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Fish Commission*

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

THE UNITED STATES OF)	
AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:22-cv-00054-SLG
)	
THE STATE OF ALASKA, THE)	
ALASKA DEPARTMENT OF FISH &)	
GAME and DOUG VINCENT-LANG,)	
in his official capacity as Commissioner)	
of the Alaska Department of Fish &)	
Game,)	
)	
Defendants.)	
)	

COMPLAINT IN INTERVENTION

The Kuskokwim River Inter-Tribal Fish Commission (the “Commission”) alleges as follows:

1. This is an action in intervention in the above-captioned suit filed by Plaintiff the United States of America seeking (a) a declaration under the Federal Declaratory *United States v. State of Alaska*, Case No. 1:22-cv-00054-SLG

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Judgment Act, 28 U.S.C. § 2201, that actions by Defendants the State of Alaska, its Department of Fish & Game, and Commissioner Doug Vincent-Lang in contravention of a rural Alaskan subsistence priority are preempted by federal law and are therefore unlawful, and (b) injunctive relief enjoining the Defendants from continuing to adopt, implement or enforce any state action that purports to authorize or encourage harvest of fish or wildlife that contravenes or interferes with federal law or regulatory actions instituted by the Federal Subsistence Board (“FSB”) or authorized federal officials.

2. This Complaint incorporates the United States of America’s Complaint for Declaratory and Injunctive Relief, ECF No. 1, in its entirety and adopts the allegations and claims for relief as its own, as supplemented by the additional allegations herein.

3. Plaintiff-Intervenor the Commission is an inter-tribal consortium that represents the Federally Recognized Indian Tribes¹ of the Kuskokwim River watershed concerning fisheries management matters, including but not limited to the management of

¹ Each of the following Member Tribes of the Commission has issued a duly-adopted resolution ratifying the Kuskokwim River Inter-Tribal Fish Commission Constitution and authorizing the Commissioner appointed by that Tribe to vote on behalf of the Tribe: Nikolai Village, Telida Village, McGrath Native Village, Takotna Village, Native Village of Georgetown, Village of Stony River, Village of Sleetmute, Village of Crooked Creek, Native Village of Napaimute, Native Village of Chuathbaluk, Village of Kalskag, Village of Lower Kalskag, Village of Aniak, Tuluksak Native Community, Akiak Native Community, Akiachak Native Community, Organized Village of Kwethluk, Orutsararmuit Native Village (aka Bethel), Native Village of Napaskiak, Native Village of Napakiak, Village of Atmautluak, Kasigluk Traditional Elders Council, Native Village of Eek, Village of Chefornak, and Native Village of Kwinhegak (aka Quinhagak). Currently, the Commissioners for Lime Village, Village of Red Devil, Oscarville Traditional Village, Native Village of Kongiganak, Native Village of Kwigillingok, and the Native Village of Kipnuk may participate but do not vote on Commission decisions.

the Kuskokwim River Chinook and chum salmon populations that are the subject of this matter.

4. The Commission's thirty-three (33) Tribally appointed Fish Commissioners, seven (7) Executive Council members, and five (5) In-Season Managers combine Traditional Knowledge and western science to conservatively manage Kuskokwim fisheries according to Yup'ik and Athabascan Dené values, subsistence harvest needs, and escapement targets aimed at rebuilding depleted salmon populations.

5. Through the Commission, the Tribes of the Kuskokwim River watershed seek to conserve, protect, and manage the Chinook and chum salmon resources that form a core element of the traditional subsistence lifestyle of the people in their communities:

We, the Tribes of the Kuskokwim River and its tributaries, proclaim that our fisheries are essential to our cultural, nutritional, economic and spiritual well-being and our way of life. We recognize our responsibility and authority to exercise our inter-tribal treaty rights to act as stewards to our common traditional territories and resources. Since time immemorial, we have properly cared for the fishery resources of the Kuskokwim River Drainage. We commit to conserve, restore, and provide for tribal use of fisheries based on indigenous knowledge systems and scientific principles. Founded on tribal unity, and striving for consensus, we form the Kuskokwim River Inter-Tribal Fisheries Commission for the health and well-being of our tribal members, our future generations, and all Alaskans who rely upon the health of the fisheries.²

6. Since 2015, the Commission has co-managed the Kuskokwim salmon fishery cooperatively with the U.S. Fish and Wildlife Service ("USFWS") within the Yukon Delta

² Kuskokwim Inter-Tribal Fisheries Commission Constitution, Preamble (Attachment A).

National Wildlife Refuge (“Refuge”) pursuant to a Memorandum of Understanding between USFWS and the Commission.³

7. The decline of the Chinook and chum salmon subsistence resources in the Kuskokwim River watershed over recent years has been catastrophic, threatening the food, cultural, and economic security of the Tribes of the region.

8. In September 2021, the Commission published its 2021 Kuskokwim River Salmon Situation Report (“Situation Report”),⁴ which lays out the timeline of the subsistence catastrophe that has occurred for the people of the Kuskokwim River watershed, including but not limited to a drastically below-average Chinook run and a greater than ninety (90) percent collapse of the chum salmon run, as well as impacts on the Kuskokwim River communities.

