

ANDREA A. TREECE, State Bar No. 237639  
Earthjustice  
50 California Street, Suite 500  
San Francisco, CA 94111  
Telephone: 415-217-2000  
Facsimile: 415-217-2040  
Email: atreece@earthjustice.org

STEPHEN D. MASHUDA (*Pro Hac Vice forthcoming*)  
Earthjustice  
810 Third Ave., Suite 610  
Seattle, WA 98104  
Telephone: 206-343-7340  
Facsimile: 415-217-2040  
Email: smashuda@earthjustice.org

*Counsel for Plaintiff*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

OCEANA, Inc.,

Plaintiff,

v.

WYNN COGGINS, in her official capacity as  
Acting Secretary of Commerce; NATIONAL  
OCEANIC AND ATMOSPHERIC  
ADMINISTRATION; and NATIONAL MARINE  
FISHERIES SERVICE,

Defendants.

Case No. 5:21-cv-00736

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

Administrative Procedure Act Case

## INTRODUCTION

1  
2 1. For the third time in four years, the National Marine Fisheries Service (“NMFS”)  
3 has promulgated a blatantly illegal regulation setting catch limits for the central subpopulation of  
4 northern anchovy (hereinafter, “anchovy”). NMFS’s near-fanatical determination to ignore  
5 science and maintain a fishery management approach this Court has explicitly held unlawful  
6 displays a troubling disregard for the rule of law and harms a species that is vital to West Coast  
7 coastal communities and marine ecosystems.

8 2. Above all else, the Magnuson-Stevens Fishery Conservation and Management  
9 Act requires NMFS to manage federal fisheries based on the best scientific information available  
10 to prevent overfishing and protect the marine ecosystem. This suit challenges NMFS’s  
11 continued failure to comply with these bedrock requirements in its December 31, 2020 Catch  
12 Rule<sup>1</sup> and the Coastal Pelagic Species Fishery Management Plan (“CPS FMP”) provisions that  
13 rule applies. The agency’s insistence on setting unchanging catch limits that do not reflect the  
14 status of the anchovy population and are not subject to any regular review or adjustment, fails to  
15 account for the well-known “boom and bust” cycle of the anchovy population and its importance  
16 to the West Coast marine ecosystem.

17 3. Twice in the past two years, this Court has instructed NMFS to correct  
18 fundamental errors in its approach to anchovy management. In 2018, the Court ordered NMFS,  
19 et al.,<sup>2</sup> to apply the best available science and issue a new rule that prevents overfishing of  
20 anchovy. *Oceana, Inc. v. Ross*, No. 16-CV-06784-LHK, 2018 WL 1989575 (N.D. Cal. Jan. 18,  
21 2018) (“*Oceana v. Ross P*”). The Court determined that the agency’s 2016 annual catch limit  
22 (“ACL”), acceptable biological catch (“ABC”), and overfishing limit (“OFL”) (collectively,  
23 “catch limits”) were unlawfully based on decades-old data about the size of the anchovy

24  
25 <sup>1</sup> Fisheries off West Coast States; Coastal Pelagic Species Fisheries; Harvest Specifications for  
the Central Subpopulation of Northern Anchovy, 85 Fed. Reg. 86855 (Dec. 31, 2020) (“2020  
Catch Rule”).

26 <sup>2</sup> Federal Defendants include Wynn Coggins in her official capacity as Acting Secretary of  
27 Commerce, the National Oceanic and Atmospheric Administration, and the National Marine  
28 Fisheries Service. They will be referred to collectively in this Complaint as “NMFS” or “the  
agency.”

1 population, did not bear any relationship to the actual size of that population, and thus could not  
2 prevent overfishing of this population. The decision explicitly recognized that in order to  
3 prevent overfishing, catch limits must be based on the size of the anchovy population. Anchovy  
4 populations naturally experience rapid changes in abundance, meaning management must be  
5 responsive to the fluctuating population and cannot rely on unchanging catch limits to prevent  
6 overfishing. Nonetheless, in its 2019 Catch Rule, NMFS doubled down on its previous unlawful  
7 approach and attempted to lock in catch limits for an indefinite period that fail to account for the  
8 fact that the anchovy population undergoes frequent and rapid declines.

9 4. On September 2, 2020, the Court vacated the 2019 Catch Rule, holding that  
10 NMFS had ignored the best available science on anchovy abundance and population fluctuations.  
11 *Oceana, Inc. v. Ross*, No. 19-CV-03809-LHK, 2020 WL 5232566 (N.D. Cal. Sept. 2, 2020)  
12 (*“Oceana v. Ross II”*). The Court further held that NMFS failed to prevent overfishing by setting  
13 unchanging catch limits that did not reflect the anchovy’s potential to drop quickly to very low  
14 levels, and leaving those limits in place for an indefinite time period. The Court ordered NMFS  
15 to develop a new rule that complied with the Magnuson-Stevens Act and Administrative  
16 Procedure Act (“APA”). NMFS responded by promulgating the 2020 Catch Rule, which repeats  
17 the errors the Court identified and rationales the Court rejected, while attempting to refute the  
18 Court’s carefully considered holdings.

19 5. Like the 2019 Catch Rule the Court vacated, the 2020 Catch Rule establishes  
20 values for three interrelated limits: the overfishing limit, the acceptable biological catch, and the  
21 annual catch limit. Together, these three catch limits are supposed to prevent overfishing and  
22 ensure that enough anchovy are left in the water to feed other fish and wildlife.

23 6. Despite sound, peer-reviewed science showing the anchovy population can drop  
24 by more than 90 percent in just two years, and the Court’s holding that NMFS must consider that  
25 science, the 2020 Catch Rule allows commercial fishing vessels to catch 25,000 metric tons of  
26 anchovy every year, regardless of the size of the anchovy population. In other words, the new  
27 rule would allow 25,000 metric tons of catch regardless of whether the population rapidly  
28 declines to very small levels, is at its historic average size, or is in a boom period. This

1 unchanging catch limit ignores the agency’s legal duties—and the Court’s direction—to apply  
2 the best available science to anchovy management, and to adjust the catch limits based on best  
3 available science to prevent overfishing in down years.

4 7. The Magnuson-Stevens Act requires that the annual catch limit also account for  
5 the needs of marine predators that depend on anchovy. The best available science demonstrates  
6 the intertwined fates of these predators and their prey: when anchovy populations decline,  
7 predators like brown pelicans and California sea lions suffer starvation, breeding failures, and  
8 death.

9 8. Despite the Court’s holdings that setting unchanging catch limits for an indefinite  
10 time period and relying on a 75 percent buffer between the overfishing limit and annual catch  
11 limit do not reflect the best available science and fail to prevent overfishing, NMFS based the  
12 2020 Catch Rule on this unlawful approach. That approach is inherent in the CPS FMP’s  
13 framework for managing anchovy and other so-called “monitored” fish populations. But the  
14 agency’s application of that approach serves only to highlight (again) that the CPS FMP itself  
15 violates the Magnuson-Stevens Act.

16 9. The CPS FMP’s “monitored stock” provisions purport to allow the agency to set  
17 all three catch limits once, when the rule is issued, without requiring the agency to periodically  
18 check them against new data as the stock fluctuates over time. While the CPS FMP indicates  
19 that the agency has discretion to revise the catch limits in light of new data—and the agency  
20 itself routinely collects data on anchovy abundance—the CPS FMP does not require the agency  
21 to do so. Accordingly, the CPS FMP, like the 2020 Catch Rule that applies it, violates NMFS’s  
22 Magnuson-Stevens Act duties to use the abundance information the agency collects every year to  
23 update its understanding of the population status and adjust the catch limits to ensure that they  
24 reflect the size of the population, prevent overfishing of that population, and account for the  
25 needs of marine predators. Oceana challenges NMFS’s 2020 Catch Rule, and the provisions of  
26 the CPS FMP it applies, because they fail to use the best available science, will not prevent  
27 overfishing, and fail to protect this vital population of anchovy at the base of the West Coast  
28 marine ecosystem’s food web on an ongoing basis.



1 judicial review “if a petition for such review is filed within 30 days after the date on which the  
2 regulations are promulgated or the action is published in the Federal Register, as applicable.” 16  
3 U.S.C. § 1855(f). NMFS published the 2020 Catch Rule on December 31, 2020, in the Federal  
4 Register. Oceana is filing this Complaint within 30 days of publication of the 2020 Catch Rule.

5 15. This Court, further, has jurisdiction over this action pursuant to the APA, which  
6 provides that final agency action is subject to judicial review. 5 U.S.C. §§ 701–706. NMFS’s  
7 issuance of the 2019 Catch Rule is a “final agency action” subject to judicial review under the  
8 APA.

9 16. This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331  
10 (federal question jurisdiction), which grants the district courts “original jurisdiction of all civil  
11 actions arising under the ... laws ... of the United States,” and 28 U.S.C. § 1361, which grants  
12 the district courts “original jurisdiction of any action in the nature of mandamus to compel an  
13 officer or employee of the United States or any agency thereof to perform a duty owed to the  
14 plaintiff.”

15 17. This Court has the authority to grant declaratory relief pursuant to the Declaratory  
16 Judgment Act, 28 U.S.C. §§ 2201–02, and may also grant relief pursuant to the Magnuson-  
17 Stevens Act, 16 U.S.C. §§ 1861(d) and 1855(f), as well as the APA, 5 U.S.C. § 706.

18 18. Venue is properly vested in this judicial district under 28 U.S.C. § 1391(e),  
19 because a substantial part of the events and omissions which gave rise to this action occurred in  
20 this district.

#### 21 INTRADISTRICT ASSIGNMENT

22 19. This action should be assigned to the San Jose Division pursuant to Civil L.R. 3-  
23 2(e) because a substantial part of the events or omissions giving rise to the claim occurred in  
24 Santa Cruz County and Monterey County.

