


No. \_\_\_\_\_

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**In the  
Supreme Court of the United States**



COOK INLET FISHERMAN'S FUND,

*Petitioner,*

v.

ALASKA DEPARTMENT OF FISH & GAME, ET AL.,

*Respondents.*

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**On Petition for a Writ of Certiorari  
to the Alaska Supreme Court**

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**PETITION FOR A WRIT OF CERTIORARI**

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## **QUESTIONS PRESENTED**

1. Does the Alaska-resident-only Personal Use (“PU”) salmon fishery in Cook Inlet, Alaska, violate the Commerce Clause of the U.S. Constitution?

2. Does restricting the commercial fishery in Upper Cook Inlet (“UCI”) to provide salmon for the Alaska-resident-only PU salmon fishery, violate the Magnuson-Stevens Act (“MSA”) and the Commerce Clause?

3. Does managing the Kenai River king salmon (Chinook) and other salmon stocks primarily for sport and guided sport uses violate the MSA and the Commerce Clause?

4. Can Alaska restrict the UCI commercial fishery and interstate commerce because it is restricting resident and non-resident commercial fishermen alike?

5. Does the fact that PU fish cannot be bartered or sold mean the impacts on interstate commerce can be ignored?

6. Can the Kenai River king salmon stock be managed for only part of the stock over 34 inches, ignoring the definition of “fish stock” in state law and the MSA?

## **PARTIES TO THE PROCEEDINGS**

### **Petitioner**

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- Cook Inlet Fisherman's Fund ("CIFF")

### **Respondents**

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- State of Alaska Department of Fish & Game
- Alaska Board of Fisheries
- ADF&G Commissioner Doug Vincent-Lang

## **CORPORATE DISCLOSURE STATEMENT**

The Cook Inlet Fisherman's Fund has no parent corporation and no public company owns 10% or more of its stock.

## LIST OF PROCEEDINGS

Supreme Court of Alaska

No. S-19034

Cook Inlet Fisherman's Fund, *Appellant* v.  
Alaska Department of Fish & Game, Alaska Board  
of Fisheries, and Commissioner Doug Vincent-Lang,  
in an official capacity, *Appellees*

Final Judgment: October 29, 2025

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Superior Court of the State of Alaska,  
Third Judicial District, Kenai

No. 3KN-22-00515CI

Cook Inlet Fisherman's Fund, *Plaintiff* v. Alaska  
Department of Fish & Game, Alaska Board of Fisheries,  
and Commissioner Doug Vincent-Lang, *Defendants*

Final Summary Judgment Order: February 23, 2024

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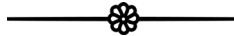
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## PETITION FOR A WRIT OF CERTIORARI

On behalf of its members and the interests of the 1345 UCI commercial salmon set net and drift net fishermen, the support businesses engaged in the UCI commercial salmon fishery, and the local communities that depend on the commerce, CIFF petitions for a writ of certiorari to review and reverse the judgment of the Alaska Supreme Court in *Cook Inlet Fisherman's Fund v. Alaska Department of Fish & Game, Alaska Board of Fisheries, and Commissioner Doug Vincent-Lang*, No. S-19034 (Oct 29, 2025). The rulings by the Alaska court are contrary to rulings by this Court and the Ninth Circuit, as well as being contrary to the U.S. Constitution and the MSA.



## OPINIONS BELOW

The opinion of the Alaska Supreme Court challenged here was issued on October 29, 2025, with court number S-19034. It has not yet been reported in P.3d, but is reproduced at App.1a.



## JURISDICTION

Alaska Supreme Court issued its opinion on October 29, 2025. This Court has jurisdiction under 12 U.S.C. § 1257(a). The basis for this Court’s jurisdiction and the federal questions are articulated in greater detail *infra* at 4-9.



## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Supremacy Clause of the U.S. Constitution, the Commerce Clause, the Due Process Clause, the Alaska Statehood Act, the Magnuson-Stevens Fishery Conservation & Management Act, and the *Hughes v. Oklahoma* decision in 1979, combine to compel the conclusion that Alaska is violating interstate commerce by mismanaging the UCI salmon fisheries to put more salmon in the rivers until someone makes them stop.