9. As the Commission has explained:

The Chinook and chum salmon run failures have the potential to place increased harvest pressure on other limited fish stocks which could threaten the sustainability of those species. These failures and associated in-river restrictions also limited the subsistence-dependent communities from practicing their ways of life and passing on generations-old Traditional Knowledge to youth, especially the specialized food processing and preparation methods of cultural delicacies that are otherwise at risk of being lost. *The collapse of both Chinook and chum salmon threatens the food and*

³ See Memorandum of Understanding Between the United States Department of the Interior, U.S. Fish and Wildlife Service Alaska Region, and Kuskokwim Inter-Tribal Fish Commission (2016) (Attachment B); *see also* Kuskokwim River Inter-Tribal Fish Comm’n & U.S. Fish & Wildlife Serv., Draft 2022 Kuskokwim River Salmon Management and Harvest Strategy (April 15, 2022) (Attachment C) (the USFWS/Commission practice has been to keep Management and Harvest Strategy documents in draft form until the fishing season is complete, given the need to maintain flexibility for in-season management).

⁴ Attachment D.

*economic security and spiritual and cultural vitality of subsistence fishing communities on the Kuskokwim River.*⁵

10. Federal management, including co-management with the Commission, of the salmon fishery within the Refuge pursuant to ANILCA Title VIII, including but not limited to the various emergency special actions issued by the FSB, is critical to the conservation of the Chinook and chum resources within the Kuskokwim River watershed. Such management decisions and escapement goals rely on information collected by and shared between the Commission and USFWS, including information collected by the Commission's in-season managers and through the Commission's Community-Based Harvest Monitoring Program.⁶

11. During the 2021 fishing season, the State of Alaska Department of Fish & Game's ("ADF&G") unlawful issuance of emergency orders purporting to provide opportunities for all Alaskans, rather than only federally qualified subsistence users, to fish within the Refuge in contravention of the closures announced by the FSB were in direct contravention of ANILCA Title VIII and undermined the federal subsistence priority.

12. ADF&G's actions created havoc for the Tribes of the Kuskokwim River watershed and confusion for the Tribes' subsistence fishers, who received conflicting information from the State regarding the critical "who, where, when" and "with what gear" questions of the subsistence fishery.

⁵ Situation Report at 7 (emphasis added).

⁶ See Kuskokwim Inter-Tribal Kuskokwim River Inter-Tribal Fish Comm'n, 2021 Annual Report at 11 (Attachment E).

13. This confusion was exacerbated because many of these subsistence fishers speak English as a second language (if at all), and they may not be deeply familiar with the complicated federal and state regulatory schemes governing fishing in the region. Instead of minimizing confusion, ADF&G's orders told all Alaskans they could fish, and left it up to individual fishers to realize that following that State's guidance would constitute a violation of federal regulations.

14. ADF&G's actions, including but not limited to the issuance of emergency special actions in the lead-up to the 2022 fishing season that purport to allow fishing by all users on the Kuskokwim within the Refuge in contravention of the federal closure, continue to undermine the federal subsistence priority, violate ANILCA, contravene the Commission's authority to co-manage the Kuskokwim River salmon fisheries with federal managers, and sow confusion among the subsistence fishers in the region.

15. ADF&G's actions directly threaten the management authority of the Commission, as delegated by the Commission's Member Tribes and recognized by the United States.

16. ADF&G's actions threaten the health, welfare, economic security, and continued traditional subsistence-based way of life for the people of the Commission's Member Tribes.

PRAYER FOR RELIEF

WHEREFORE, the Kuskokwim River Inter-Tribal Fish Commission respectfully requests the following relief:

A. A declaratory judgment stating that Defendants' emergency orders purporting to open harvest on the public waters of the Kuskokwim River during the federal closure in 2021 and 2022, and any similar actions interfering with or in contravention of federal orders addressing ANILCA Title VIII and applicable regulations, are invalid, null, and void;

B. A preliminary and permanent injunction against the State of Alaska, including all of its officers, employees, and agents, from reinstating Defendants' 2021 orders, from proceeding under Defendants' 2022 orders, or from taking similar actions interfering with or in contravention of federal orders addressing ANILCA Title VIII and applicable regulations;

C. Any and all other relief necessary to fully effectuate any injunction;

D. An award to the Kuskokwim River Inter-Tribal Fish Commission of its fees and costs in this action; and

E. Any other relief that the Court deems just and proper.

DATED this 31st day of May 2022, at Anchorage, Alaska.

SONOSKY, CHAMBERS, SACHSE
MILLER & MONKMAN, LLP

By: /s/ Nathaniel Amdur-Clark
Nathaniel Amdur-Clark
Alaska Bar No. 1411111
Whitney A. Leonard
Alaska Bar No. 1711064

Certificate of Service

I certify that on May 31, 2022, a copy of the foregoing document was served via ECF on all counsel of record.

/s/ Nathaniel Amdur-Clark
Nathaniel Amdur-Clark