25 20. This case challenges a final rule promulgated in direct response to two previous  
26 rulings from U.S. District Court Judge Lucy H. Koh of the San Jose Division in *Oceana v. Ross*  
27 *I*, 5:16-cv-06784-LHK and *Oceana v. Ross II*, 5:19-cv-03809-LHK, concerning the same parties  
28 and the same subject matter at issue in those ongoing matters, and is related to those cases

1 pursuant to Civil L.R. 3-12(a).

2 **PARTIES**

3 21. Plaintiff OCEANA is a non-profit international advocacy organization dedicated  
4 to protecting and restoring the world's oceans through policy, advocacy, science, law, and public  
5 education. Oceana has over 1,392,680 members worldwide, including 215,789 members in  
6 California, Oregon, and Washington. Oceana maintains an office in Monterey, California.  
7 Ensuring the conservation and sound management of forage species, such as the species  
8 managed under the 2020 Catch Rule and the CPS FMP, is a central focus of Oceana's work.  
9 Oceana devotes considerable resources to studying and communicating the ecological and  
10 economic importance of sound management of forage species in the California Current  
11 Ecosystem off the U.S. West Coast.

12 22. Oceana and others have urged the Pacific Fishery Management Council  
13 ("Council") and NMFS to fulfill their legal obligations to sustainably manage northern anchovy.  
14 For nearly a decade, Oceana and others have specifically requested that NMFS and the Council  
15 consider updated abundance estimates for northern anchovy; establish a scientifically based  
16 annual catch limit, acceptable biological catch, and overfishing limit; conduct a full stock  
17 assessment of northern anchovy; and develop an ecosystem-based management framework for  
18 managing the stock. These requests were made in letters to the Council in June 2010, June and  
19 October 2013, March and September 2014, June and October 2015, and September 2016. In  
20 February 2015, Oceana submitted comments to NMFS on Amendment 14 to the CPS FMP,  
21 requesting that NMFS conduct an updated stock assessment and develop an annual catch limit  
22 that reflects anchovy's importance to marine predators in the California Current Ecosystem.  
23 Oceana commented on NMFS's proposed 2016 Catch Rule in December 2015, describing the  
24 scientific evidence indicating a collapse of the stock. Oceana subsequently challenged the 2016  
25 Catch Rule, which this Court set aside for violations of the Magnuson-Stevens Act and APA.  
26 Oceana continued to advocate for scientifically valid management of anchovy after the Court's  
27 ruling. On April 7, 2018, and April 12, 2019, the Pacific Fisheries Management Council  
28

1 considered anchovy management. Oceana staff attended both meetings and provided public  
2 comment, highlighting the importance of a new overfishing limit, acceptable biological catch,  
3 and annual catch limit. Oceana commented on NMFS's proposed 2019 Catch Rule in April 2019  
4 and subsequently challenged the 2019 Catch Rule, which this Court again set aside for violations  
5 of the Magnuson-Stevens Act and APA. Oceana continued to advocate for a CPS FMP  
6 amendment to fix the flaws the Court identified and establish scientifically valid management of  
7 anchovy. Specifically, Oceana requested the FMP be amended to require NMFS and the Council  
8 to regularly update the overfishing limit, acceptable biological catch, and annual catch limit for  
9 anchovy based on the most recent estimate of population size through annual or biannual harvest  
10 specifications (as is currently done for Pacific sardine and Pacific mackerel). Oceana conveyed  
11 these requests in detailed letters to the Council and public testimony in front of the Council on  
12 June 20, 2019; November 15, 2019; and November 18, 2020. Most recently, Oceana commented  
13 on the proposed 2020 Catch Rule, describing the rule's failure to use the best available science  
14 and prevent overfishing as well as the numerous scientific and legal problems with the agency's  
15 "monitored stock" management approach, and requesting that NMFS limit the effective period of  
16 the catch rule.

17 23. Oceana's members use and enjoy the oceans for numerous activities, including  
18 fishing, wildlife observation, scuba diving, snorkeling, boating, swimming, beach walking,  
19 research, and study. Oceana's members value and depend upon a healthy marine environment  
20 for these activities. Oceana's members also consume seafood caught in the California Current  
21 Ecosystem. They are concerned about and directly affected by environmental injury caused by  
22 unsustainable fishing in the U.S. West Coast fisheries resulting in depletion of northern anchovy  
23 and the predatory fish and wildlife that rely on northern anchovy to grow and thrive. Injuries to  
24 Oceana's members include injuries to their consumption and recreational and commercial use of  
25 fish populations, as well their interest in healthy populations of sea lions, brown pelicans,  
26 humpback whales, and other wildlife.

27 24. The above-described aesthetic, conservation, recreational, commercial, scientific,  
28 educational, and other interests of Oceana and its members have been, are being, and, unless the

1 relief prayed for in this Complaint is granted, will continue to be adversely affected and  
2 irreparably injured by NMFS's failure to protect northern anchovy through the unlawful 2020  
3 Catch Rule. These injuries are actual and concrete and would be redressed by the relief Oceana  
4 seeks here. Oceana has no adequate remedy at law.

5 25. The Defendants in this action are:

6 a. WYNN COGGINS. Ms. Coggins is sued in her official capacity as Acting  
7 Secretary of Commerce. The Secretary of Commerce is ultimately responsible for overseeing  
8 the proper administration and implementation of the Magnuson-Stevens Act in connection with  
9 federal fisheries management actions, including provisions related to the duty to end and prevent  
10 overfishing and achieve optimum yield and base all conservation and management measures on  
11 the best available science.

12 b. NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION.  
13 The National Oceanic and Atmospheric Administration is an agency of the United States  
14 Department of Commerce with supervisory responsibility for NMFS. The Secretary of the  
15 Department of Commerce has delegated responsibility to ensure compliance with the Magnuson-  
16 Stevens Act to the National Oceanic and Atmospheric Administration, which in turn has sub-  
17 delegated that responsibility to NMFS.

18 c. NATIONAL MARINE FISHERIES SERVICE. NMFS is an agency of  
19 the United States Department of Commerce that has been delegated the primary responsibility to  
20 ensure that the requirements of the Magnuson-Stevens Act and other applicable laws are  
21 followed and enforced, including the requirements to prevent and end overfishing, account for  
22 the needs of the ecosystem in order to achieve optimum yield, and set rational annual catch limits  
23 and other reference points based on best available science. In that capacity, NMFS must review  
24 fishery management plans and amendments to those plans, and issue implementing regulations.

## 25 LEGAL BACKGROUND

### 26 Magnuson-Stevens Act Framework for Preventing Overfishing

27 26. The Magnuson-Stevens Act governs the conservation and management of  
28

1 fisheries in the United States territorial waters and in the exclusive economic zone, which  
2 extends from the boundaries of state waters (typically 3 miles from shore) to 200 miles offshore  
3 or to an international boundary with neighboring countries. 16 U.S.C. §§ 1801(b)(1), 1802(11).  
4 The Magnuson-Stevens Act creates eight regional Fishery Management Councils and requires  
5 them to prepare fishery management plans for all fisheries under their authority that require  
6 conservation and management. 16 U.S.C. § 1852(a), (h)(1).

7 27. All fishery management plans and amendments developed by the Councils and  
8 regulations implementing fishery management plans and amendments are subject to final review  
9 and approval by NMFS to ensure that they comply with the requirements of the Magnuson-  
10 Stevens Act, as well as with other applicable laws and requirements. 16 U.S.C. § 1854(a), (b).

11 28. The Magnuson-Stevens Act requires that fishery management plans, fishery  
12 management plan amendments, and any regulations promulgated to implement such fishery  
13 management plans, must be consistent with the “National Standards” for fishery conservation  
14 and management, and certain other requirements. 16 U.S.C. § 1851(a).

15 29. The Magnuson-Stevens Act establishes a common-sense approach to prevent  
16 overfishing, requiring that NMFS assess the condition of each fish population it manages using  
17 the best scientific information available and base management measures such as catch limits on  
18 the current size of the population. In other words, the Act requires NMFS to determine as best it  
19 can how many fish are in the water and ensure that its catch limits leave enough fish in the water  
20 to prevent overfishing and protect the marine ecosystem.

21 30. National Standard One of the Magnuson-Stevens Act requires that  
22 “[c]onservation and management measures shall prevent overfishing while achieving, on a  
23 continuing basis, the optimum yield from each fishery.” 16 U.S.C. § 1851(a)(1).

24 31. National Standard Two of the Magnuson-Stevens Act requires that  
25 “[c]onservation and management measures shall be based upon the best scientific information  
26 available.” 16 U.S.C. § 1851(a)(2). “Conservation and management measures” include “all of  
27 the rules, regulations, conditions, methods, and other measures” to “rebuild, restore, or maintain  
28 ... the marine environment,” including annual catch limits, acceptable biological catch, and

1 objective and measurable criteria for determining when a stock is overfished, such as the  
2 overfishing limit. *Id.* §§ 1802(5); 1853(a)(1), 1853(a)(10), 1853(a)(15); 50 C.F.R. §  
3 600.310(e)(2)(i)(A), (D).

4 32. Because the first step to preventing overfishing and achieving optimum yield is to  
5 understand the status of the fish population, the Magnuson-Stevens Act requires each fishery  
6 management plan to “assess and specify the present and probable future condition of, and the  
7 maximum sustainable yield and optimum yield from, the fishery, and include a summary of the  
8 information utilized in making such specification.” 16 U.S.C. § 1853(a)(3). The status of the  
9 population must inform the catch limits described below.

10 33. In 2006, Congress enacted the Magnuson-Stevens Reauthorization Act, which  
11 among other things established a system of interrelated management measures and reference  
12 points intended to prevent and end overfishing. Pursuant to the Magnuson-Stevens Act, 16  
13 U.S.C. § 1851(b), NMFS has promulgated guidelines that reflect the agency’s interpretation of  
14 the Act’s requirements to prevent overfishing and rely on the best available science. 50 C.F.R. §  
15 600.305(a)(3). These guidelines provide further details on how required measures are  
16 established and work as part of a system to prevent and end overfishing. Of particular relevance  
17 here, this system includes establishing and revising the key measures: overfishing limits,  
18 acceptable biological catches, and annual catch limits.