## STATEMENT OF THE CASE

### I. The Decision of the Alaska Supreme Court

The Alaska Supreme Court ruled that Alaska may manage UCI salmon to restrict interstate commerce because some commercial fishermen are Alaska residents, which conflicts with this Court’s holding that “facial discrimination [on interstate commerce] invokes the strictest scrutiny of any purported legitimate local

purpose and of the absence of nondiscriminatory alternatives.” *Hughes v. Oklahoma*, 441 U.S. 322, 337 (1979).

The Alaska Supreme Court ruled that the federal preemption doctrine and the Supremacy Clause do not require Alaska fish management officials to meet the national standards for fishery management in the MSA, 16 U.S.C. §§ 1801-91, as applied by the Ninth Circuit Court of Appeals in *United Cook Inlet Drift Ass’n v. Nat’l Marine Fisheries Serv.*, 837 F.3d 1055 (9th Cir. 2016).

The Alaska Supreme Court has approved the Alaska-resident-only PU salmon fishery and permits Alaska to manage UCI salmon to minimize the salmon available to the commercial fishing industry and maximize salmon into the rivers, which results in millions of salmon over escaping their maximum sustainable yield mandate. This is wrong, unconstitutional, and will continue unless this Court grants certiorari and applies the controlling constitutional provisions and this Court’s rulings in the *Hughes v. Oklahoma* case.

Two previous Alaska Supreme Court decisions were issued against CIFF challenges to the discriminatory manner in which Alaska officials manipulate the management of UCI salmon to minimize the interstate commerce take of salmon and maximize the number of salmon going into the rivers for PU, sport, and guided-sport fishing interests.

In 2013 CIFF filed suit against Alaska fish management officials over the legality of their salmon management actions. *Cook Inlet Fisherman’s Fund v. State, Dep’t of Fish & Game*, 357 P.3d 789 (Alaska 2015). The Alaska Supreme Court affirmed the lower

court denial of all of CIFF's claims under state and federal law.

Regulations and executive orders (“EO’s”) by State fish management officials controlling fishing in UCI federal and state waters continued to change yearly, with increasingly adverse economic consequences for the remaining commercial fishermen and numerous others who engage in related interstate commerce such as canneries, retail supply stores, etc. In 2019 to address the increasingly troublesome UCI salmon management decisions, CIFF filed suit against the responsible officials, but lost in the lower court and on appeal. *Cook Inlet Fisherman’s Fund v. State*, 514 P.3d 1250 (Alaska 2022). The key question presented by this Petition is whether the Alaska courts may continue to permit Alaska’s unlawful management of UCI salmon by not applying pertinent holdings by this Court, not applying U.S. Constitutional provisions, and not applying Congressional enactments? The Alaska Supreme Court ruled it is not unconstitutional for Alaska to manage UCI salmon to restrict interstate commerce so more salmon can go into the rivers for the Alaska-resident-only PU, sport, and sport-guided fisheries, without any legitimate justification, contrary to the holding in *Hughes v. Oklahoma*, 441 U.S. 322 (1979).

## **II. Statement of the Basis for Jurisdiction in This Court**

### **A. Salmon in Upper Cook Inlet, Alaska.**

Salmon were in abundance in Cook Inlet well before Captain James Cook arrived in 1778. In fact, archaeological evidence suggests salmon fishing has been practiced in Alaska for at least 11,500 years.

The late 1800s and early 1900s marked an expansion of Alaska's commercial salmon industry. A key development was the introduction of salmon canneries circa 1878. Demand for Alaskan salmon grew, and fleets of boats, including gillnetters and seiners, expanded fishing operations.

As Congress considered statehood for the Territory of Alaska, concerns arose that Alaska might try to control the salmon resources for parochial interests with adverse economic consequences to interstate commerce. Congress therefore required Alaska in the Alaska Statehood Act to make adequate provision for the administration, management, and conservation of the fish and wildlife resources of Alaska "**in the broad national interest.**" Alaska continues to ignore that obligation, especially in Cook Inlet.

