AS 16.05.020; AS 16.05.050; AS 16.05.060; AS 16.05.241.

[22] AS 16.05.258.

allocate fishery resources among various user groups, including personal use, sport, and guided sport fisheries, as well as to commercial fisheries.[23] Under this authority, the Alaska Board of Fisheries has adopted comprehensive fishery regulations for the Cook Inlet Fisheries, including detailed management plans for particular fisheries.[24]

III. ARGUMENT

A. The State of Alaska Has a Right to Intervene Under Rule 24(a).

The State of Alaska has a right to intervene under Fed. R. Civ. Proc. 24(a) in order to defend the State's interests against the claims asserted by UCIDA. Rule 24(a)(2) provides that on timely motion, the court must permit intervention by anyone who "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or

[23] AS 16.05.251(e); 5 AAC 39.205. Personal use fishing is intended as a substitute for subsistence fishing and is often permitted in state nonsubsistence or federal nonrural areas, or in other areas where an adequate demonstration of customary and traditional use has not been made to support provision of a subsistence priority. *See, e.g.,* 5 AAC 77.001. Findings that taking or use has been "customary and traditional" are generally required in order to provide a subsistence preference under either state or federal law, and only rural residents are eligible for the federal preference. *See* AS 16.05.258(a); 50 C.F.R. § 100.5(a)-(b); 50 C.F.R. § 100.16.

[24] *See* Alaska Administrative Code (AAC) Tit. 5 Chap. 21 Art. 3, 5 AAC 21.310-21.380 (commercial fishing regulations for the Cook Inlet Area, including Central District Drift Gillnet Fishery Management Plan, Northern District Salmon Management Plan, Kenai River Late-Run King Salmon Management Plan, Kenai River Late-Run Sockeye Salmon Management Plan, Upper Cook Inlet Salmon Management Plan, Kasilof River Salmon Management Plan, Northern District King Salmon Management Plan, Lower Cook Inlet Seine Fishery Management Plan); 5 AAC 77.500-77.549 (personal use fishing regulations for the Cook Inlet Area, including Upper Cook Inlet Personal Use Salmon Fishery Management Plan); 5 AAC 56.101-56.195 (sport fishing regulations for the Kenai Peninsula Area, including Riparian Habitat Fishery Management Plan for the Kenai Peninsula Area); 5 AAC 57.101-57.180 (sport fishing regulations for the Kenai River Drainage Area, including Russian River Sockeye Salmon Management Plan, Kenai River and Kasilof River Early-Run King Salmon Management Plan, Kenai River Coho Salmon Management Plan; Riparian Habitat Fishery Management Plan for the Kenai River Drainage Area).

impede the movant's ability to protect its interest, unless existing parties adequately represent that interest."

The Ninth Circuit has adopted a four-part test to determine whether a party should be permitted to intervene as of right. The applicant must show that (1) it has a significant protectable interest relating to the property or transaction that is the subject of the action; (2) the disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect its interest; (3) the application is timely; and (4) the existing parties may not adequately represent the applicant's interest.[25] The Ninth Circuit applies this test broadly in favor of intervention.[26] The State of Alaska meets these requirements and should be allowed to intervene as a matter of right.

1. The State of Alaska Has Significant Protectable Interests in this Action

Whether the moving party demonstrates sufficient interest to intervene is a "practical, threshold inquiry" for which "[n]o specific legal or equitable interest need be established."[27] A protectable interest sufficient to support intervention exists where the interest asserted is protectable under some law, and where there is a relationship between the protected interest and the claims at issue.[28]

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[25] *United States v. City of Los Angeles*, 288 F.3d 391, 397 (9th Cir. 2002) (quoting *Donnelly v. Glikman*, 159 F.3d 405, 409 (9th Cir. 1998)); *Smith v. Marsh*, 194 F.3d 1045, 1049 (9th Cir. 1999).

[26] *City of Los Angeles, supra*, 288 F.3d at 397-398; *see also Southwest Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 818 (9th Cir. 2001).

[27] *Greene v. United States*, 996 F.2d 973, 976 (9th Cir. 1993); aff'd *Greene v. Babbitt*, 64 F.3d 1266 (9th Cir. 1995).

This standard clearly is met here. As discussed above, the State of Alaska has vital sovereign interests in regulating and managing fish and fisheries within State waters and the fishery habitat in and adjacent to State waters.