19 34. To avoid overfishing, NMFS must first establish an “overfishing limit” that  
20 estimates the catch level (expressed in numbers or weight of fish) above which overfishing will  
21 occur. 50 C.F.R. § 600.310(e)(2)(i)(D).

22 35. NMFS must then specify the “acceptable biological catch” for each stock, which  
23 provides an upper limit on annual catch that accounts for scientific uncertainty in estimating the  
24 overfishing limit, as well as any other scientific uncertainty. 50 C.F.R. § 600.310(f)(1)(ii).  
25 Fishery managers “must articulate how [acceptable biological catch] will be set compared to the  
26 [overfishing limit] based on the scientific knowledge about the stock ... and taking into account  
27 scientific uncertainty” and “should consider reducing fishing mortality as stock size declines ...  
28 and as scientific uncertainty increases.” *Id.* § 600.310(f)(2)(ii).

1           36.     The function of acceptable biological catch is to ensure that any uncertainty in  
2 estimating the overfishing limit does not result in overfishing.

3           37.     Each fishery management plan must “establish a mechanism for specifying annual  
4 catch limits in the plan (including a multiyear plan), implementing regulations, or annual  
5 specifications, at a level such that overfishing does not occur in the fishery, including measures  
6 to ensure accountability.” 16 U.S.C. § 1853(a)(15).

7                   **Fishery Management Measures Must Protect the Marine Ecosystem**

8           38.     The Magnuson-Stevens Act and its implementing regulations emphasize the  
9 importance of protecting marine ecosystems and making decisions about fisheries in the context  
10 of the health and long-term sustainability of the marine environment. The Act requires that  
11 fisheries be managed to achieve “optimum yield,” 16 U.S.C. § 1801(b)(4), which is defined as  
12 the amount of fish that “will provide the greatest overall benefit to the Nation, particularly with  
13 respect to food production and recreational opportunities, and taking into account the protection  
14 of marine ecosystems,” and “is prescribed on the basis of the maximum sustainable yield from  
15 the fishery, as reduced by any relevant social, economic, or *ecological* factor.” 16 U.S.C. §  
16 1802(33)(A)–(B) (emphasis added).

17           39.     To determine optimum yield in the context of protecting marine ecosystems,  
18 NMFS must consider, among other things, “maintaining adequate forage for all components of  
19 the ecosystem.” 50 C.F.R. § 600.310(e)(3)(iii)(A)(3). Ecological factors that NMFS is supposed  
20 to consider when determining the appropriate level for optimum yield include the fishery’s  
21 “impacts on ... forage fish stocks, other fisheries, predator-prey or competitive interactions,  
22 marine mammals, threatened or endangered species, and birds.” *Id.* § 600.310(e)(3)(iii)(B)(3).  
23 In addition, the regulatory guidelines advise fishery managers to consider managing forage  
24 stocks to leave a larger proportion of the population to feed marine predators rather than the  
25 smaller proportion they would leave unfished if they managed only to attain maximum  
26 sustainable yield. *Id.*

27           40.     NMFS’s interpretation of Magnuson-Stevens Act requirements states that the  
28

1 annual catch limit should be reduced below the acceptable biological catch level to account for  
2 ecological, economic, and social factors. It also specifically states that annual catch limit should  
3 be reduced to address the “needs of forage fish” such as anchovy. 50 C.F.R. § 600.310(f)(4)(iv).

4 41. The Secretary has the responsibility to carry out any fishery management plan or  
5 plan amendment approved or prepared by the Secretary in accordance with the Magnuson-  
6 Stevens Act. 16 U.S.C. § 1855(d).

## 7 **FACTUAL BACKGROUND**

### 8 **Role of Anchovy in California Current Ecosystem**

9 42. Anchovy are a keystone forage species in the California Current Ecosystem off  
10 the U.S. West Coast. They are preyed upon by a wide variety of marine wildlife, including  
11 commercially and recreationally valuable fish, mammals, and sea birds. Studies of predator diets  
12 show that anchovy are among the most important forage fish throughout the California Current  
13 Ecosystem in terms of the number of predators they support and the importance in predators’  
14 respective diets.

15 43. Anchovy are preferred prey due to their high fat content, small body size,  
16 tendency to school (which makes them easier to catch), and superior nutritional value. Some  
17 marine predators are highly dependent on anchovy abundance for their survival and reproductive  
18 success, and suffer food-related reproductive failures when anchovy are not readily available,  
19 even if other prey are available. For example, northern anchovy availability within foraging  
20 distance of brown pelican breeding colonies is among the most important factors influencing  
21 pelican breeding success. While the brown pelican was listed under the Endangered Species Act,  
22 the anchovy fishery was required to account for brown pelican forage needs in setting catch  
23 limits. When the U.S. Fish and Wildlife Service delisted the brown pelican in 2009, it did so  
24 partly on the assumption the CPS FMP would provide adequate forage for the species. Since  
25 that time, however, brown pelicans experienced unprecedented die-offs and multi-year breeding  
26 failures from 2008 to 2015 due to lack of high-quality forage—particularly, anchovy and Pacific  
27 sardine (also managed under the CPS FMP).

1           44. In addition to supporting many species of sea birds and predatory fish, anchovy  
2 also support many species of marine mammals, including seals, sea lions, dolphins, porpoises,  
3 and whales. A study led by NMFS found that availability of northern anchovy and Pacific  
4 sardine is especially important for breeding California sea lions, and that the lack of adequate  
5 supplies of anchovy and sardine in recent years was the primary factor in mass starvation and  
6 die-offs among California sea lion pups in 2013, 2014, 2015, and 2016. This was the case even  
7 though other prey items, such as rockfish and squid, were locally available because these  
8 alternative prey species lack the energy content sea lion mothers need to successfully feed and  
9 wean their pups.

10           45. A number of threatened and endangered species rely on northern anchovy as a  
11 preferred prey. These species include populations of threatened and endangered Chinook  
12 salmon; sea birds such as the endangered California least tern and threatened marbled murrelet;  
13 and marine mammals such as threatened and endangered populations of humpback whales.

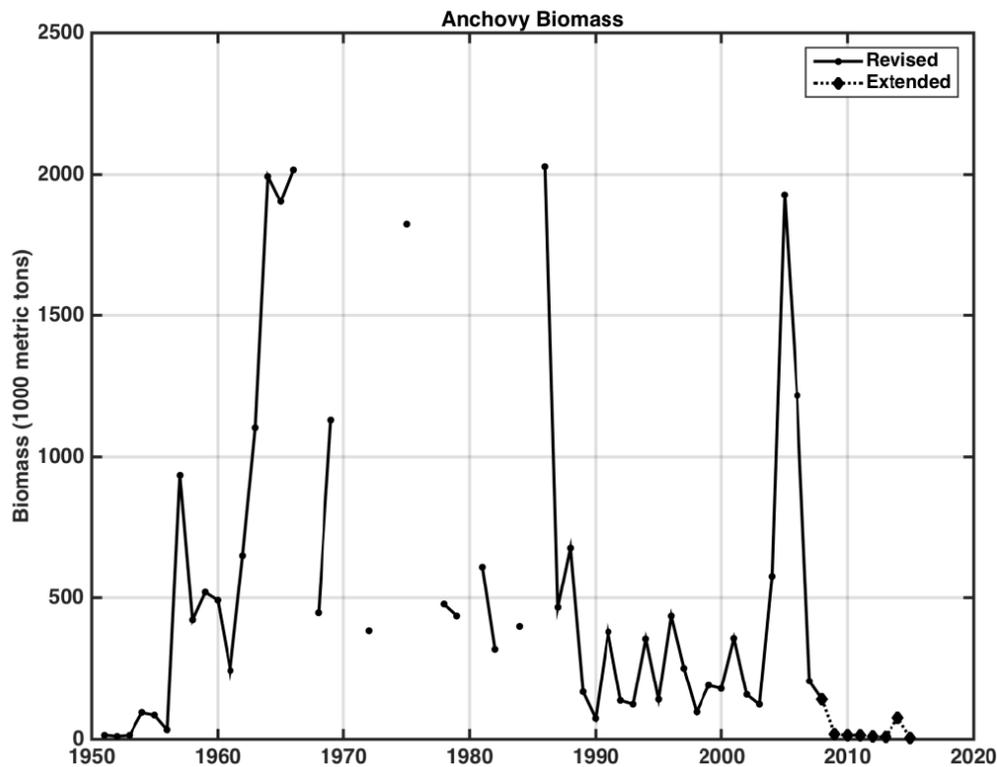
14           46. Because anchovy provide an essential food source for whale, sea lion, sea bird,  
15 and other wildlife populations, anchovy are critical to supporting the tourism associated with  
16 seeking and watching these animals. In Monterey Bay alone, whale watch business owners have  
17 estimated that a single ton of anchovy left in the water to feed a humpback whale can bring in  
18 \$1,000 to \$3,000 in direct whale watching ticket revenue.

19           47. Healthy anchovy populations are also crucial to the productivity and sustainability  
20 of other commercially and recreationally important fish species, including swordfish, salmon,  
21 bluefin tuna, and groundfish species like rockfish, lingcod, and halibut.

### 22           **The Rapidly Fluctuating, “Boom and Bust” Pattern of the Anchovy Population**

23           48. Anchovy populations naturally experience rapid changes in abundance,  
24 particularly in response to changes in ocean conditions. Analyses of anchovy abundances over  
25 the last 30 years show a pattern of periodic, brief spikes to high levels followed by dramatic  
26 drops in abundance, after which the population remains at significantly lower levels for  
27 prolonged periods. These data show that the anchovy population can decline by more than 90  
28

1 percent over a two-year period and did so most recently between 2005 and 2007.



15 **Figure 1: Central Subpopulation of Northern Anchovy biomass in the U.S. and**  
 16 **Mexico from 1951 to 2015. From Thayer *et al.* 2017.<sup>3</sup>**

17 49. Even more so than other species, schooling forage fish like anchovy are highly  
 18 vulnerable to overfishing and collapse. Recent studies of forage species around the world,  
 19 including northern anchovy, found that fishing forage species during a decline can increase the  
 20 rate and magnitude of population collapses, and delay population recovery after a collapse.

