IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Nos. 23-35322, 23-35323, 23-35324, 23-35354

WILD FISH CONSERVANCY,
Plaintiff-Appellee/Cross-Appellant,

v.

JENNIFER QUAN, Regional Administrator; CHRIS OLIVER, Assistant Administrator for Fisheries; NATIONAL MARINE FISHERIES SERVICE; GINA RAIMONDO, Secretary of Commerce; U.S. DEPARTMENT OF COMMERCE,
Defendants-Appellants/Cross-Appellees,

and

STATE OF ALASKA; ALASKA TROLLERS ASSOCIATION,
Intervenor-Defendants-Appellants/Cross-Appellees.

ON APPEAL FROM THE U.S. DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

ALASKA CONGRESSIONAL DELEGATION MOTION FOR LEAVE TO FILE AMICI CURIAE BRIEF IN SUPPORT OF INTERVENOR-DEFENDANTS-APPELLANTS/CROSS APPELLEES AND DEFENDANTS-APPELLANTS/CROSS-APPELLEES SUPPORTING REVERSAL

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MOTION FOR LEAVE TO FILE AMICI CURIAE BRIEF

U.S. Senators Dan Sullivan and Lisa Murkowski and U.S. Congresswoman Mary Sattler Peltola (hereinafter, "the Alaska Congressional Delegation") respectfully move this Court for leave to file the accompanying Amici Curiae brief in support of the Federal Defendants, the State of Alaska, and the Alaska Trollers Association. Counsel for the Alaska Congressional Delegation contacted counsel of record for all parties to seek their consent for the filing of the brief. All parties have consented to the filing of this motion except for Plaintiff-Appellee Wild Fish Conservancy, who said it was unable to determine its position without first reviewing this motion.

I. The Alaska Congressional Delegation's Interest

Amici Curiae are Members of Congress—two U.S. Senators and the sole Member of the U.S. House of Representatives—elected from the State of Alaska and who were Amici Curiae in the litigation before the district court. The Alaska Congressional Delegation has a unique interest in this litigation, particularly with regard to their interest in the faithful administration of the Pacific Salmon Treaty (the "Treaty"), and the impact of the district court's orders on the troll fishery participants and fishing communities of Southeast Alaska ("SEAK").

The Alaska Congressional Delegation shares a bipartisan interest in ensuring that the nation's treaty obligations are met. The Treaty underlying this litigation is

the product of decades of international collaboration between the United States and Canada to manage the complexities of Pacific salmon fisheries in a sustainable, responsible manner, which includes mitigating the impacts of Treaty-protected rights on endangered species. 1-ER-13 (describing U.S. interests and objectives); 7-ER-1624 (treaty principles). Congress has allocated millions of dollars to meet our nation's obligations under the Treaty, including providing the funding necessary to implement mitigation and conservation programs. 2-ER-256. While the United States' Treaty obligations will remain unchanged regardless of the outcome of this litigation, the district court's order affirming the Magistrate Judge's Report & Recommendation ("R&R") threatens vital components of the Treaty's negotiated approach to the management of Pacific regional fisheries.

Further, as representatives of the people of Alaska, the Alaska Congressional Delegation has an interest in ensuring that the shared environmental resources of the Pacific Ocean are protected and promoted in a fair and responsible manner that does not needlessly disrupt long-established regional fisheries.

The Alaska Congressional Delegation members serve in positions of legislative oversight of issues directly involved in this case. Senator Dan Sullivan has represented Alaskans in the U.S. Senate since 2015. He serves on the U.S. Senate Committee on Commerce, Science, and Transportation, which oversees issues including fisheries, marine transportation, highways, interstate commerce, and

transportation, and which has jurisdiction over the Pacific Salmon Treaty Act. He is the Ranking Member of the Subcommittee on Oceans, Fisheries, Climate Change and Manufacturing. Prior to his tenure as U.S. Senator, Senator Sullivan served as the Commissioner of the Alaska Department of Natural Resources and the Attorney General of the State of Alaska, where he was regularly involved with issues related to Alaska's fisheries.

