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 9 WEST COAST SEAFOOD PROCESSORS ASSOCIATION

10 UNITED STATES DISTRICT COURT
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 NATURAL RESOURCES DEFENSE)
 13 COUNCIL, INC. and OCEANA, INC.,)
 14 Plaintiffs,)
 15 v.)
 16 CARLOS M. GUTIERREZ, Secretary of)
 17 Commerce; and NATIONAL OCEANIC)
 18 AND ATMOSPHERIC)
 19 ADMINISTRATION,)
 20 Defendants.)

Nos. C01-0421 JL
**[PROPOSED] ANSWER OF WEST
 COAST SEAFOOD PROCESSORS
 ASSOCIATION TO PLAINTIFF’S
 [PROPOSED] FOURTH AMENDED
 COMPLAINT**

21 The West Coast Seafood Processors Association (the “Applicant”), seeking to intervene in this
 22 action, files this [Proposed] Answer to Plaintiff’s [Proposed] Fourth Amended Complaint (“Amended
 23 Complaint), in the event the Court grants Plaintiff’s Motion for Leave to Amend Complaint:

24 1. The allegations in paragraph 1 of the Amended Complaint describe the action and no
 25 response is required. To the extent a response is required, Applicant denies that any of the final Pacific
 26 Groundfish Fishery regulations promulgated in the Federal Register by Federal Defendants on
 27 December 29, 2006 are either substantively or procedurally unlawful on any grounds.

28 2. The allegations in paragraph 2 contain legal conclusions as to subject matter jurisdiction
 to which no response is required.

1 3. The allegations in paragraph 3 contain legal conclusions as to venue to which no response
2 is required.

3 4. The allegations in paragraph 4 contain legal conclusions as to intradistrict assignment to
4 which no response is required.

5 5. Applicant lacks sufficient information and knowledge to form a belief as to the factual
6 allegations in paragraph 5, and therefore denies them.

7 6. Applicant lacks sufficient information and knowledge to form a belief as to the factual
8 allegations in paragraph 6, and therefore denies them.

9 7. Applicant denies the allegations in paragraph 7.

10 8. Applicant admits the allegations in paragraph 8.

11 9. Applicant admits the allegations in paragraph 9.

12 10. Applicant admits the allegations in paragraph 10.

13 11. The allegations in paragraph 11 purport to describe provisions of a federal statute known
14 as the Sustainable Fisheries Act, which contained certain amendments to the Magnuson-Stevens
15 Fishery Conservation and Management Act (the “Magnuson-Stevens Act”). These statutory provisions
16 speak for themselves, and no response is required. Recently, Congress enacted H.R. 5946, the
17 Magnuson-Stevens Fishery Conservation and Management Reauthorization Act, and President George
18 W. Bush signed the legislation into law on January 12, 2007. None of the changes of law in H.R. 5946
19 apply to the final regulations that are the subject of this lawsuit, given that the regulations were adopted
20 prior to enactment of H.R. 5946.

21 12. Applicant admits the allegations in paragraph 12.

22 13. Applicant denies the allegations in paragraph 13. Marine fish stocks vary in size over
23 time due to natural variability in ocean conditions.

24 14. The allegations in paragraph 14 purport to describe provisions of the Magnuson-Stevens
25 Act. These statutory provisions speak for themselves, and no response is required.

26 15. The allegations in paragraph 15 purport to describe provisions of the Magnuson-Stevens
27 Act. These statutory provisions speak for themselves, and no response is required.

1 16. Applicant admits that three of the 84 species of Pacific Groundfish were declared
2 overfished in 1999. The remaining allegations purport to describe provisions of the Magnuson-Stevens
3 Act, which speak for themselves, and no response is required.

4 17. Applicant admits that the current stock status of bocaccio and Pacific ocean perch meets
5 the technical definition of “overfished” under the Magnuson-Stevens Act, and that lingcod does not.
6 Applicant avers that neither bocaccio nor Pacific ocean perch have ever been listed as either threatened
7 or endangered under the Endangered Species Act, 16 U.S.C. §§ 1531-1544.