The fisheries challenged by the Plaintiff in this case, with the exception of only three small extensions into the EEZ, lie entirely within the boundaries of the State of Alaska in water overlaying land belonging to the State of Alaska.[29] As a matter of federal and state constitutional law, the state holds the fish and wildlife within the State of Alaska in trust for its people.[30] The sovereign interests of the states in managing their fish and wildlife resources has been explicitly recognized by Congress which declared in the Reaffirmation of State Regulation of Resident and Nonresident Hunting and Fishing Act of 2005:

> It is the policy of Congress that it is in the public interest for each State to continue to regulate the taking for any purpose of fish and wildlife within its boundaries, including by means of laws or regulations that differentiate between residents and nonresidents of such State with respect to the availability of licenses or permits for taking of particular species of fish or wildlife, the kind and numbers of fish and wildlife that may be taken, or the fees charged in connection with issuance of licenses or permits for hunting or fishing.[31]

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[28] *City of Los Angeles, supra*, 228 F.3d at 398.

[29] Pursuant of the Submerged Land Act, 43 U.S.C. §§ 1301-1315, the State received title to submerged lands within three miles of the shore of Alaska and to the land underlying historic bays and other inland waters with entrances of less than 24 miles in diameter.

[30] *Hughes v. Oklahoma*, 441 U.S. 332, 334, 99 S.Ct. 1727, 1735 (1979) (acknowledging that although state "ownership" of wildlife is not sufficient to prevent modern commerce clause analysis of discriminatory state law, states have an important sovereign interest in managing their wildlife).

[31] Pub. L. 109-13 (HR 1268, Section 6036), 119 Stat. 231 (2005).

This basic principle of state sovereignty is also expressly recognized in the MSA, which provides that, except for the federal preemption procedures in the MSA, nothing in it "shall be construed as extending or diminishing the jurisdiction or authority of any State within its boundaries."[32]

In addition to its significant interests in the fisheries and habitat that are the subject of this litigation, the State also has an interest in ensuring that Plaintiff and other similarly situated organizations and individuals exhaust their State administrative remedies. The appropriate State entities should have an opportunity to hear and decide such matters of fundamental importance to the State and its citizens. For these reasons, the "interest" standard is met.[33]

2. Disposition of the Action May Impair or Impede the State's Ability to Protect its Interest.

As discussed above, Alaska has exercised of its sovereign authority to manage and conserve its fish, game, waters and lands through provisions in its constitution, its statutes, and the regulations of the Department of Fish and Game and the

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[32] 16 U.S.C. § 1856(a). It is important to note that even the federal preemption procedures in 16 U.S.C. § 1856 do not authorize any federal preemption in state internal waters, where most of the personal use fisheries challenged by plaintiffs occur.

[33] *See U.S. v. State of Oregon*, 745 F.2d 550, 552 (9th Cir. 1984) (no serious dispute that Idaho had an interest in anadromous fish runs in the upper tributaries of the Columbia River in Idaho and that its participation would not prejudice other parties, therefore its Rule 24(a)(2) motion to intervene in litigation involving a management plan which could have significant impact upon its fish resources should have been granted); *Forest Conservation Council v. U.S. Forest Service*, 66 F.3d 1489 (1995) (state's non-economic interests, such as the environmental health of, and wildfire threats to, state lands adjacent to national forests, which it had a legal duty to maintain, met the "interest" test for intervention).

Board of Fisheries. The relief requested by plaintiff would interfere with Alaska's exercise of its sovereign state jurisdiction and could "divest the state of its sovereign control" over its fish, waters, and lands, an essential attribute of state sovereignty.[34]

Plaintiff's complaint shows its action is aimed directly at the sovereign authority of the State of Alaska. In his complaint Plaintiff complains that actions by the State of Alaska and the Alaska Board of Fisheries that are to be addressed by the lawsuit.[35] Plaintiff's complaint seeks to strip the State of authorities granted to it under federal law, including the Submerged Lands Act of 1953 and the Alaska Statehood Act, and return those sovereign state authorities to the federal government.[36] There can be no doubt that the relief requested in this action would affect the State's sovereign interests in its fish, waters, and lands.[37]

The Ninth Circuit Court of Appeals follows the Rule 24 advisory committee note, which provides "'[i]f an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene.'"[38] The State must have the opportunity to fully participate in this

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[34] *See Idaho v. Coeur d'Alene Tribe of Idaho,* 521 U.S 261, 283, 117 S.Ct. 2028, 2041 (1997).