Senator Lisa Murkowski has served the people of Alaska in the U.S. Senate since 2002. She serves on the U.S. Senate Committee on Appropriations, and on its Subcommittee for Commerce, Justice, Science, and Related Agencies, which has appropriations jurisdiction over the National Oceanic and Atmospheric Administration and the National Marine Fisheries Service, the agency with primary responsibility for implementation of the Treaty. She is also the Ranking Member of the Subcommittee on Interior, Environment, and Related Agencies, which has appropriations jurisdiction over the U.S. Fish and Wildlife Service and Bureau of Indian Affairs. Funding for Treaty implementation, including mitigation, comes through these subcommittees. Senator Murkowski is also the Vice Chair of the U.S. Senate Committee on Indian Affairs.

Congresswoman Mary Sattler Peltola was elected to Congress in August 2022 to serve out the late Congressman Don Young's term. She was re-elected in November 2022. She currently serves on the U.S. House Committee on Natural

Resources, which is responsible for legislation governing issues related to fisheries—including the Treaty—and wildlife, public lands, oceans, and Native Americans. Before her election to the U.S. House of Representatives, Congresswoman Peltola served for 10 years in the Alaska State Legislature. She grew up commercially fishing alongside her father, and she previously served as the Executive Director of the Kuskokwim River Inter-Tribal Fish Commission, where she helped mobilize 118 Tribes and rural Alaskans to advocate for the protection of salmon runs in Alaska.

As explained more fully in the proffered Amici Curiae brief, this case has broad-reaching implications for not only the nation's treaty obligations, but also the State of Alaska, its fisheries, and its people. The Alaska Congressional Delegation is comprised of the three representatives that the people of Alaska have elected to represent them in Congress, and they offer a unique perspective and legislative expertise on the implications of this case for the people of Alaska.

II. Desirability and Relevance of Amici Curiae Brief

An Amici Curiae brief presenting the Alaska Congressional Delegation's perspective is desirable and relevant to the disposition of this case. Fed. R. App. P. 29(a)(3).

As described above, the Alaska Congressional Delegation has a unique perspective that will help this Court decide the legal questions at issue. Its members

share a bipartisan interest in ensuring that the nation's treaty obligations are met and that the shared environmental resources of the Pacific Ocean are protected and promoted in a fair and responsible manner that does not needlessly disrupt existing regional fisheries, which are an integral part of Alaska's ecosystems, culture, and economy. The Alaska Congressional Delegation proffers its brief to explain Congress' faithful administration of the Treaty's carefully balanced policy agreements and to stress the interconnectedness of those agreements with the Incidental Take Statement and prey increase program that are the subject of this appeal.

III. Conclusion

For the reasons set forth above, the Alaska Congressional Delegation respectfully requests that the Court grant its motion for leave to file the attached Amicus Brief.

Respectfully submitted,

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Dated: October 6, 2023

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rules of Appellate Procedure 27(d)(2)(A), and Circuit Rule 27-1, I hereby certify that the foregoing Motion for Leave to File Amici Curiae Brief has been prepared in a proportionally spaces typeface (using Microsoft Word 365, in 14-point Times New Roman font), contains 992 words total.

Respectfully submitted,

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Dated: October 6, 2023

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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INTEREST OF AMICI CURIAE[1]

The Amici Curiae are Alaska's members of the U.S. Congress. The Amici share a bipartisan interest in ensuring that the nation meets its treaty obligations and protects and promotes the Pacific Ocean's shared environmental resources in a fair and responsible manner without needlessly disrupting long-established regional fisheries that support Alaska Natives, contribute to the economies of dozens of Alaska communities, and provide jobs for thousands of Alaskans. Amici also share an interest in ensuring that federal laws, including appropriations laws, are carried out according to Congress's will. Amici submit this brief under Federal Rule of Appellate Procedure 29(a)(3) to emphasize their interests in the faithful administration of the carefully balanced policy agreements in the Pacific Salmon Treaty ("Treaty") and to stress potential impacts of the district court's decision to vacate the Incidental Take Statement ("ITS") for the Southeast Alaska ("SEAK") salmon troll fishery on those interests.

INTRODUCTION

The district court abused its discretion when, along with remanding the 2019 SEAK Biological Opinion ("2019 BiOp") for certain deficiencies under the

[1] No party's counsel authored this brief in whole or in part, and no party, party's counsel, or other person made a monetary contribution to the brief's preparation or submission.