### **B. Alaska's Resident-Only UCI Salmon Fisheries.**

In 1995 the previous Alaska-resident only subsistence fishery became the Alaska-resident only PU fishery by closed-door action by the Board of Fish in response to a decision by the Alaska Supreme Court that required the "resident only" subsistence fisheries to close in urban areas. The Board renamed the illegal subsistence fishery as a PU fishery for Alaska residents only.

As reported by Brannian & Fox, *Upper Cook Inlet Subsistence and Personal Use Fisheries Report to Alaska Board of Fisheries, 1996*, at page 12 (App.63a):

The Board of Fisheries convened an emergency meeting by teleconference on May 24, 1995 to close subsistence fisheries in the non-subsistence area. At this emergency

meeting the Board of Fisheries delegated the authority to the commissioner to readopt the Upper Cook Inlet Subsistence Salmon Management Plan as a personal use fishery. This was done by emergency regulation and later was made a permanent regulation due to the length of the fishing season.

The previous resident only subsistence fishery had an allocation priority with the Board of Fish to harvest 38,000 salmon. The Alaska-resident-only PU fishery in 1995 harvested nearly 100,000 salmon without public input sought or allowed, no public proposals, no department proposals, no public testimony, and no discussion of allocation criteria. The Board reallocated over 500,000 salmon annually from the already fully allocated UCI salmon fisheries (*i.e.*, thereby removing them from interstate commerce) to the Alaska-resident-only PU fishery without any discussion of need, benefit, or effects on other fisheries or interstate commerce.

### **C. Alaska Management of the UCI Salmon Fisheries.**

Alaska manages the UCI salmon resources through the statewide Board of Fish and the Alaska Department of Fish & Game, with separate management in the Department of the commercial fisheries, PU, sport fishing, and guided sport fishing. There is an office on K-Beach Road, and offices in Anchorage, where the respondent Commissioner is officed.

The Board adopts regulations that include area management plans. For example, 5 AAC 21.359 is the

Kenai River Late-Run King Salmon Management Plan, which substantively changes from time to time.<sup>1</sup>

The Department runs the day-to-day management of the fisheries, primarily by issuing EOs. Here by EO, Board closures and regulations, the management created what amounts to a freeway corridor for salmon through the most productive UCI commercial fishing grounds to allocate more salmon to the Alaska-resident-only PU Fishery. UCI commercial set net fishing has been severely restricted for the last 30 years and was entirely closed by the Department in 2023 and 2024, and most of 2025, in violation of the Commerce Clause and other laws requiring fair allocations of salmon among the users. The resulting burden on interstate commerce from the UCI east side set gill-netters (ESSN) being restricted and shut down entirely in 2023 and 2024, and the UCI drift net commercial fishermen in being limited as to time and location combined to severely adversely affect interstate commerce in Upper Cook Inlet in 2023 and 2024 and its related participants and communities in addition to the commercial fishermen.

The Alaska court erred by failing to take into account that all the UCI salmon species are destined for interstate commerce when they are harvested by commercial fishermen in the commercial fishing grounds

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<sup>1</sup> The Board, made up of politically appointed laymen, meets annually but focuses on only one particular area such as Cook Inlet every three years. The agenda is cunningly controlled by sport fishing and guided sport fishing interests. The resulting actions by the Board consistently favor PU, sport, and guided sport fishing, disadvantage commercial fishing interests, and continue irreparable harm to the fishery and the UCI salmon resources.

as occurred annually from 1882 until 2023. When the Department shuts down or restricts the UCI commercial fishery to enable more salmon to reach the PU Fishery, interstate commerce is significantly impaired, in violation of federal constitutional provisions and the federal law of the land, *i.e.*, the Commerce Clause, the Supremacy Clause, the Alaska Statehood Act, the MSA, and the *Hughes v. Oklahoma* case holding.