[35] *See, e.g.*, Amended Complaint (Docket No. 5) at 2, 10, 13, 17

[36] *Id.* at 13, 17.

[37] *Cf. Coeur d'Alene Tribe of Idaho*, 521 U.S at 287, 117 S.Ct. at 2043; *see also Pullen v. Ulmer,* 923 P.2d 54, 59-61 (Alaska 1996) (treating fish as "assets" of the State which may not be appropriated by initiative).

[38] *Southwest Ctr. for Biological Diversity,* 268 F.3d at 822 (quoting Fed.R.Civ.P. 24 advisory committee's notes).

case as a party in order to protect its interests. There is no other venue, forum or opportunity available for protection of the State's interests.

In *Sierra Club v. United States*, 995 F.2d 1478 (9th Cir. 1993), the Ninth Circuit rejected the Sierra Club's assertion the City of Phoenix could protect its interests in subsequent administrative proceedings. The court noted "the relief sought by the Sierra Club would constrain the EPA, which would not then be free to violate the terms of the declaratory and injunctive relief in later administrative proceedings." *Id.* at 1486. The Court also observed the City of Phoenix had no avenue to administratively appeal the constraints that might be placed on EPA's regulatory duties by virtue of an injunction. Without intervention, the State of Alaska would be facing the same kind of situation here. If plaintiff's claims are successful, the National Marine Fisheries Service and the North Pacific Fishery Management Council would be under constraints imposed by judicial directives and interpretations in limiting the State's actions under the salmon fishery management plan in Alaska and the State will have had no say.

3. The Secretary May Not Adequately Represent Alaska's Interests.

If an applicant meets the conditions of timeliness and impairment of interest, intervention shall be permitted "unless the applicant's interest is adequately represented by existing parties." Fed. R. Civ. P. 24(a)(2). According to the United States Supreme Court, "[t]he requirement of the Rule is satisfied if the applicant shows that representation of his interest 'may be' inadequate; and the burden of making that showing

should be treated as minimal."[39] The Court must consider (1) whether the interest of a present party is such that it will undoubtedly make all the intervenor's arguments; (2) whether the present party is capable and willing to make such arguments; and (3) whether the would-be intervenor would offer any necessary elements to the proceedings that other parties would neglect.[40]

In this case, the State's interest and the Secretary's interests and legal positions may be somewhat different. Because the Secretary does not share the same proprietary and sovereign interests as the State, the Secretary cannot necessarily be counted upon to adequately represent the State's interests. For example, the Secretary's concerns about fishery issues in other parts of the nation could possibly motivate federal interpretations and legal positions that are detrimental to the State's interests in fisheries in the EEZ off Alaska. Upon intervention, the State would be able to argue for a narrower judicial focus. And in this particular case, plaintiffs seek remedies against the State's territorial and internal water fisheries, in which the Secretary may have no interest at all.

4. The Motion is Timely

The Ninth Circuit evaluates the question of timeliness of a motion to intervene using three factors: 1) the stage of the proceedings, 2) the prejudice to the other

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[39] *Trbovich v. United Mine Workers of America*, 404 U.S. 528, 538 n.10, (1972) (citation omitted).

[40] *City of Los Angeles*, 288 F.3d at 398 (citing *Northwest Forest Resource Council v. Glickman* 82 F.3d 825, 838 (9th Cir. 1996)).

parties, and 3) the reason for and length of the delay.[41] The timeliness requirement for intervention as of right is treated more leniently than for permissive intervention because of the likelihood of more serious harm.[42] The question of timeliness may turn upon the issue of prejudice to the existing parties, which has been termed "the most important consideration in deciding whether a motion for intervention is untimely." [43]

The State of Alaska satisfies the timeliness requirement. This motion is being filed during the early stage of the proceedings, in time for the Court to get the benefit of the State's briefing, with no significant delay in moving for intervention. Intervention will not prejudice the existing parties to the lawsuit.