Endangered Species Act ("ESA") and the National Environmental Policy Act ("NEPA"), it ordered vacatur of the ITS. The Report and Recommendation ("R&R") the district court approved and adopted, 1-ER-6, is internally inconsistent, improperly balances the relevant interests and legal authorities, and ignores more pragmatic and appropriate judicial actions. Specifically, the R&R recognizes that the prey increase program is working, but recommends vacatur of the ITS anyway, disregarding that the prey increase program compensates for and mitigates any fishery impacts from the ITS.

Wild Fish Conservancy ("WFC") asks this Court to vacate the prey increase program, but in doing so confuses the applicable balancing test and ignores that, regardless of what occurs on remand, the nation's Treaty obligations will remain unchanged. If this Court enjoins or vacates either of the programs at issue, it will undo the progress Congress has made in conserving ESA-listed species and promoting sustainable fisheries—making remand without vacatur or vacatur held in abeyance the most appropriate judicial action.

RELEVANT FACTUAL BACKGROUND[2]

The Treaty represents decades of international collaboration between the United States and Canada to manage the complexities of Pacific salmon fisheries sustainably, responsibly, and in a manner that mitigates the impacts of those Treaty-protected rights on endangered species. 1-ER-13 (describing U.S. interests and objectives); 7-ER-1624 (treaty principles). At the request of the U.S. Pacific Salmon Commissioners[3] and the President of the United States, 2-ER-256–57, Congress has allocated tens of millions of dollars every year to meet the United States' obligations under the Treaty, including providing more than $18 million annually to implement mitigation and conservation programs. *Id*.

The ITS is vital to the success of the Treaty's negotiated approach to management. It allows the SEAK fishery, whose annual permit holders are largely small family-owned businesses in SEAK, 8-ER-1769, to continue operating under the Treaty's Chinook salmon harvest limits while incidentally taking a small number

[2] The Alaska Congressional Delegation agrees with the Statements of the Case contained in the briefs of Intervenor-Defendant-Appellants the State of Alaska (No. 23-35322, ECF 59), the Alaska Trollers Association (No. 23-35322, ECF 60), and the Federal Defendants-Appellants (No. 23-35354, ECF 43).

[3] The Pacific Salmon Commission is the body formed by the governments of Canada and the United States to implement the Treaty. The Pacific Salmon Commission is a 16-person body with four commissioners and four alternates from each country representing the interests of commercial and recreational fisheries as well as federal, state, and tribal governments. 2-ER-136 n.4; 7-ER-1622–29.

of protected species. Without the ITS, the troll fishery cannot operate for 10 months of the year and most trollers would be forced to stop fishing altogether. Alaska Trollers Br. at 9-10; 3-ER-541. The economic and social impact of any such closure would be severe in many remote SEAK communities, where a significant number of Alaskan residents rely on trolling as a primary source of year-round income, the communities depend on the fishery to generate other economic activity, and local and state governments need related tax revenues to provide vital services. *E.g.*, 3-ER-524; *see also* State of Alaska Br. at 36–37 (describing devastating effects of closing SEAK troll fishery); Federal Defendants Br. at 31–33 (same). This is further demonstrated by the fact that, since the district court issued its decision, more than 30 Alaska and Washington communities, Tribes, conservation organizations, and governments have passed resolutions or issued other statements opposing closure of the SEAK troll fishery.[4] Closing the fishery would also needlessly undermine and interfere with the carefully negotiated international interests the Treaty seeks to promote and protect.

[4] Amici submitted those statements to this Court in its prior briefing on injunctive relief. *See* ECF 27-3.

ARGUMENT

A. Standard of Review

A district court's choice of remedies is reviewed for abuse of discretion. *Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, 524 F.3d 917, 936 (9th Cir. 2008).