#### **D. Improper Closure of the East Side UCI Commercial Set Net Fishery.**

The East Side of Cook Inlet includes the Kenai River, the Kasilof River, and the cities of Kenai, Soldotna, Ninilchik, Kasilof, with considerable population along the main highway on the Kenai Peninsula – the Sterling Highway. The West Side of Cook Inlet does not have a paved highway and is sparsely populated. There are more set net fishermen on the East Side.

The Department completely closed the ESSN in 2023. The 2023 EO closure of the East Side Set Netters (“ESSN”) occurred some four months before the normal openings and was financially devastating to the ESSN fishermen and the many others related to that fishery, including processors, laborers, suppliers, and local businesses. Some communities declared economic disasters. The 2024 EO closure of the ESSN increased the adverse economic impacts on interstate commerce, as did the 2025 restrictions.

#### **E. Improper Restrictions on UCI Commercial Drift Net Fishing**

The Department manipulated the fishing areas and times for the UCI drift netters by arbitrary administrative action. Some restrictions were based on the

Board's regulations at: 5 AAC 21.353(c)-(e); 5 AAC 21.354(a) & (b); 5 AAC 21.358(c) & (d); 5 AAC 21.359(b), (d), & (e); 5 AAC 21.365(a)-(d); and 5 AAC 21.370. The "Friday windows" restrictions under 5 AAC 21.360(c) (2)(C)&(3)(C) from 7:00 a.m. on Fridays for 36 hours, were designed to remove UCI salmon from interstate commerce and make them available for the resident-only PU, sport, and sport-guided fisheries. Prior to 1995 these salmon were available for interstate commerce as part of the harvest on which UCI commercial fishermen depended. The fishery was fully allocated. The 2023 restrictions were designed to flood the rivers of Cook Inlet with salmon for the PU Fishery. The UCI salmon management is systematically designed to put the commercial fishery out of business by increasing the ongoing irreparable harm on the commercial fishermen, the fishing industry, and the salmon resource.

With salmon fisheries the science is clear, both overfishing (too much harvest) and underfishing (too little harvest) can jeopardize the capacity of a stock or stock complex to produce the MSY/OY on a continuing basis.



## REASONS FOR GRANTING THE PETITION

In July of 2022 Cook Inlet Fishermen’s Fund sued the Alaska Department of Fish and Game and the Board of Fisheries contending that management of two salmon fisheries conducted by the State in the UCI area violated the Commerce Clause of the U.S. Constitution among other issues. The first regulation is the Personal Use Fishery (PU) in Cook Inlet for state residents only, conducted under 5 AAC 77.540. The second regulation is 5 AAC 21.359, the Late-Run Kenai River King Salmon Management Plan. The latter provides that “The department shall manage the late-run Kenai River king salmon stocks primarily for sport and guided sport uses.” Both regulations are unconstitutional because they interrupt the stream of interstate commerce in this valuable salmon resource. These regulations violate the Commerce Clause and are counter to the MSA as well as case law from this Court and the Ninth Circuit.

The State misled the Alaska Supreme Court on what the CIFF case was about. The underlined portions of the Alaska Supreme Court ruling below are key subjects of this petition.

“The superior court granted summary judgment in favor of ADF&G, holding that the management decision did not violate the dormant Commerce Clause. Because the fish harvested in the personal use fishery will never enter a stream of commerce, and because the commercial closures apply equally to residents and non-resident fishing ventures.”

we hold that ADF&G’s management decision does not impermissibly discriminate against interstate commerce and affirm the decision of the superior court.”

*CIFF v. State*, Case No. S-19034. App.2a.

The first underlined phrase is counter to the holdings in *Hughes*, *Conservation Force*, and *Camps*. The *Hughes v. Oklahoma* decision in 1979 held that a state may not manage fishery resources in a way that discriminates against interstate commerce.

