

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

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

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

v.

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

and

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

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

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

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MOTION FOR LEAVE TO FILE AMICI CURIAE BRIEF

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

I. The Alaska Congressional Delegation’s Interest

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

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

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

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

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

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

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

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

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

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

II. Desirability and Relevance of *Amici Curiae* Brief

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

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

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

III. Conclusion

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

Respectfully submitted,

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Dated: October 6, 2023

CERTIFICATE OF COMPLIANCE

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

Respectfully submitted,

s/ Charlene Koski

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9th Cir. Case Number(s) 23-35322, 23-35323, 23-35324, 23-35354

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MOTION FOR LEAVE TO FILE AMICI CURIAE BRIEF

Signature s/ Charlene Koski **Date** October 6, 2023

(*use "s/[typed name]" to sign electronically-filed documents*)