B. Applicable Legal Standard

An invalid agency action may be left in place when equity demands. *Cal. Cmtys. Against Toxics v. EPA*, 688 F.3d 989, 992–94 (9th Cir. 2012) (vacatur unwarranted due to public need for completion of power plant, "economically disastrous" impact of stopping construction on plant, and fact that harms of proceeding were insignificant with mitigation); *see also Solar Energy Indus. Ass'n v. FERC*, 80 F.4th 956, 997–98 (9th Cir. 2023) (remanding without vacatur to avoid significant disruptive consequences). When determining whether vacatur is appropriate, this Court weighs "the seriousness of the agency's errors against 'the disruptive consequences of an interim change that may itself be changed.'" *Ctr. for Food Safety v. Regan*, 56 F.4th 648, 663 (9th Cir. 2022) (quoting *Cal. Cmtys. Against Toxics*, 688 F.3d at 992 (quoting *Allied-Signal, Inc. v. U.S. Nuclear Regul. Comm'n*, 988 F.2d 146, 150–51 (D.C. Cir. 1993) (remanding without vacatur due to unnecessary waste of already invested public resources and harm to agricultural industry))).

"Seriousness" is determined by considering "'whether the agency would likely be able to offer better reasoning or whether by complying with procedural rules, it could adopt the same rule on remand, or whether such fundamental flaws in the agency's decision make it unlikely that the same rule would be adopted on remand.'" *Ctr. for Food Safety*, 56 F.4th at 663–64 (quoting *Pollinator Stewardship Council v. EPA*, 806 F.3d 520, 532 (9th Cir. 2015)).

C. This Court Should Affirm No Vacatur of the Prey Increase Program.

In seeking to reverse the district court's order denying vacatur and enjoinment of the prey increase program, WFC seeks a remedy that would jeopardize the success of that program and endanger the very species WFC claims it wants to protect. Indeed, the R&R expressly found that "the disruptive consequences of vacating the prey increase program would put" Southern Resident killer whales ("SRKW") "at further risk of extinction." 1-ER-38; *see also Ctr. for Food Safety*, 56 F.4th at 668 (remand without vacatur maintains "enhanced protection of the environmental values" covered by the challenged rule) (citation omitted). That is because the primary goal of the prey increase program is to provide a four to five percent increase in prey available for SRKWs. 1-ER-16; 2-ER-283. Although the Magistrate Judge previously found that the program was uncertain, indefinite, and not subject to agency control, the R&R recognized that is no longer the case. 1-ER-36. Congress funds the prey increase program every year with an understanding that the program

will both increase prey abundance and enable certain Alaska and Pacific Northwest fisheries to continue, albeit at a reduced level. Given this understanding, Congress is fulfilling its commitment to fund the mitigation called for in the 2019 BiOp. 1-ER-17; 2-ER-285.

Disrupting the prey increase program now, after careful and deliberate balancing of conservation and allocation interests through the extensive Treaty process, would reverse much of the program's recognized achievements and endanger the wildlife Congress intended to protect through the Treaty's mitigation and conservation programs. As this Court and the Supreme Court have repeatedly recognized in the context of the Political Question Doctrine, "[t]he conduct of the foreign relations of our Government is committed by the Constitution to the Executive and Legislative—'the political'—Departments of the Government, and the propriety of what may be done in the exercise of this political power is not subject to judicial inquiry or decision." *Alperin v. Vatican Bank*, 410 F.3d 532, 545 (9th Cir. 2005) (quoting *Baker v. Carr*, 369 U.S. 186, 211 (1962) (citing *Oetjen v. Cent. Leather Co.*, 246 U.S. 297, 302 (1918))).

Here, in establishing the appropriate remedy, the inextricable nature of the Treaty and ITS warrants careful consideration and a certain degree of caution. Of particular interest to Amici is that in addition to providing more salmon for SRKWs, the prey increase program is designed to offset Treaty impacts from fisheries. *See*

6-ER-1195. The Treaty's fishery limits reflect an effort to "find an acceptable and effective distribution of harvest opportunities and fishery constraints that, when combined with domestic fishery management constraints, would be consistent with the fundamental conservation and sharing objectives of the Treaty." 5-ER-1053. The Treaty works to balance the interests of fisheries, protected species, and the rights and obligations of impacted states, countries, and tribes. 5-ER-1053–54. The mitigation actions, including the prey increase program, are part of an interdependent management scheme that was designed, along with harvest levels, to achieve the Treaty's objectives.

As the R&R concluded, without an ITS, "hatchery operators would likely not spawn addition[al] adult fish next fall to provide increased prey to SRKW." 1-ER-37; 2-ER-277. Hatcheries might also have to release juvenile fish early and without tags that allow for monitoring and managing genetic risk. 2-ER-277–78. This makes them less likely to survive and serve as a food source for SRKWs, and potentially poses a greater risk to endangered species of Chinook salmon. *Id.* Such results would frustrate the Treaty's objectives and undermine Congress's efforts.