In *Conservation Force, Inc. v. Manning*, 301 F.3d 985 (9th Cir. 2002), the 9th Circuit Court held that the State of Arizona restriction on non-resident elk hunters to no more than 10 percent of the licenses to hunt elk violated the commerce clause. The court pointed out in footnote six that the U.S. Supreme Court in *Hughes* has already “indicated, however, that even wild animals ‘killed for the purposes of food’ may be articles of commerce for the purposes of dormant Commerce Clause analysis.”

In *Camps Newfound/Owatonna, Inc. v. Town of Harrison*, 520 U.S. 564 (1997), this Court found that:

- “(a) an otherwise generally applicable state property tax violates the Commerce Clause if its exemption for property owned by charitable institutions excludes organizations operated principally for the benefit of nonresidents. pp. 571-95.
- “(b) The Court is unpersuaded by the Town’s arguments that the dormant Commerce Clause is inapplicable here, either because campers are not “articles of commerce,” or more gener-

ally because interstate commerce is not implicated. The camp is unquestionably engaged in commerce, not only as a purchaser, *see, e.g., Katzenbach v. McClung*, 379 U.S. 294, 300-301, but also as a provider of goods and services akin to a hotel, *see, e.g., Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 244, 258. Although the latter case involved Congress' affirmative powers, its reasoning is applicable in the dormant Commerce Clause context. *See, e.g., Hughes v. Oklahoma*, 441 U.S. 322, 326, n.2. The Town's further argument that the dormant Clause is inapplicable because a real estate tax is at issue is also rejected. Even assuming, as the Town argues, that Congress could not impose a national real estate tax, States are not free to levy such taxes in a manner that discriminates against interstate commerce. *Pennsylvania v. West Virginia*, 262 U.S. 553, 596. pp. 572-575.

“(c) . . . The statute discriminates on its face against interstate commerce: It expressly distinguishes between entities that serve a principally interstate clientele and those that primarily serve an intrastate market, singling out camps that serve mostly in-staters for beneficial tax treatment, and penalizing those camps that do a principally interstate business. Such laws are virtually per se invalid. *E.g., Fulton Corp. v. Faulkner*, 516 U.S. 325, 331.”

The second underlined phrase ignores the finding in *C & A Carbone, Inc. v. Town of Clarkstown*, 511 U.S.

383 (1994). In *Carbone* this Court fleshed out the dormant side of the commerce clause by ruling that;

“the article of commerce here is not so much the waste itself, but rather the service of processing and disposing of it. With respect to this stream of commerce, the ordinance discriminates, for it allows only the favored operator to process waste that is within the town’s limits. It is no less discriminatory because in-state or in-town processors are also covered by the prohibition. Cf., e.g., *Dean Milk Co. v. Madison*, 340 U.S. 349. Favoring a single local proprietor makes the ordinance’s protectionist effect even more acute, for it squelches competition in the waste-processing service altogether, leaving no room for outside investment. pp. 389-392.

“(c) The town does not lack other means to advance a legitimate local interest. It could address alleged health and safety problems through nondiscriminatory alternatives, such as uniform safety regulations that would ensure that competitors do not underprice the market by cutting corners on environmental safety. Justifying the ordinance as a way to steer solid waste away from out-of-town disposal sites that the town might deem harmful to the environment would extend its police power beyond its jurisdictional boundaries. Moreover, the ordinance’s revenue generating purpose by itself is not a local interest that can justify discrimination against interstate commerce.”

*Carbone*, 511 U.S. at 389-392. The *Carbone* Court explained,

“The central rationale for the rule against discrimination is to prohibit state or municipal laws whose object is local economic protectionism, laws that would excite those jealousies and retaliatory measures the Constitution was designed to prevent. *See The Federalist* No. 22, pp. 143-145 (C. Rossiter ed. 1961) (A. Hamilton); Madison, *Vices of the Political System of the United States, in 2 Writings of James Madison* 362-363 (G. Hunt ed. 1901).”