21 50. Population fluctuations can also be magnified by long-term changes in ocean  
 22 conditions caused by climate change and ocean acidification. Even relatively moderate changes  
 23 in fishing levels can result in significant changes in forage species abundance and their local  
 24 availability to predators, particularly during times when the species' productivity is already low  
 25 due to environmental conditions.

26 51. Multiple scientific studies have concluded that setting a constant, unchanging

27  
 28 <sup>3</sup> Thayer *et al.*, *California anchovy population remains low, 2012–16*, 58 CalCOFI Rep., 4, Fig. 3 (2017).

1 catch limit for a species with a naturally fluctuating population results in more severe population  
2 collapses and harms the population's ability to recover.

3 52. Because forage species are so ecologically important, scientific studies  
4 recommend that fishery managers set catch limits that leave a large proportion of a forage  
5 species' mean unfished biomass (the level of biomass that would exist without any fishing) in the  
6 ecosystem to provide for the needs of predators, minimize risk of stock collapse, and maintain  
7 ecosystem health. Many studies recommend not allowing fishing on forage fish stocks when  
8 their population drops below one half of their mean unfished levels to protect their role in the  
9 ecosystem.

#### 10 **Need for a Robust Anchovy Population in the Context of Declines in Multiple Forage Fish** 11 **Species**

12 53. The central subpopulation of northern anchovy is managed in concert with other  
13 forage species. The CPS FMP governs management of this anchovy population as well as several  
14 other forage species, including Pacific sardine and Pacific mackerel.

15 54. In 2012, Fisheries Service scientists published a peer-reviewed study warning that  
16 the agency was allowing too much fishing on an already declining Pacific sardine stock. Despite  
17 warnings from its own scientists and others, NMFS continued to authorize the maximum catch  
18 limits permissible under the CPS FMP's framework for Pacific sardine.

19 55. In April 2015, NMFS realized that it had made errors in its prior stock  
20 assessments that had led to overestimates of the sardine population. The corrected assessment  
21 revealed that the Pacific sardine stock was well below the minimum level to sustain the fishery.  
22 As a result, NMFS closed the Pacific sardine fishery for the remainder of the 2015 season  
23 (April–June 30) and the July 1, 2015–June 30, 2016 fishing year. The Pacific sardine population  
24 has failed to recover since that time. NMFS's most recent stock assessment in March 2020  
25 projected the age 1+ stock biomass to be 28,276 metric tons in July 2020 and confirmed the  
26 population is still overfished.

27 56. Other key forage species, including Pacific mackerel, which are managed under  
28 the CPS FMP, and Pacific herring, have also declined to low numbers in recent years. While

1 many predators are adapted to switch prey sources in response to changes in relative availability,  
2 this simultaneous decline in multiple preferred forage species leaves marine predators with fewer  
3 high-energy prey alternatives and can force them to switch to relatively low nutrition food  
4 sources. The longer-term decline of other prey sources makes it all the more vital that  
5 management measures promote a robust anchovy population and protect the remaining forage  
6 base for predators.

#### 7 **Management of Anchovy under the Coastal Pelagic Species Fishery Management Plan**

8 57. Fishing for anchovy is managed under the CPS FMP. Commercial fishing vessels  
9 targeting northern anchovy operate off the California coast using large nets such as purse seines  
10 that surround schools of fish near the surface.

11 58. The market value of northern anchovy is relatively low. In 2020 and other recent  
12 years, fishermen sold their anchovy catch for only \$100 per ton (5 cents per pound). Anchovy  
13 are generally exported and used for agricultural or aquaculture feed or as bait.

14 59. Prior to 2000, the northern anchovy fishery operated under a much more intensive  
15 management plan. Under the Northern Anchovy FMP, fishery managers conducted annual  
16 assessments of the spawning and total biomass of anchovy and adjusted optimum yield  
17 specifications and catch levels accordingly. Fishery managers noted that the “inherent variability  
18 of anchovy populations suggests that any fixed annual harvest would be too large in some years  
19 and too low in others. Thus, an optimum yield formula, which relates allowable annual harvest  
20 to the current population size, is superior to a fixed [optimum yield].” Northern Anchovy FMP,  
21 Amendment 5 at 5 (1983).

22 60. In 2000, NMFS changed the name of the fishery management plan to “Coastal  
23 Pelagic Species Fishery Management Plan” and removed the system of frequent adjustments to  
24 catch levels and safeguards for maintaining high levels of anchovy biomass in the water that had  
25 existed under the prior management regime.

26 61. In 2006, Congress amended the Magnuson-Stevens Act to require annual catch  
27 limits for all federally managed fish stocks, as well associated measures for preventing  
28

1 overfishing, including the overfishing limit and acceptable biological catch.

2 62. The CPS FMP as amended through Amendment 17 (i.e. the current version of the  
3 FMP in effect at the time of rulemaking) contains formulas for calculating annual catch limits for  
4 the anchovy stock, as well as acceptable biological catch levels, based on the estimated  
5 overfishing limit for the stock. Under these formulas, the acceptable biological catch is set to 25  
6 percent of the overfishing limit; this buffer between the overfishing limit and acceptable  
7 biological catch is supposed to account for scientific uncertainty in the actual level of anchovy  
8 biomass, which fluctuates widely within short periods of time. The annual catch limit is set  
9 equal to acceptable biological catch “or reduced by [optimum yield] considerations.” CPS FMP  
10 at 41.

11 63. The CPS FMP currently categorizes anchovy as a “monitored” stock.<sup>4</sup>  
12 “Monitored” is not a category or management approach recognized by the Magnuson-Stevens  
13 Act or its implementing regulations. The CPS FMP’s “monitored stock” management approach  
14 lacks a number of features that are standard in other fishery management plans and required by  
15 the Magnuson-Stevens Act. Of most relevance here, it does not require NMFS to use the  
16 anchovy abundance data it collects every year to assess the current size or condition of the  
17 population or require the agency or Council to revisit and update catch limits on any regular  
18 basis based on the current size of the population, even if available data show the population has  
19 declined significantly.

20 64. The CPS FMP states that “[m]onitored management ... involves tracking trends  
21 in landings and qualitative comparison to available abundance data, but without periodic stock  
22 assessments, or periodic adjustments to target harvest levels.” CPS FMP at 9. The CPS FMP  
23 therefore monitors the amount of anchovy caught (or landed) to determine whether landings  
24 remain under the annual catch limit itself, and though it provides for a qualitative comparison  
25 between landings and abundance data, it does not provide a mechanism to ensure that the catch  
26

---

27 <sup>4</sup> At its June 2019 meeting, the Council voted to remove the term “monitored” from the CPS  
28 FMP, but explicitly stated that the management approach currently called “monitored” would  
remain unchanged. The Council has not taken further action to implement the term change.

1 limits that are supposed to prevent overfishing are updated or adjusted based on the current size  
2 of the population.

3 65. The CPS FMP also does not require regular assessments of the condition of the  
4 stock, either through stock assessments or annual abundance estimates derived from ongoing  
5 surveys. A stock assessment is a scientific analysis of the status of a fish stock, including its  
6 overall biomass. NMFS has not conducted a stock assessment for northern anchovy since 1995.

7 66. However, the agency does collect anchovy abundance data every year through its  
8 annual acoustic trawl survey and the CalCOFI survey. NMFS's Southwest Fisheries Science  
9 Center stated in a recent report that its experts "strongly feel that the most efficient scientific  
10 assessment for regularly advising management regarding the status (abundance) of any member  
11 of the [Coastal Pelagic Species] assemblage is the [acoustic trawl] survey-based approach."  
12 These experts also noted that a 2018 report "concluded that [acoustic trawl] data represented the  
13 best scientific information available on an annual basis for assessing abundance of all members  
14 of the [Coastal Pelagic Species] assemblage (except Pacific herring)." P. R. Crone *et al.*, *Pacific*  
15 *mackerel (Scomber japonicas) stock assessment for U.S. management in the 2019-20 and 2020-*  
16 *21 fishing years*, Pacific Fishery Management Council (2019), at 2. NMFS has produced annual  
17 anchovy abundance estimates based on this data since at least 2015.

18 67. The CPS FMP states that annual catch limits for "monitored" stocks are  
19 "specified for multiple years until such time as the species becomes actively managed or new  
20 scientific information becomes available." CPS FMP at 40. The CPS FMP does not specify any  
21 time frame or schedule for revisiting catch limits relative to available abundance information;  
22 nor does it require the Council or Fisheries Service to revise catch limits when available  
23 scientific information shows that a species' abundance has dropped significantly.

24 **Previous Anchovy Population Decline and Court's Holding that the 2016 Catch Rule Was**  
25 **Not Based on Best Available Science and Failed to Prevent Overfishing**

26 68. The anchovy population collapsed between 2009 and 2015. At the time,  
27 numerous sources of scientific information showed that anchovy abundance had declined steeply  
28 since 2009 to historically low levels. These included peer-reviewed, published studies on

1 anchovy abundance, abundance estimates derived by NMFS itself, survey data on anchovy eggs,  
2 larvae, and adults, and evidence of extreme food shortages among marine predators known to  
3 depend on anchovy and sardine.

4 69. The effects of the decline in anchovy abundance shown in scientific analyses and  
5 surveys were particularly apparent in marine predators. For example, in the U.S. and Mexico  
6 during 2009–2015, brown pelicans experienced die-offs, anomalous feeding behavior such as the  
7 predation of common murre chicks, and poor reproductive success. The U.S. Fish and Wildlife  
8 Service, the federal agency responsible for managing brown pelicans, repeatedly expressed grave  
9 concern regarding the pelican’s lack of food, unprecedented reproductive failures, and the need  
10 for fishery managers to lower fishing pressure on anchovy.

11 70. California sea lions experienced large-scale die-offs in 2013, 2014, 2015, and  
12 2016 linked to low anchovy and sardine abundance. A study led by NMFS scientists concluded  
13 that the increased mortality and starvation of California sea lion pups born at the Channel Islands  
14 was directly related to the decline of high-quality forage—sardine and anchovy—available to  
15 breeding female California sea lions.