The R&R also correctly noted that vacatur of the prey increase program would impact fisheries other than those in SEAK because the program serves as an integral component of the environmental baseline for other salmon fisheries operating off the West Coast and in Puget Sound. 1-ER-37. Those fisheries rely on salmon production

from the prey increase program to stay above a Chinook salmon abundance threshold and limit potential fishery impacts on the SRKW. *Id.*; 5-ER-889–90. As noted in the 2019 BiOp, "[f]undamentally, all U.S. fisheries may be affected by decisions made in the event that funding is not provided," 5-ER-890, and, in addition to harming SEAK fisheries, granting the relief WFC seeks would "likely have cascading impacts to commercial and recreational fisheries off the coast of Washington, in Puget Sound and other areas." 2-ER-238; *see also* Alaska Trollers Br. at 10 (describing importance of the SEAK troll fishery to the communities and residents of Southeast Alaska). Vacating or enjoining the prey increase program would also have a significant impact on Tribes in Washington State because they operate hatcheries that receive funding from the prey increase program. *See, e.g.*, 2-ER-271. Because vacating or enjoining the prey increase program would undermine congressional objectives, void the Treaty's negotiated policies, cause environmental harm to SRKWs, and disrupt ongoing domestic fisheries, this Court should decline to do so.

D. This Court Should Reject the Magistrate's Vacatur of the ITS for the SEAK Salmon Troll Fishery.

The recommendation in the R&R to vacate the ITS for the SEAK Chinook salmon troll fishery misapplies the vacatur standards and fails to consider the Treaty's role in managing the complex web of competing interests and fishery management challenges at issue. The most appropriate judicial action is either

remand without vacatur or vacatur held in abeyance pending resolution of any identified errors on remand.

Contrary to the R&R, 1-ER-41, the Treaty, not the National Marine Fisheries Service ("NMFS"), sets SEAK Chinook salmon harvest limits, and one of the Treaty's guiding principles is avoiding undue disruptions to existing fisheries. 7-ER-1623. As described above, the prey increase program, which Congress has funded and which the R&R concluded is working, helps accomplish the Treaty's objectives by mitigating the small environmental impact attributable to the SEAK Chinook salmon troll fishery. *See* 2-ER-57 (without prey increase program, SEAK fishery estimated to decrease SRKW Chinook salmon prey by average of 0.5%-1.8%). Yet, when considering the potential environmental harms that might arise from leaving the ITS in place, the R&R, which the district court adopted, failed to balance or even mention the mitigating benefits of the successful prey increase program. *See* 1-ER-31–35. If this Court takes that mitigation into account, the environmental impact associated with the ITS is negligible. In comparison, the economic devastation the SEAK fishing communities would experience and the public interests the Treaty aims to protect easily outweigh that environmental impact.

Weighing the seriousness of NMFS's perceived errors, the R&R noted that violations "undermin[ing] important congressional objectives of the underlying statute" are serious, 1-ER-31 (citation omitted), and that NMFS's "reliance on

uncertain and indefinite mitigation measures to find no jeopardy to the SRKW, and its failure to address the prey increase mitigation program" undermined congressional objectives in the ESA and NEPA. 1-ER-31–32. This reasoning ignores, however, that *the Treaty* controls harvest limits for SEAK fisheries and that Congress has reviewed and continues to fully fund the prey increase program. Mitigation is no longer "uncertain and indefinite," and neither is Congress's mandate. On remand, the Treaty will still control, and the 2019 BiOp must reflect the Treaty's harvest limits and include an ITS for the SEAK Chinook salmon troll fishery. While congressional objectives contained in the ESA and NEPA deserve weight, so do the congressional objectives of the Pacific Salmon Treaty Act, Pub. L. No. 99-5, 99 Stat. 7 (1985), and the appropriations laws funding the Treaty's mitigation measures. The ESA and NEPA do not trump Congress's other statutes and the various objectives of the ESA, NEPA, and the Treaty do not conflict. The greater concern is that vacatur would undermine Congress's complementary objectives under the Treaty, which distinguishes this case from any other case on which the R&R and district court relied, none of which involve treaties.

