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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WILD FISH CONSERVANCY,

Plaintiff,

v.

SCOTT RUMSEY, *et al.*,

Defendants.

and

ALASKA TROLLERS ASSOCIATION,
and STATE OF ALASKA,

Defendant-Intervenors.

Case No. 2:20-cv-00417-RAJ-MLP

DEFENDANT-INTERVENOR ALASKA
TROLLERS ASSOCIATION’S REPLY IN
SUPPORT OF DEFENDANT-INTERVENOR
STATE OF ALASKA’S MOTION FOR
PARTIAL STAY PENDING APPEAL

Noting Date: May 26, 2023

I. INTRODUCTION

Defendant-Intervenor the Alaska Trollers Association (“ATA”) submits this Reply in Support of Defendant-Intervenor State of Alaska’s Motion for Partial Stay Pending Appeal (the “Motion”) to directly respond to Plaintiff Wild Fish Conservancy’s (“WFC”) insulting allegation that highly uncertain and significantly delayed federal disaster relief funding could mitigate the irreparable harm that will be imposed on the trollers in Southeast Alaska if this requested stay, or other similar relief, is not granted.

1 On May 8, 2023, the State of Alaska (the “State”) filed the Motion. ECF No. 172. The
2 next day, the ATA filed a joinder in the Motion, explicitly reserving “the right to reply in support
3 of the Motion, pursuant to the existing briefing schedule, as the ATA deems necessary.” ECF
4 No. 173 at 2. This Reply and the accompanying declaration from ATA Executive Director Amy
5 Daugherty (“Daugherty Decl.”) demonstrate that, contrary to WFC’s suggestion, the
6 communities of Southeast Alaska will experience irreparable harm from the Court’s vacatur
7 decision and federal disaster relief funding cannot mitigate that irreparable harm.

8 II. ARGUMENT

9 With its response to the Motion, WFC continues its crusade to minimize the impacts that
10 its requested relief will have on the communities of Southeast Alaska. WFC’s refusal to
11 acknowledge the harm that will result from this litigation grows more concerning with each of its
12 filings.

13 WFC argues that there is no irreparable harm that will result from the Court’s order that
14 justifies granting the Motion. ECF No. 179 at 13-14. In the Motion, the State highlighted eight
15 communities that would experience “devastating impacts.” ECF No. 172 at 4. WFC, however,
16 characterizes the harm that the communities of Southeast Alaska are facing as mere monetary
17 injuries or temporary losses of income. ECF No. 179 at 14. The Court must not rely on these
18 disingenuous characterizations when addressing the Motion.

19 Trolling is not just an income or occupation—it is a way of life that has been passed
20 down through generations in Southeast Alaska. ECF No. 128 at 14; ECF No. 130 ¶¶ 2, 7. The
21 ATA explained the impacts to the way of life of trollers in Southeast Alaska in response to
22 WFC’s Motion for Relief. ECF No. 128 at 14. WFC has no answer to these impacts and WFC’s
23 continued tactic of painting the impacts to Southeast Alaska as insignificant monetary harm is
24 disrespectful. Given the importance of the summer and winter seasons and the inability for
25 trollers to switch from trolling to other fisheries, closing those seasons of the troll fishery for just
26 one year will force many trollers to stop fishing immediately. Daugherty Decl. ¶¶ 6-7. The

1 summer and winter seasons are by far the most important seasons to trollers, and the other
 2 seasons cannot consistently support the entire fishery. *Id.* ¶ 7. Thus, these trollers cannot just take
 3 a year off. *Id.*

4 In addition to harming the very fabric of Southeast Alaskan communities, there will be
 5 significant and irreparable financial harm to those communities. WFC’s suggestion that “[t]here
 6 is at least a ‘possibility,’ and maybe a likelihood, that federal funding will be provided to
 7 mitigate economic impacts from the Court’s vacatur order” wholly fails to appreciate the depth
 8 of financial harm that will result and the insufficient nature of that funding. ECF No. 179 at 14.
 9 Commercial fishing is the most important economic sector for thirty-three communities and
 10 approximately 72,500 residents in Southeast Alaska. Daugherty Decl. ¶ 6. Eleven rural
 11 communities of Southeast Alaska are particularly susceptible to irreparable harm from closing
 12 the troll fishery, as they contain populations between ten and one hundred residents. *Id.* ¶ 6. In
 13 particular, the historical fishing villages of Edna Bay, Elfin Cove, Meyers Chuck, Point Baker,
 14 Port Protection, Port Alexander, and Pelican rely on the troll fishery year-round. *Id.* There are
 15 high levels of residents in these communities with troll fishery permits. This is more than just an
 16 income or occupation; the troll fishery is intertwined with the day-to-day life of these
 17 communities.