16 71. In the fall of 2015, common murre chicks experienced an unprecedented die-off.  
17 Northern anchovy and Pacific sardine normally comprise about half of the common murre  
18 chicks’ diet. Researchers believe that limited prey abundance or availability was a primary cause  
19 of the die-off.

20 72. A 2016 study pointed out that low anchovy numbers could be harming West  
21 Coast salmon fisheries in two ways: by limiting the number of anchovy directly available to  
22 salmon as food and by increasing predation pressure on salmon smolts by common murre trying  
23 to find alternative food.

24 73. By NMFS’s own estimate, the anchovy population weighed in at 31,427 metric  
25 tons in the summer of 2015. Estimates produced by independent experts indicated the  
26 population was even lower, averaging around 24,300 metric tons between 2012 and 2015.

27 74. Notwithstanding this evidence, NMFS promulgated the 2016 Catch Rule on  
28 October 26, 2016, specifying an annual catch limit and acceptable biological catch of 25,000

1 metric tons and overfishing limit of 100,000 metric tons. Fisheries Off West Coast States;  
2 Coastal Pelagic Species Fisheries; Multi-Year Specifications for Monitored and Prohibited  
3 Harvest Species Stock Categories, 81 Fed. Reg. 74309 (Oct. 26, 2016) (“2016 Catch Rule”).  
4 Rather than apply the most recent evidence about the size of the anchovy population, the agency  
5 in the 2016 Catch Rule adopted these values based on estimates derived from anchovy  
6 abundance data from 1964–1990, when anchovy biomass ranged as high as 1,611,800 metric  
7 tons and never fell below 299,401 metric tons.

8         75. On November 23, 2016, Oceana challenged the 2016 Catch Rule for NMFS’s  
9 failure to use the best scientific and commercial data available about the size of the anchovy  
10 population in establishing the overfishing limit, acceptable biological catch, and annual catch  
11 limit; its failure to demonstrate that its 25,000 metric ton catch limit would prevent overfishing  
12 when the anchovy population ranged from just above to just below that limit; and its failure to  
13 account for the needs of predators and the marine ecosystem when setting an annual catch limit  
14 that could allow the fishery to catch most (and potentially all) of the northern anchovy remaining  
15 in the central subpopulation.

16         76. The Court granted Oceana’s motion for summary judgment on January 18, 2018.  
17 *Oceana v. Ross I*, 2018 WL 1989575, at \*16. The Court first rejected the agency’s argument that  
18 the Court lacked jurisdiction to consider Oceana’s challenges to the overfishing limit and the  
19 acceptable biological catch because “Plaintiff’s timely challenge to the Catch Rule also allows  
20 Plaintiff to challenge Amendment 13, and in particular the OFL and ABC values that  
21 Amendment 13 established.” *Id.* at \*8. The Court reviewed the record and held that that all  
22 three of values set in the 2016 Catch Rule were arbitrary and capricious and “not based on the  
23 best scientific information available” because NMFS arbitrarily “ignore[d] the most important  
24 aspect of the problem—the size of the anchovy population.” *Id.* at \*15–16; \*11–14. The Court  
25 also agreed that all three levels were “too high to prevent overfishing” and determined that the  
26 agency failed to consider whether these levels “still prevented overfishing in light of their direct  
27 reliance on a MSY estimate from a 1991 study that evidence in the administrative record  
28 indicated was out of date.” *Id.* at \*15–16.



1 existing framework.” Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Multi-  
2 Year Harvest Specifications for the Central Subpopulation of Northern Anchovy, 84 Fed. Reg.  
3 25196, 25197 (May 31, 2019) (“2019 Catch Rule”).

4 81. Despite the best available science and the Court’s holding in *Oceana v. Ross I* that  
5 catch limits must be related to size of the anchovy population in order to meet the Magnuson-  
6 Stevens Act requirement to prevent overfishing, NMFS maintained that it could set unchanging  
7 catch limits that will remain in place indefinitely and simply monitor landings of anchovy against  
8 those unchanged limits—rather than monitoring actual abundance of anchovy and annually  
9 adjusting the annual catch limit based on the size of the population.

10 82. NMFS derived its 2019 catch limit values by averaging abundance estimates from  
11 three years, 2016–2019, which reflected the highest abundance levels the population had seen in  
12 the past decade. These estimates included two that it derived from its acoustic trawl survey for  
13 2016 (151,558 metric tons) and 2018 (723,826 metric tons), and one estimate derived from its  
14 “daily egg production method” survey for 2017 (308,173 metric tons). The agency calculated  
15 the overfishing limit of 94,290 by averaging these three abundance estimates to arrive at a value  
16 of 394,519 metric tons and multiplying that average by an estimate of the rate of fishing  
17 mortality for anchovy at maximum sustainable yield (0.239).

18 83. The best scientific information available at the time showed that the only years  
19 since 2006 that anchovy population weighed in above 394,519 metric tons were 2017 and 2018.  
20 In contrast, during 2009 through 2015, the population measured less than 100,000 metric tons.

21 84. As it did in the 2016 Catch Rule, NMFS calculated the acceptable biological catch  
22 of 23,573 metric tons by reducing the overfishing limit by 75 percent, as specified in the CPS  
23 FMP.

24 85. In comments on the 2019 Catch Rule, *Oceana* and others emphasized that  
25 establishing constant, unchanging catch limits for anchovy and leaving them in place indefinitely  
26 was contrary to well-established science about anchovy populations, which has long shown that  
27 the species fluctuates significantly and rapidly, and that setting unchanging catch limits that  
28 remain in place indefinitely for fluctuating populations makes them more prone to collapse.

1 Oceana and others also emphasized that setting unchanging catch limits based on a relatively  
2 robust population level will fail to prevent overfishing when the population drops to significantly  
3 lower levels.

4 86. NMFS rejected recommendations to reduce the annual catch limit below the  
5 acceptable biological catch in order to achieve optimum yield by accounting for the anchovy's  
6 importance as a vital food source for numerous marine predators. Instead, it set the annual catch  
7 limit equal to the acceptable biological catch (23,573 metric tons).

8 87. NMFS asserted that it did not need to reduce the annual catch limit to account for  
9 the needs of marine predators, citing information on sardine predators from the 1950s through  
10 the 1980s, but omitting any mention of documented predator die-offs and breeding failures  
11 linked to low anchovy and sardine abundance in recent years.

12 88. Even apart from problems associated with setting unchanging, long-term catch  
13 limits based on average biomass assumptions, the average biomass that NMFS calculated relied  
14 on a narrow subset of abundance data that does not represent the "boom and bust" cycle of the  
15 anchovy population. NMFS based the 2019 Catch Rule of three years of data reflecting an  
16 increasing anchovy population while omitting multiple anchovy abundance estimates from years  
17 prior to 2016 during which the anchovy population was significantly lower. Notably, the agency  
18 omitted its own abundance estimate for 2015 derived from the acoustic trawl survey, which  
19 estimated the population at 31,427 metric tons.

20 89. NMFS expressly implemented the CPS FMP's "monitored" stock approach to  
21 management through the 2019 Catch Rule, which directs the establishment of constant catch  
22 limits based on average biomass without regard to current biomass, and that remain in place  
23 indefinitely, and its approach of monitoring landings of anchovy against the catch limits instead  
24 of revisiting and revising the annual catch limit, acceptable biological catch, and overfishing  
25 limits based on the actual abundance of anchovy in a given year.

26 **The Court Found the 2019 Catch Rule and the Management Framework It Implemented**  
27 **Are Not Based on Best Available Science and Failed to Prevent Overfishing**

28 90. On June 28, 2019, Oceana challenged the 2019 Catch Rule and the CPS FMP

1 provisions it implemented on the following bases: (a) NMFS failed to base the 2019 Catch Rule  
2 on the best available science on anchovy abundance levels and population dynamics, and failed  
3 to ensure the rule would prevent overfishing when the anchovy population declined to low  
4 levels; (b) NMFS failed to account for the needs of marine predators in the 2019 Catch Rule; (c)  
5 the CPS FMP provisions NMFS implemented in the 2019 Catch Rule are not based on the best  
6 available science about anchovy population dynamics, fail to prevent overfishing, and fail to  
7 account for the needs of marine predators; and (d) NMFS's selective use of data from only three  
8 years of relatively high anchovy abundance to set catch limits for an indefinite period was  
9 arbitrary and capricious and not based on the best available science.

10 91. On September 2, 2020, the Court issued its Order Regarding Motions for  
11 Summary Judgment, granting in part and denying in part Oceana's motion. *Oceana v. Ross II*,  
12 2020 WL 5232566. With respect to Oceana's challenge to the CPS FMP, the Court found that  
13 Oceana had waged both direct and as-applied challenges to the CPS FMP. The Court held that a  
14 direct challenge to the CPS FMP provisions must be based on evidence before the agency at the  
15 time it approved those provisions, and denied Oceana's challenge on the basis that it relied on  
16 evidence that post-dated Amendment 13. *Id.* at \*10–11. However, the Court found that Oceana  
17 properly challenged Amendment 13 as it was applied to the 2019 Catch Rule based on the record  
18 for that rule, and proceeded to examine the merits of the rule. *Id.* at \*11.

19 92. After carefully examining the parties' arguments and underlying record, the Court  
20 found that NMFS had ignored the best available science regarding anchovy abundance and  
21 population fluctuations, rendering the 2019 Catch Rule arbitrary and capricious: “[T]he fact that  
22 the NMFS calculated unchanging OFL, ABC, and ACL values for an indefinite period of time  
23 based on data from 2016 to 2018—years in which the anchovy population was drastically  
24 increasing—demonstrates that the NMFS did not consider the best scientific information  
25 available from MacCall (2016) and Thayer *et al.* (2017)” and thus the OFL, ABC, and ACL were  
26 arbitrary and capricious because they were not based on the best available science. *Oceana v.*  
27 *Ross II*, 2020 WL 5232566 at \*15.