Because NMFS's violation has already been largely remedied and the agency will, more likely than not, justify its decision on remand, the harm that vacatur would

cause outweighs any deficiency in the ITS.[5] This imbalance of harm should prevent the use of vacatur. *See Solar Energy Indus. Ass'n*, 80 F.4th at 997–98; *Cal. Cmtys. Against Toxics*, 688 F.3d at 992-94. Evidence of harm that vacatur would cause is well-documented in the record, the R&R, and the briefing of the Defendant and Intervenor-Defendants. 1-ER-35 (describing "disruptive economic consequences" of vacatur); 3-ER-519, 3-ER-521–22 (vacatur would result in an estimated $29 million annual loss in an industry that employs hundreds of people); 3-ER-535–38 (describing importance of commercial fishing to SEAK economies and communities); 2-ER-230 (same). The R&R acknowledged this harm, then applied the vacatur factors in a way that conflicts with both Ninth Circuit and persuasive precedent. The result is a remedy that undermines Congress's Treaty and appropriations objectives and will devastate the troll fishing communities of SEAK.

Remanding without vacatur also aligns with the approach of other circuits who apply the same standards as this circuit. For instance, the D.C. Circuit found vacatur of an ITS unwarranted because it was possible that on remand the agency would correct its error and reach the same result. *Schafer & Freeman Lakes Env't Conservation Corp. v. FERC*, 992 F.3d 1071, 1096 (D.C. Cir. 2021); *see also Cent. Me. Power Co. v. FERC*, 252 F.3d 34, 48 (1st Cir. 2001) (no vacatur due to public

[5] NMFS has published notice of its intent to prepare an environmental impact statement for issuance of an ITS for SEAK salmon fisheries subject to the Treaty. 88 Fed. Reg. 68,572 (Oct. 4, 2023).

interest in assuring power); *Tex. Ass'n of Mfrs. v. U.S. Consumer Prod. Safety Comm'n*, 989 F.3d 368, 389 (5th Cir. 2021) ("Remand, not vacatur, is generally appropriate when there is at least a serious possibility that the agency will be able to substantiate its decision given an opportunity to do so.") (citation omitted); *Black Warrior Riverkeeper, Inc. v. U.S. Army Corps of Eng'rs*, 781 F.3d 1271, 1291 (11th Cir. 2015) (relevant consideration in vacatur analysis is impact of mitigation on extent and implications of the agency's error); *Cal. Cmtys. Against Toxics*, 688 F.3d at 992; *Oceana, Inc. v. Pritzker*, 125 F. Supp. 3d 232, 255 (D.D.C. 2015) (remanding but declining to vacate a BiOp for seven fisheries); *Pub. Emps. for Env't Resp. v. Beaudreau*, 25 F. Supp. 3d 67, 110–15 (D.D.C. 2014) (declining to vacate BiOp and remanding the matter for issuance of an ITS).

Alternatively, this Court could remand and hold any vacatur in abeyance to avoid disruptive consequences. *Anacostia Riverkeeper, Inc. v. Wheeler*, 404 F. Supp. 3d 160, 189 (D.D.C. 2019) (staying vacatur of flawed Clean Water Act pollution limits and citing cases with similar stays); *Indep. U.S. Tanker Owners Comm. v. Dole*, 809 F.2d 847, 855 (D.C. Cir. 1987); *Ctr. for Biological Diversity v. Raimondo*, No. 18-cv-112-JEB, 2022 WL 17039193, at *2 (D.D.C. Nov. 17, 2022) (holding vacatur of BiOp in abeyance to "allow the federal lobster fishery some stability to keep operating, while all stakeholders continue their shared work of implementing corrective measures to secure the future of the right whale in the long term."). Given

this authority and the significant harm that would result from vacatur of the ITS, this Court should remand without vacatur or, alternatively, order that any vacatur be held in abeyance pending resolution of any remaining errors.

CONCLUSION

Based on the foregoing and arguments in the briefs of Intervenor-Defendants-Appellants and the Federal Defendants-Appellants, this Court should reverse the district court's order vacating the ITS for the SEAK salmon troll fishery. Vacating the ITS would cause irreparable harm to SEAK troll fishery participants and fishing communities and frustrate the Treaty's objectives.

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