18 In the words of the Mayor of Pelican, Alaska, Patricia Phillips, “those of us who live in
 19 Pelican year-round will struggle to maintain our way of life with no influx of economic activity
 20 from the winter and summer fishing seasons.” ECF No. 132 ¶ 4. In addition to directly impacting
 21 the thirty percent of the Pelican population that participates in the troll fishery, the City of
 22 Pelican receives approximately ten percent of its annual revenue from raw fish taxes associated
 23 with the troll fishery. *Id.* ¶¶ 5, 7. That revenue funds crucial services including education,
 24 water/wastewater, electricity, snowplowing, trash, boardwalk/harbor repairs, and public health
 25 and safety. *Id.* ¶ 5. The troll fishery also directly impacts the viability of the local café, the port,
 26 the local seafood processor, and the individuals employed for those services. *Id.* ¶¶ 6-7. Some

1 trollers may be forced to turn to mortgages or loans, if possible, to tread water financially.

2 Daugherty Decl. ¶ 10.

3 WFC’s mitigation arguments fail to appreciate and address such harm. First, WFC likens
4 the harm to Southeast Alaska to the “temporary loss of income, ultimately to be recovered, [that]
5 does not usually constitute irreparable injury.” ECF No. 179 at 14 (quoting *Sampson v. Murray*,
6 415 U.S. 61, 90 (1974)). The *Sampson* decision is factually and legally inapposite to this matter
7 and WFC’s reliance on it is entirely misplaced. In *Sampson*, the Supreme Court held that wages
8 or income lost when a probationary government employee was allegedly wrongfully discharged
9 did not constitute irreparable injury. 415 U.S. at 80, 89-90. In reaching that conclusion, the Court
10 relied on caselaw examining the Back Pay Act—a statute designed to “afford[] monetary relief
11 which will prevent the loss of earnings on a periodic basis from being irreparable injury” and
12 provide “the usual, if not the exclusive, remedy for wrongful discharge.” *Id.* at 90-91 (internal
13 quotation marks omitted). The Court noted that the discharged employee was eligible for “full
14 compensation for any period of improper discharge” under that statute. *Id.* at 83. WFC wields the
15 *Sampson* decision as a broad definition of irreparable harm in the context of monetary harm, but
16 the decision applies tailored legal authority to specific facts.

17 This is not a case of wrongful or improper discharge. This is not a case where the harm at
18 issue is lost wages. As explained above and in many prior filings, the harm imposed on the
19 communities from the Court’s vacatur decision is not just financial—it detrimentally affects the
20 fabrics of these communities and the way of life for many Southeast Alaskans. To the extent that
21 the harm is financial, that harm extends to the livelihood of the fishers, the viability of the
22 businesses that rely on and support the fishers, and the social services that the tax revenue from
23 fishing funds in Southeast Alaskan communities.

24 WFC’s suggestion that federal disaster relief funding may provide relief to the
25 communities of Southeast Alaska in the same manner as the Back Pay Act provided possible
26 compensation to the discharged employee in *Sampson* is irresponsible. Receiving funds is

1 dependent on political willpower and influence. Daugherty Decl. ¶ 8. And, to date, such funding
 2 under the Magnuson-Stevens Act has only been granted in cases of commercial fisheries failing
 3 as a result of natural or undetermined causes—never from judicial rulings. *Id.* Even more
 4 concerning, obtaining fundings takes *years* and timely distribution of funds cannot be
 5 guaranteed. *Id.* Simply put, this funding is nothing like the statutorily guaranteed back pay
 6 specifically designed to address the very harm at issue in *Sampson*. There is little guarantee that
 7 the funds could be available and there is no likelihood that, years later, any funds would provide
 8 relief to those fishers, entities, and communities that lost their way of life, jobs, homes,
 9 businesses, and social services due to the closure of the troll fishery.

10 III. CONCLUSION

11 The ATA implores the Court to look beyond WFC’s mischaracterizations. The
 12 irreparable harm from the Court’s vacatur decision is such that the portion of the decision
 13 pertaining to the incidental take statement must be stayed while the appeal is resolved. Renewed
 14 authorization and incidental take protection for the commercial trollers is coming—at the latest
 15 by the end of 2024. There is no equity in decimating the troll fishery and the communities that
 16 rely on it in the intervening eighteen months.

17 DATED this 26th day of May, 2023.

18 NORTHWEST RESOURCE LAW PLLC

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I certify that this memorandum contains
 1,379 words, in compliance with the Local Civil
 Rules.

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court for the United States District Court for the Western District of Washington using the CM/ECF system. Participants who are registered with CM/ECF will be served by the CM/ECF system.

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I declare under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct to the best of my knowledge.

DATED May 26, 2023, in Seattle, Washington.

/s/ Eliza Hinkes
Eliza Hinkes, Paralegal

4873-1764-5926, v. 2