28 93. The Court found that none of the various arguments NMFS had advanced in its

1 attempt to discredit these studies held water. Instead, the Court held: “MacCall (2016) and  
2 Thayer *et al.* (2017) constitute the best scientific information available regarding recent anchovy  
3 abundance estimates and anchovy population fluctuations.” *Oceana v. Ross II*, 2020 WL  
4 5232566 at \*14.

5 94. The Court once again found that NMFS’s reliance on a 75 percent buffer between  
6 the OFL and ACL to prevent overfishing pursuant to the CPS FMP is not based on the best  
7 available science and does not satisfy the Magnuson-Stevens Act’s requirement to prevent  
8 overfishing. “The 2019 Catch Rule’s framework fails to consider its effects on the anchovy  
9 population when the best scientific information available establishes that the anchovy population  
10 can drop by as much as 77% in a single year, 90% over two years, or even 99% over four years,”  
11 rendering the OFL, ABC, and ACL set in the 2019 Catch Rule arbitrary and capricious. *Oceana*  
12 *v. Ross II*, 2020 WL 5232566 at \*15.

13 95. The Court further found that NMFS’s decision to set catch limits for indefinite  
14 period of time pursuant to the CPS FMP is not based on the best available science and fails to  
15 prevent overfishing. “[I]t was arbitrary and capricious for the NMFS to set static OFL, ABC,  
16 and ACL values for an indefinite period of time because the evidence did not demonstrate that  
17 those limits would prevent overfishing. Instead, evidence demonstrated that anchovy abundance  
18 is known to drop below the limits set in the 2019 Catch Rule and that the 75% buffer between  
19 the OFL and the ABC and ACL does not account for drastic anchovy population variability.”  
20 *Oceana v. Ross II*, 2020 WL 5232566 at \*19.

21 96. Finally, the Court struck down NMFS’s cherry-picking of data, explaining that  
22 NMFS’s decision to “craft[] the OFL, ABC, and ACL values in the 2019 Catch Rule by  
23 averaging anchovy biomass from only three years with relatively high anchovy abundance (2016  
24 to 2018) and ignoring data from years with low anchovy abundance” was arbitrary and  
25 capricious, ignored best available science, and failed to prevent overfishing. *Oceana v. Ross II*,  
26 2020 WL 5232566 at \*15–16.

27 97. Having clearly spelled out the errors in the 2019 Catch Rule and management  
28 approach it implemented, the Court vacated the 2019 Catch Rule and remanded it to NMFS “for

1 further action consistent with this order.” *Oceana v. Ross II*, 2020 WL 5232566 at \*19. The  
2 Court specifically ordered NMFS to promulgate a new rule in compliance with the Magnuson-  
3 Stevens Act and APA within 120 days of its Order (by December 31, 2020). *Id.* at \*20.

4 98. Even after the Court issued its Summary Judgment Order, NMFS continued to  
5 resist complying with the Court’s directions. In its Order, the Court directed the parties to  
6 provide a joint statement setting forth a proposed schedule for promulgating the new rule  
7 compliant with 16 U.S.C. § 1855(d) and the APA. *Oceana v. Ross II*, 2020 WL 5232566 at \*20.  
8 Instead of setting forth a proposal for meeting the Court’s December 31, 2020 deadline, NMFS  
9 used this statement and subsequent filings to unilaterally seek to add six more weeks to the  
10 Court’s schedule. *Oceana v. Ross II*, ECF Nos. 79 at 2; 80 at 3. The Court did not take action  
11 on these proposals, and thus did not alter its 120-day deadline for promulgating the new rule.

12 99. NMFS published the draft 2020 Catch Rule on November 18, 2020. 85 Fed. Reg.  
13 73446. Despite representing in an earlier case management statement that it was willing to  
14 provide a 21-day comment period, *Oceana v. Ross II*, ECF No. 80 at 3, it provided only a 15-day  
15 comment period on the proposed rule, part of which fell over the Thanksgiving holiday. As a  
16 result, the agency received only two public comments on the proposed rule—one from Oceana  
17 and one from the California Wetfish Producers Association.

18 100. On December 16, 2020, three and half months after the Court ordered it to  
19 promulgate a new rule by December 31, 2020, NMFS finally asked the Court for permission to  
20 delay its compliance and filed a Motion for Administrative Relief to extend its deadline to  
21 January 15, 2021. *Oceana v. Ross II*, ECF No. 84. On December 21, 2020, Oceana opposed the  
22 motion, noting that the agency had created its own problem and stifled public participation by  
23 ignoring the Court’s Orders and slow-walking the issuance of the rule. *Oceana v. Ross II*, ECF  
24 No. 85. The Court denied NMFS’s motion on December 28, 2020. *Oceana v. Ross II*, ECF No.  
25 86.

26 101. NMFS published the final 2020 Catch Rule on December 31, 2020.  
27  
28

1 **NMFS’s 2020 Catch Rule Adopts Nearly Identical Catch Limits and Relies on the Same**  
2 **Rationale and Same Management Framework the Court Held Unlawful**

3 102. NMFS’s 2020 Catch Rule is remarkably similar in substance and approach to the  
4 2019 rule this Court just vacated. NMFS derived its 2020 catch limit values by averaging  
5 abundance estimates from the most recent four years, 2016–2019, which reflect the highest  
6 abundance levels the population has seen in nearly 15 years. These estimates include three that it  
7 derived from its acoustic trawl survey for 2016 (151,558 metric tons), 2018 (723,826 metric  
8 tons), and 2019 (810,634 metric tons) and one estimate derived from its “daily egg production  
9 method” survey for 2017 (308,173 metric tons). The agency calculated the overfishing limit of  
10 119,153 metric tons by averaging these four abundance estimates to arrive at a value of 498,548  
11 metric tons and multiplying that average by an estimate of the rate of fishing mortality for  
12 anchovy at maximum sustainable yield (0.239).

13 103. The best scientific information available shows that the only years since 2006 that  
14 anchovy population weighed in above 498,548 metric tons were 2017–2019. In contrast, during  
15 2009 through 2015, the population measured less than 100,000 metric tons.

16 104. As it did in the 2016 Catch Rule and 2019 Catch Rule, NMFS calculated the  
17 acceptable biological catch of 29,788 metric tons by reducing the overfishing limit by 75 percent,  
18 as specified in the CPS FMP. NMFS set the annual catch limit at 25,000 metric tons because this  
19 was the maximum ACL that previous environmental analyses had considered. NMFS also  
20 erroneously asserted that the Council had determined that 25,000 metric tons constitutes  
21 optimum yield for anchovy. The record shows the Council selected this value in the belief that it  
22 would prevent overfishing and did not analyze whether it accounted for predator needs, the needs  
23 of fisheries targeting fish that feed on anchovy, or any optimum yield factor.

24 105. In the proposed rule, NMFS stated that it was considering limiting the effective  
25 period of the new rule to four years. In the final rule, however, NMFS declined to put any limit  
26 on the effective period for the 2020 Catch Rule, meaning that—like the 2016 and 2019 Catch  
27 Rules the Court vacated—the catch limits set in the 2020 rule will remain in place indefinitely.  
28 While the agency noted its “intent” to ask the Council to “schedule an agenda item in the Spring

1 of 2022 to develop recommendations to NMFS,” 85 Fed. Reg. at 86861, it tellingly stopped far  
2 short of any commitment to doing so and expressly rejected including a fixed expiration date in  
3 the rule, *id.* Moreover, NMFS asserts that it “cannot require the Council to take action over the  
4 next two years” and that any new rule that might eventually result from a vague process initiated  
5 two years from now may not be any different than the current rule. *Id.*

6 106. Despite the Court’s express finding that “MacCall (2016) and Thayer *et al.* (2017)  
7 constitute the best scientific information available regarding recent anchovy abundance estimates  
8 and anchovy population fluctuations,” *Oceana v. Ross II*, 2020 WL 5232566 at \*14, NMFS  
9 again refused to use data from these studies in the 2020 Catch Rule. The agency again failed to  
10 offer any competing estimates of anchovy abundance for 2009–2015. Instead, NMFS repeated  
11 the same arguments the Court already rejected with respect to the reliability of MacCall (2016)  
12 and Thayer *et al.* (2017) and invented one additional reason to continue to rely on 25-year old  
13 anchovy abundance data instead of current, peer-reviewed estimates.

14 107. Namely, NMFS “compared overlapping estimates of biomass from the 1961–  
15 1994 time series of spawning stock biomass produced in NMFS’s 1995 central anchovy stock  
16 assessment and recent NMFS ATM and DEPM estimates with estimates in the 1951–2017  
17 Thayer publication’s time series.” 85 Fed. Reg. at 86859–60. NMFS noted that the Thayer  
18 estimates differed in value from NMFS’s estimates for the same years and showed greater  
19 fluctuations between low and high abundance over the years. The agency asserted,

20 The significant differences in these comparable estimates raises additional valid  
21 concerns about the reliability of the estimates found in the MacCall and Thayer  
22 publications, and further supports NMFS’ rationale for concluding that, for those  
23 years for which data only exist from the MacCall and Thayer publications, that data  
cannot be considered the best scientific information available for making  
determinations about catch limits for anchovy.”

24 85 Fed. Reg. at 86860.

25 108. NMFS’s new gloss on its old data contradicts statements from its own scientists.  
26 NMFS scientists found that the stock assessment values NMFS seeks to rely on to discredit the  
27 MacCall and Thayer estimates suffer from a fundamental error, not those of MacCall (2016) or  
28 Thayer *et al.* (2017). In a 2016 report, the Southwest Fisheries Science Center explained:

1 The MacCall et al. (2016) study also identified a potential bias in previous egg-  
2 production estimates of anchovy abundance that used CalCOFI data. The bias is  
3 caused by [the] fact that CalCOFI stations have been weighted equally and treated  
4 as if they were obtained from a simple random sample in previous egg-production  
5 estimates. Stations in the CalCOFI survey are fixed and spaced more closely in  
6 the near shore portion of the sampling grid than they are offshore. This creates a  
7 “hyperstability” bias because anchovy tend to occur at greater densities near  
8 shore. *Previous studies may have overestimated anchovy abundance when the  
9 population size was small and underestimated the population size when it was  
10 large.*

11 NMFS Southwest Fisheries Science Center, *Egg and Larval Production of the Central  
12 Subpopulation of Northern Anchovy in the Southern California Bight* (Oct. 24, 2016), *Oceana v.  
13 Ross II*, AR 412:0019264 (emphasis added).