8 18. Applicant lacks sufficient information or knowledge to form a belief as to the factual
9 allegations in paragraph 18, and therefore denies them. Applicant avers that the Magnuson-Stevens Act
10 provides for judicial review of regulations and actions taken by the Secretary of Commerce to
11 implement a fishery management plan, or amendments thereto. 16 U.S.C. § 1855(f). Applicant avers
12 that fishery management plans are not subject to judicial review, except to the extent such fishery
13 management plans, including rebuilding plans, are implemented through final regulations and/or
14 actions taken by the Secretary of Commerce. Moreover, Applicant avers that only such regulations
15 and/or actions that are the subject of a lawsuit, filed within 30 days after notice of such final regulations
16 and/or actions is published in the Federal Register, are subject to judicial challenge. Applicant further
17 avers that all the Pacific Groundfish regulations published on December 29, 2006 were subject to notice
18 and opportunity for comment by the public, including by Plaintiff, and that Plaintiff did in fact provide
19 extensive comments on the proposed regulations.

20 19. Applicant lacks sufficient information and knowledge to form a belief as to the factual
21 allegations in paragraph 19, and therefore denies them.

22 20. Applicant admits the allegations in paragraph 20.

23 21. Applicant lacks sufficient information and knowledge to form a belief as to the factual
24 allegations in paragraph 21, and therefore denies them.

25 22. Applicant lacks sufficient information and knowledge to form a belief as to the factual
26 allegations in paragraph 22, and therefore denies them.

1 23. The allegations in paragraph 23 purport to describe the content of material published in
2 the Federal Register by Federal Defendants. Such material speaks for itself, and no response is
3 required.

4 24. Applicant lacks sufficient information and knowledge to form a belief as to the factual
5 allegations in paragraph 24, and therefore denies them. Applicant denies that Federal Defendants failed
6 to comply with the National Environmental Policy Act in their consideration of the final regulations
7 that are the subject of this lawsuit.

8 25. Applicant admits that the current stock status of canary rockfish and cowcod meets the
9 technical definition of “overfished” under the Magnuson-Stevens Act. Applicant avers that neither
10 canary rockfish nor cowcod have ever been listed as either threatened or endangered under the
11 Endangered Species Act, 16 U.S.C. §§ 1531-1544.

12 26. Applicant admits that the current stock status of darkblotched rockfish, widow rockfish
13 and yelloweye rockfish meets the technical definition of “overfished” under the Magnuson-Stevens
14 Act. Applicant avers that darkblotched rockfish, widow rockfish, and yelloweye rockfish have never
15 been listed as either threatened or endangered under the Endangered Species Act, 16 U.S.C. §§ 1531-
16 1544.

17 27. Applicant lacks sufficient information and knowledge to form a belief as to the factual
18 allegations in paragraph 27, and therefore denies them.

19 28. Applicant lacks sufficient information and knowledge to form a belief as to the factual
20 allegations in paragraph 28, and therefore denies them.

21 29. Applicant lacks sufficient information and knowledge to form a belief as to the factual
22 allegations in paragraph 29, and therefore denies them.

23 30. The allegations in paragraph 30 purport to describe the content of material published in
24 the Federal Register by Federal Defendants. Such material speaks for itself, and no response is
25 required.

26 31. Applicant lacks sufficient information and knowledge to form a belief as to the factual
27 allegations in paragraph 31, and therefore denies them.

1 32. Applicant lacks sufficient information and knowledge to form a belief as to the factual
2 allegations in paragraph 32, and therefore denies them.

3 33. The allegations in paragraph 33 purport to describe the content of material published in
4 the Federal Register by Federal Defendants. Such material speaks for itself, and no response is
5 required.

6 34. Applicant lacks sufficient information and knowledge to form a belief as to the factual
7 allegations in paragraph 34, and therefore denies them.

8 35. Applicant lacks sufficient information and knowledge to form a belief as to the factual
9 allegations in paragraph 35, and therefore denies them.

10 36. Applicant lacks sufficient information and knowledge to form a belief as to the factual
11 allegations in paragraph 32, and therefore denies them.

12 37. The allegations in paragraph 37 purport to describe the content of material published in
13 the Federal Register by Federal Defendants. Such material speaks for itself, and no response is
14 required.

15 38. Applicant lacks sufficient information and knowledge to form a belief as to the factual
16 allegations in paragraph 38, and therefore denies them.

17 39. Applicant lacks sufficient information and knowledge to form a belief as to the factual
18 allegations in paragraph 39, and therefore denies them.

19 40. Applicant lacks sufficient information and knowledge to form a belief as to the factual
20 allegations in paragraph 40, and therefore denies them.