B. Alternatively, the State of Alaska Should Be Allowed to Intervene Permissively.

Federal Civil Rule 24(b)(1) provides for permissive intervention on timely motion by anyone who "has a claim or defense that shares with the main action a common question of law or fact." In addition, Rule 24(b)(2) provides: "On timely motion, the court may permit a … state governmental officer or agency to intervene if a party's claim or defense is based on: (A) a statute or executive order administered by the officer or agency; or (B) any regulation, order, requirement, or agreement issued or made

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[41] *State of Alaska v. Suburban Propane Gas Corp*., 123 F.3d 1317, 1319 (9th Cir. 1997).

[42] *U.S. v. State of Oregon*, 745 F.2d 550, 552-53 (9th Cir. 1984) (finding no basis for holding that the intervention would prejudice the existing parties because of the passage of time, therefore Idaho's application to intervene should not have been denied as untimely).

[43] *Id*. at 552 (quoting C. Wright and A. Miller, *Federal Practice and Procedure* § 1916 at 575 (1972).

under the statute or executive order." Permissive intervention is appropriate under these standards, even if the Court were to find the State does not find intervention of right is warranted under Federal Civil Rule 24(a).

Plaintiff's claims are based on regulations and requirements of the State issued under authority of the Magnuson-Stevens Act, through the Alaska Salmon FMP adopted by the Secretary, which in turn defers the regulation of the salmon fisheries in the EEZ to the Alaska Department of Fish and Game. This provides ample basis for permissive intervention under Rule 24(b)(1).

Alternatively, permissive intervention should be allowed under Rule 24(b)(1) as long as the applicant seeking intervention establishes that: "1) it shares a common question of law or fact with the main action; 2) its motion is timely; and 3) the court has an independent basis for jurisdiction over the applicant's claims."[44] Under this standard, neither the inadequacy of representation, nor a direct interest in the subject matter of the action need be shown.[45] Once the party seeking to intervene has demonstrated a common question of law or fact, it is within the discretion of the court whether to allow intervention.[46] Where parties share similar interests in the outcome of the litigation, a district court may grant intervention where the court believes the party seeking intervention will assist in the resolution of the case.

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[44] *See Donnelly v. Glickman*, 159 F.3d 405, 412 (9th Cir. 1998).

[45] *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1108 (9th Cir. 2002).

[46] *Id*. at 1111.

In *Kootenai Tribe of Idaho v. Veneman*, for instance, the Ninth Circuit Court of Appeals found that the District Court had acted within its discretion when it granted permissive intervention under Rule 24(b) to environmental groups who sought to intervene in order to assist the Environmental Protection Agency's defense of the Roadless Rule. The District Court stated that "the magnitude of this case is such that both Applicants' intervention will contribute to the equitable resolution of this case." The Ninth Circuit found that the court's recognition that "the presence of intervenors would assist the court in its orderly procedures leading to the resolution of the case, which impacted large and varied interests" was within the District Court's discretion.[47]

The State meets all of the requirements for permissive intervention under this rule. The State does not anticipate raising any additional issues in the litigation; rather, it hopes to bring the perspective of the party whose stake in the outcome is at least coequal to the Secretary's. The State's defenses in this action will address questions of law and fact that are in common with those already raised. The State has significant interest in and knowledge of the fishery resources in the coastal areas of Alaska; it has much to protect and much to contribute to the equitable resolution of this case. As discussed above, this motion is timely and the State's intervention will not delay the resolution of the case. Also, because the action involves a federal question, and because the State's interests derive from the federal question presented, the court has an independent basis for jurisdiction in this matter.

[47] *Id.*

IV. CONCLUSION

For the reasons stated above, the State of Alaska respectfully requests that the court grant its motion to intervene of right under Rule 24(a)(2) to protect its interests in the face of UCIDA's claims. In the alternative, the State of Alaska requests that the Court grant it leave to intervene permissively pursuant to Rule 24(b) with regard to all claims raised by UCIDA.

Respectfully submitted this 2nd day of April, 2010.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 2, 2010, the *State Of Alaska's Motion to Intervene as a Defendant and Memorandum an Support* and *[Proposed] Order* were electronically filed with the Clerk of the Court via the CM/ECF system, which will send notification of such to the attorneys of record:

Gregory R. Gabriel, Jr.

Coby H. Howell

/s/ Michael G. Mitchell