14 109. Therefore, according to NMFS’s own scientists, the reason that the MacCall  
15 (2016) and Thayer *et al.* (2017) estimates show greater variation in anchovy abundance is that  
16 they corrected the error in the previous estimates that masked the full extent of the fluctuations.

17 110. Those previous estimates include NMFS’s 1995 stock assessment, which was  
18 based on the same biased analysis of the CalCOFI survey data that NMFS’s scientists  
19 highlighted and credited MacCall and Thayer with correcting. NMFS’s statement that its “stock  
20 assessment *had been* subject to a formal scientific review and determined to be the best scientific  
21 information available on the biomass of central anchovy” in 1995, 85 Fed. Reg. at 86859–60  
22 (emphasis added), does not mean it constitutes the best scientific information available in 2020.

23 111. Oceana explained these errors in comments on the proposed rule. NMFS did not  
24 address them.

25 112. With respect to both the 75 percent buffer and indefinite effective period for the  
26 catch limits, NMFS simply relied on the CPS FMP’s management framework and repeated the  
27 same rationales the Court rejected in its Orders invalidating the 2016 Catch Rule and 2019 Catch  
28 Rule. Instead of following the Court’s Order, NMFS chose to rely on the CPS FMP management  
framework the Court held was unlawful:

To address the Court’s concern, NMFS examined ways to use recent abundance  
estimates in the 2019 Rule .... However, NMFS also determined that a new OFL  
and ABC that significantly deviated from the management approach set in the

1 CPS FMP for stocks in the monitored category would not be in accordance with  
2 the CPS.

3 85 Fed. Reg. at 86857.

4 113. Having again rejected the best available science on anchovy abundance and  
5 population fluctuations, NMFS batted aside the Court’s holding that setting the ABC and ACL  
6 75 percent below the OFL is sufficient to prevent overfishing by repeating its incorrect assertion  
7 that overfishing need only be measured on a long-term basis. 85 Fed. Reg. at 86863.

8 114. NMFS similarly contravened the Court’s holding that setting catch limits for an  
9 indefinite period of time does not reflect best available science and fails to prevent overfishing  
10 and instead asserted that the “risk policy incorporated” in the FMP somehow “more than  
11 accounts” for the years in which the stock declines. 85 Fed. Reg. at 86863.

12 115. While NMFS set the ACL below the ABC, it expressly disavowed any need to do  
13 so in order to account for the needs of marine predators and did not explain how the ACL would  
14 account for predator needs when the anchovy population drops to low levels. Instead, the agency  
15 falsely stated that the 75 percent buffer between the overfishing limit and acceptable biological  
16 catch encompasses “long-term” ecological needs, ignored evidence of mass die-offs and  
17 breeding failures among anchovy predators during 2009–2015, and repeated its misleading claim  
18 that there is “no evidence of direct competition between the fishery and anchovy predators.” 85  
19 Fed. Reg. at 86863.

20 **FIRST CLAIM FOR RELIEF**

21 **Violation of the Magnuson-Stevens Act and the APA—2020 Catch Rule Fails to Base**  
22 **Annual Catch Limit, Acceptable Biological Catch, and Overfishing Limit on the Best**  
23 **Available Science and Fails to Prevent Overfishing**  
24 **(16 U.S.C. § 1851(a)(1)–(2), 1853(a)(3))**

25 116. Plaintiff re-alleges, as if fully set forth herein, each and every allegation contained  
26 in the preceding paragraphs.

27 117. The Magnuson-Stevens Act requires NMFS to base the 2020 Catch Rule “upon  
28 the best scientific information available.” 16 U.S.C. § 1851(a)(2).

118. The Magnuson-Stevens Act requires that “[c]onservation and management

1 measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield  
2 from each fishery.” 16 U.S.C. § 1851(a)(1).

3 119. The Magnuson-Stevens Act requires that the CPS FMP “establish a mechanism  
4 for specifying annual catch limits ..., implementing regulations, or annual specifications, at a  
5 level such that overfishing does not occur in the fishery, including measures to ensure  
6 accountability.” 16 U.S.C § 1853(a)(15).

7 120. NMFS failed to base the 2020 Catch Rule on the best available science regarding  
8 anchovy population dynamics, which shows that the anchovy population fluctuates significantly  
9 year to year and can drop by more than 90 percent over just two years, as it did most recently  
10 between 2005 and 2007. Instead, the agency promulgated indefinite catch limits based on an  
11 average biomass estimate of 498,548 metric tons calculated from only four most recent years of  
12 data showing high abundance and failed to establish any mechanism for reassessing and  
13 adjusting those limits when the anchovy population falls significantly below that level, as it did  
14 for 10 of the last 15 years.

15 121. NMFS failed to demonstrate how setting an unchanging annual catch limit for an  
16 indefinite period of time will prevent overfishing when the anchovy population falls significantly  
17 below the level the agency used as the basis to calculate the overfishing limit, acceptable  
18 biological catch, and annual catch limit.

19 122. NMFS also failed to demonstrate how basing its management on unchanging  
20 overfishing limit and acceptable biological catch values that do not reflect the fact that the  
21 anchovy population can and does drop below its assumed average abundance—and even below  
22 its overfishing limit—will prevent overfishing.

23 123. NMFS’s decision to establish an unchanging overfishing limit, acceptable  
24 biological catch, and annual catch limit for an indefinite period of time violates both the  
25 Magnuson-Stevens Act requirement to base its regulation “upon the best scientific information  
26 available,” 16 U.S.C. § 1851(a)(2), and the fundamental APA requirement that NMFS consider  
27 all relevant factors and draw a rational connection between the facts in the record and its  
28 decision.



1 optimum yield factors when scientific information shows that anchovy numbers are low or that  
2 anchovy predators are experiencing food shortages.

3 130. As a result of NMFS's decision to establish an unchanging annual catch limit that  
4 does not account for ecological or socioeconomic factors, the 2020 Catch Rule establishes an  
5 annual catch limit that could leave few anchovy in the ocean to feed marine predators when the  
6 anchovy population declines to low levels.

7 131. NMFS fails to explain how setting an unchanging annual catch limit accounts for  
8 the needs of marine predators when it could allow for much of the anchovy population to be  
9 caught when the population drops to low levels. In doing so, it violates the Magnuson-Stevens  
10 Act requirements that all fishery conservation and management measures shall "achiev[e], on a  
11 continuing basis, the optimum yield from each fishery....," 16 U.S.C. § 1851(a)(1), "taking into  
12 account the protection of marine ecosystems," *id.* § 1802(33)(A), and the fundamental APA  
13 requirement that NMFS consider all relevant factors and draw a rational connection between the  
14 facts in the record and its decision.

15 132. NMFS's 2020 Catch Rule is arbitrary and capricious and otherwise not in  
16 accordance with the Magnuson-Stevens Act and its implementing regulations, and is reviewable  
17 under the APA, 5 U.S.C. §§ 701–706.

18 133. NMFS's actions and failures to act are arbitrary and capricious, violate the  
19 Magnuson-Stevens Act and the APA, and are causing irreparable injury to the Plaintiff for which  
20 it has no adequate remedy at law.

### 21 **THIRD CLAIM FOR RELIEF**

#### 22 **Violation of the Magnuson-Stevens Act and the APA—Coastal Pelagic Species Fishery** 23 **Management Plan that 2020 Catch Rule Implements Is Not Based on Best Available** 24 **Science, Fails to Prevent Overfishing, and Fails to Achieve Optimum Yield** **(16 U.S.C. §§ 1851(a)(1), 1853(a)(3))**

25 134. Plaintiff re-alleges, as if fully set forth herein, each and every allegation contained  
26 in the preceding paragraphs.

27 135. National Standard One of the Magnuson-Stevens Act requires that  
28 "[c]onservation and management measures shall prevent overfishing while achieving, on a

1 continuing basis, the optimum yield from each fishery.” 16 U.S.C. § 1851(a)(1).

2 136. The Magnuson-Stevens Act requires that the CPS FMP “establish a mechanism  
3 for specifying annual catch limits ..., implementing regulations, or annual specifications, at a  
4 level such that overfishing does not occur in the fishery, including measures to ensure  
5 accountability.” 16 U.S.C § 1853(a)(15).

6 137. The Magnuson-Stevens Act requires NMFS to base all conservation and  
7 management measures, including fishery management plan provisions, “upon the best scientific  
8 information available.” 16 U.S.C. § 1851(a)(2).

9 138. By this action, Oceana challenges the 2020 Catch Rule and the CPS FMP  
10 provisions and regulations it implements. *See* 50 C.F.R. § 660.511(k)(1); 50 C.F.R. §§ 660.502,  
11 660.508, 660.517.

12 139. The 2020 Catch Rule implements provisions of the CPS FMP that apply to  
13 several fish populations currently designated as “monitored stocks.” The CPS FMP states that,  
14 under this management approach, annual catch limits are “specified for multiple years until such  
15 time as the species becomes actively managed or new scientific information becomes available.”  
16 CPS FMP at 40. The CPS FMP does not specify any time frame or schedule for revisiting catch  
17 limits relative to available abundance information; nor does it require the Council or NMFS to  
18 revise catch limits when available scientific information shows that a species’ abundance has  
19 dropped significantly, such that the catch limits no longer bear a reasonable relationship to the  
20 actual size of the population and as a result may not prevent overfishing.

21 140. Instead, the CPS FMP only requires the agency to track landings of anchovy  
22 against the annual catch limit and make some “qualitative comparison” between landings and  
23 abundance data. Tracking landings provides a means to monitor the fishery’s compliance with  
24 the annual catch limit but does nothing to ensure that the annual catch limit prevents overfishing.  
25 Nor does the CPS FMP provide a mechanism to ensure that the catch limits that are supposed to  
26 prevent overfishing are updated or adjusted based on current abundance data.