21 41. The allegations in paragraph 41 purport to describe provisions of the Magnuson-Stevens
22 Act and the meaning of a decision by the Ninth Circuit Court of Appeals. These statutory provisions
23 and the Court's decision speak for themselves, and no response is required.

24 42. Applicant denies the allegations in paragraph 42.

25 43. No response to paragraph 43 is required.

26 44. The allegations in paragraph 44 purport to describe provisions of the Magnuson-Stevens
27 Act. These statutory provisions speak for themselves, and no response is required.

1 45. Applicant lacks sufficient information and knowledge to form a belief as to the factual
2 allegations in paragraph 45, and therefore denies them.

3 46. Applicant lacks sufficient information and knowledge to form a belief as to the factual
4 allegations in paragraph 46, and therefore denies them.

5 47. Applicant denies the allegations in paragraph 47.

6 48. No response to paragraph 48 is required.

7 49. The allegations in paragraph 49 purport to describe provisions of the Magnuson-Stevens
8 Act. These statutory provisions speak for themselves, and no response is required.

9 50. The allegations in paragraph 50 purport to describe provisions of the Magnuson-Stevens
10 Act. These statutory provisions speak for themselves, and no response is required.

11 51. Applicant lacks sufficient information and knowledge to form a belief as to the factual
12 allegations in paragraph 51, and therefore denies them.

13 52. Applicant lacks sufficient information and knowledge to form a belief as to the factual
14 allegations in paragraph 52, and therefore denies them.

15 53. Applicant lacks sufficient information and knowledge to form a belief as to the factual
16 allegations in paragraph 53, and therefore denies them.

17 54. Applicant lacks sufficient information and knowledge to form a belief as to the factual
18 allegations in paragraph 54, and therefore denies them.

19 55. Applicant lacks sufficient information and knowledge to form a belief as to the factual
20 allegations in paragraph 55, and therefore denies them.

21 56. Applicant lacks sufficient information and knowledge to form a belief as to the factual
22 allegations in paragraph 56, and therefore denies them.

23 57. Applicant denies the allegations in paragraph 57.

24 58. No response to paragraph 58 is required.

25 59. The allegations in paragraph 59 purport to describe provisions of the Magnuson-Stevens
26 Act. These statutory provisions speak for themselves, and no response is required

27 60. Applicant lacks sufficient information and knowledge to form a belief as to the factual
28 allegations in paragraph 60, and therefore denies them.

1 61. Applicant lacks sufficient information and knowledge to form a belief as to the factual
2 allegations in paragraph 61, and therefore denies them.

3 62. Applicant denies the allegations in paragraph 62.

4 63. No response to paragraph 63 is required.

5 64. Applicant lacks sufficient information and knowledge to form a belief as to the factual
6 allegations in paragraph 64, and therefore denies them.

7 65. Applicant lacks sufficient information and knowledge to form a belief as to the factual
8 allegations in paragraph 65, and therefore denies them.

9 66. Applicant lacks sufficient information and knowledge to form a belief as to the factual
10 allegations in paragraph 66, and therefore denies them.

11 67. Applicant lacks sufficient information and knowledge to form a belief as to the factual
12 allegations in paragraph 67, and therefore denies them.

13 68. Applicant denies the allegations in paragraph 68.

14 69. No response to paragraph 69 is required.

15 70. Applicant denies the allegations in paragraph 70.

16 71. Applicant admits that the current stock status of yelloweye rockfish meets the technical
17 definition of “overfished” under the Magnuson-Stevens Act. Applicant denies the remaining
18 allegations in paragraph 71.

19 72. Applicant denies the allegations in paragraph 72.

20 73. Applicant denies the allegations in paragraph 73.

21 74. No response to paragraph 74 is required.

22 75. The allegations in paragraph 77 purport to describe provisions of the Magnuson-Stevens
23 Act and the meaning of a decision by the Ninth Circuit Court of Appeals. These statutory provisions
24 and the Court’s decision speak for themselves, and no response is required.

25 76. Applicant denies the allegations in paragraph 76.

26 77. The allegations in the first sentence of paragraph 77 purport to describe provisions of the
27 Magnuson-Stevens Act. These statutory provisions speak for themselves, and no response is required.
28 Applicant denies the remaining allegations in paragraph 77.