27 141. The best science available at the time NMFS adopted Amendment 13 and more  
28 recent evidence demonstrate that anchovy experience significant, rapid population fluctuations

1 and setting unchanging catch limits for these species greatly increases the risk of overfishing in  
2 low abundance years, as well as the risk that fishing will suppress population growth and  
3 recovery and deplete food sources for marine predators.

4 142. Accordingly, the CPS FMP's management framework, applied in the 2020 Catch  
5 Rule, of an unchanging overfishing limit, acceptable biological catch, and annual catch limit that  
6 will remain in place indefinitely violates both the Magnuson-Stevens Act requirement that  
7 NMFS base its regulation "upon the best scientific information available," 16 U.S.C. §  
8 1851(a)(2), and the fundamental APA requirement that NMFS consider all relevant factors and  
9 draw a rational connection between the facts in the record and its decision.

10 143. The CPS FMP's management framework, applied in the 2020 Catch Rule, of an  
11 unchanging overfishing limit, acceptable biological catch, and annual catch limit that will remain  
12 in place indefinitely fails to prevent overfishing in years when the anchovy population declines  
13 to low levels and thus violates the Magnuson-Stevens Act requirement that all fishery  
14 conservation and management measures "shall prevent overfishing while achieving, on a  
15 continuing basis, the optimum yield from each fishery ...," 16 U.S.C. § 1851(a)(1), that the plan  
16 establish a mechanism for specifying annual catch limits such that "overfishing does not occur,"  
17 *id.* at § 1853(a)(15), and the fundamental APA requirement that NMFS consider all relevant  
18 factors and draw a rational connection between the facts in the record and its decision.

19 144. The CPS FMP's management framework, applied in the 2020 Catch Rule, of an  
20 unchanging annual catch limit that does not account for the dietary needs of marine predators,  
21 despite the Plan's admission that these species provide a critical food source to the ecosystem,  
22 violates the Magnuson-Stevens Act requirements that all fishery conservation and management  
23 measures shall "achiev[e], on a continuing basis, the optimum yield from each fishery ...," 16  
24 U.S.C. § 1851(a)(1), "taking into account the protection of marine ecosystems," *id.* §  
25 1802(33)(A), and the fundamental APA requirement that NMFS consider all relevant factors and  
26 draw a rational connection between the facts in the record and its decision.

27 145. The Magnuson-Stevens Act requires NMFS to ensure that FMPs and FMP  
28 amendments are consistent with the Act and other applicable law. 16 U.S.C. § 1854(a)(1). The

1 Act also requires NMFS to ensure that proposed regulations are consistent with the relevant FMP  
2 or FMP amendment, as well with the Magnuson-Stevens Act and other applicable law. 16  
3 U.S.C. § 1854(b)(1); *see also* 16 U.S.C. § 1855(d) (giving NMFS general responsibility to carry  
4 out any FMP or FMP amendment approved or prepared by the agency). As described above, the  
5 Court has held that the CPS FMP management framework NMFS applied in the 2016 Catch Rule  
6 and 2019 Catch Rule violates the Magnuson-Stevens Act and APA. However, neither NMFS  
7 nor the Council has amended the FMP to correct that management framework, and NMFS has  
8 prioritized consistency with the unlawful FMP framework over compliance with the law.  
9 Amending the CPS FMP is essential to bring the management framework into compliance with  
10 the law and remove the current conflict between the management approach the CPS FMP  
11 mandates and what the law requires.

12 146. The CPS FMP and regulations being implemented through the 2020 Catch Rule  
13 are arbitrary and capricious and otherwise not in accordance with the Magnuson-Stevens Act and  
14 its implementing regulations, and are reviewable under the APA, 5 U.S.C. §§ 701–706.

15 147. NMFS’s actions and failures to act violate the Magnuson-Stevens Act and the  
16 APA, and are causing irreparable injury to the Plaintiff for which it has no adequate remedy at  
17 law.

#### 18 **FOURTH CLAIM FOR RELIEF**

#### 19 **Violation of the Magnuson-Stevens Act and the APA—Failure to Use Best Available** 20 **Science and Articulate a Rational Basis for the Annual Catch Limit, Acceptable Biological** 21 **Catch, and Overfishing Limit** 22 **(5 U.S.C. § 706)**

23 148. Plaintiff re-alleges, as if fully set forth herein, each and every allegation contained  
24 in the preceding paragraphs.

25 149. In addition to the fundamental problems with basing unchanging catch limits on  
26 an assumed average biomass detailed in the Claims above, the agency’s selective use of only  
27 favorable data from the most recent four years to set long-term catch limits is arbitrary and  
28 capricious and violates the Magnuson-Stevens Act’s requirement to base management measures  
on the best scientific information available.

1           150. The Magnuson-Stevens Act requires NMFS to base the 2020 Catch Rule “upon  
2 the best scientific information available.” 16 U.S.C. § 1851(a)(2).

3           151. The Administrative Procedure Act requires that NMFS rationally explain the basis  
4 for its decision to base the 2020 Catch Rule on only four years of anchovy abundance data while  
5 omitting its own 2015 estimate and available scientific data from studies this Court has  
6 determined to comprise the best available science on anchovy abundance and population  
7 fluctuations.

8           152. NMFS set the values for the overfishing limit, acceptable biological catch, and  
9 annual catch limit in the 2020 Catch Rule based on anchovy abundance estimates from 2016,  
10 2017, 2018, and 2019. It omitted its own abundance estimate from 2015, which showed far  
11 lower abundance. It also omitted peer-reviewed, published abundance estimates from  
12 independent experts that provided abundance data for 2009 through 2015, which this Court  
13 expressly held constitute the best available science on anchovy abundance and population  
14 fluctuations.

15           153. NMFS set unchanging catch limits, based on an inflated biomass average,  
16 intended to be in place for an indefinite period of time and to take effect in low abundance as  
17 well as high abundance years with no relation to the current size of the anchovy population.

18           154. The best available science shows that the anchovy population experiences a  
19 “boom and bust” pattern, increasing to large numbers and rapidly declining to lower numbers.  
20 NMFS based the 2020 Catch Rule on abundance data from only the four most recent years that  
21 reflected a period of increasing and high abundance and excluded data from prior years when  
22 anchovy had experienced dramatically lower abundance. The agency also chose not to use  
23 readily available estimates of maximum sustainable yield that more fully reflected both low and  
24 high anchovy abundance over time. The agency thus established inflated catch limits by relying  
25 only on data that reflected the “boom” part of the anchovy’s “boom and bust” population cycle.

26           155. The agency’s decision to base catch limits intended to be in place for an indefinite  
27 period, regardless of the current size of the anchovy population, only on data reflecting higher  
28 anchovy abundance is arbitrary and capricious and not based on the best available science.

1 156. NMFS's failure to offer a rational, lawful explanation why it chose to use a  
2 narrow subset of abundance data only from the four most recent years when anchovy were more  
3 abundant but chose to exclude data from prior years when anchovy were far less abundant, and  
4 why it chose not to use readily available estimates of maximum sustainable yield, violates the  
5 Magnuson-Stevens Act and APA.

6 157. NMFS's 2020 Catch Rule is arbitrary and capricious and otherwise not in  
7 accordance with the Magnuson-Stevens Act and its implementing regulations, and is reviewable  
8 under the APA, 5 U.S.C. §§ 701–706.

9 158. NMFS's actions and failures to act violate the Magnuson-Stevens Act and the  
10 APA, and are causing irreparable injury to the Plaintiff for which it has no adequate remedy at  
11 law.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff respectfully requests that the Court:

14 A. Declare that Defendants have violated the Magnuson-Stevens Act and the APA as  
15 described above because the 2020 Catch Rule is not based on the best scientific information  
16 available, fails to prevent overfishing and achieve optimum yield, and is arbitrary and capricious  
17 and not in accordance with law;

18 B. Declare that Defendants have violated the Magnuson-Stevens Act and the APA as  
19 described above because the CPS FMP provisions applied in the 2020 Catch Rule are not based  
20 on the best scientific information available, fail to prevent overfishing and achieve optimum  
21 yield, and are arbitrary and capricious and not in accordance with law;

22 C. Vacate the 2020 Catch Rule;

23 D. Vacate the CPS FMP provisions and regulations that the 2020 Catch Rule  
24 implements;

25 E. Remand the 2020 Catch Rule to Defendants for completion of a new rule that  
26 replaces the 2020 Catch Rule and complies with the Magnuson-Stevens Act and the APA within  
27 no more than 120 days from the date of the entry of judgment;

28 F. Remand the CPS FMP to Defendants for completion of a fishery management

1 plan amendment that eliminates the CPS FMP provisions applied in the 2020 Catch Rule and  
2 brings the CPS FMP into full compliance with the Magnuson-Stevens Act and the APA within  
3 no more than one year from the date of the entry of judgment;

4 G. Maintain jurisdiction over this action until Defendants are in compliance with the  
5 Magnuson-Stevens Act, the APA, and every order of this Court;

6 H. Award Plaintiff its costs of litigation, including reasonable attorney and expert  
7 witness fees; and

8 I. Grant Plaintiff such further and additional relief as the Court may deem just and  
9 proper.

10 DATED: January 29, 2021

/s/ Andrea A. Treece

11 Andrea A. Treece (State Bar No. 237639)  
12 Earthjustice  
13 50 California Street, Suite 500  
14 San Francisco, CA 94111  
15 T: 415-217-2000 / F: 415-217-2040  
16 Email: atreعه@earthjustice.org

17 Stephen D. Mashuda (*Pro Hac Vice forthcoming*)  
18 Earthjustice  
19 810 Third Ave., Suite 610  
20 Seattle, WA 98104  
21 T: 206-343-7340 / F: 415-217-2040  
22 Email: smashuda@earthjustice.org

23 *Counsel for Plaintiff*  
24  
25  
26  
27  
28