This is CIFF’s third case challenging the regulations in 5 AAC 21.359. Before the ruling in this case, 5 AAC 21.359 was amended in 2024 and a second regulation on the Kenai River Late run King Salmon was promulgated-5 AAC 21.382. In the previous two cases CIFF asked for the regulations to be revised to delete the illegal portions, but CIFF was denied relief for failure to state a claim, but not on the merits of the issue. CIFF contends the regulation changes every three years, and therefore the CIFF claims should not fall on grounds of issue and claim preclusion or res judicata, because the regulation in 2013 was not the same as the regulation in 2019, and again not the same as in 2022. Nor has there been a ruling on the merits of the issues CIFF currently challenges, and the changes are not identical. CIFF further contends that these regulations are used each fishing season by the Department in making EOs and as such should be open to review on each occasion of use. The judicial expediency of this judgment is evident in footnote 19 from the Alaska Supreme Court ruling below:

“Before granting summary judgment to ADF&G on CIFF’s dormant Commerce Clause claim, the superior court had dismissed the entirety of CIFF’s case on grounds of issue and claim preclusion. After dismissing the case, though, the court granted CIFF’s motion for reconsideration as to its dormant Commerce Clause claim, determining that CIFF did not have a ‘full and fair opportunity’ to previously litigate the constitutionality of the personal use fishery.”

*CIFF v. State*, Case No. S-19034 at App.7a, note 19.

The CIFF case was dismissed in its entirety in the lower court before CIFF had a full and fair opportunity’ to litigate the constitutionality of the issues. The challenges to interstate commerce are the primary concern in petitioning for Certiorari. The Alaska Supreme Court referenced “15,000 – 30,000” king salmon of a certain size,” as a distinction from what CIFF had challenged as “part of a stock.” In both AS 16.05.940 Definitions (15) (“fish stock” means a species, subspecies, geographic grouping, or other category of fish manageable as a unit), regulation 5 AAC 39.222 (34) (“salmon stock’ means a locally interbreeding group of salmon that is distinguished by a distinct combination of genetic, phenotypic, life history, and habitat characteristics or an aggregation of two or more interbreeding groups which occur within the same geographic area and is managed as a unit”), and in the MSA “fish stock” is a defined term. These definitions of a “fish stock” do not allow Alaska to regulate for a part of a stock or a certain size of kings.

From 1987 to 2012 the escapement goal for king salmon of all sizes varied but was generally in the

range of 15,000 to 30,000 kings. The Department determined in 2012 that for the previous 25 years they had been undercounting by approximately 30 percent of the escapement counts due to inappropriate sonar placement. In 2013 the goal for all kings using a new sonar counter was 15,000 to 30,000 kings of all sizes. In 2017 that goal was changed to 13,500 to 27,000 kings of a “certain size” (over 34 inches) and included a secret “safety factor” of 2,000 kings. In 2020 the goal was again changed to 15,000 to 30,000 kings creating an Optimal Escapement Goal (OEG) for kings over 34 inches. What is an OEG? From page 188 of the excerpt of record Commissioner Lang explained when asked by Board member Johnson at the Board meeting on 2/14/2020 that: “an OEG is not an MSY based Goal. It’s a goal to basically put more fish into the river. That’s an allocative decision. Has implications to other users.”

The problem with OEG as a goal is it violates the MSA where the goal is supposed to be based on maximum sustained yield (“MSY”). Additionally, goals of a certain size salmon violate the legal definition of a fish stock and ignore 50 to 70 percent of the fish that are not of that certain size, yet spawning. The net effect is restriction or elimination of interstate commerce in the UCI commercial fishery without any state benefit or purpose to justify the loss of commerce. It is also not using the best available science and is biologically naive. Part of the challenge in this case is that it was superficially similar to the two previous CUFF cases. However, footnote 1 in the Alaska Supreme Court’s decision on page 2 demonstrates those prior rulings were different from one another, and neither is similar to the case at bar as required for preclusion. Further,

there has been no substantive ruling on the merits of what CIFF contends is illegal in this case. After the U.S. Supreme Court's ruling regarding the *Chevron* decision, blind faith in a regulatory agency is no longer acceptable for illegal actions when challenged, as in this case. *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). In footnote 19 the Alaska Supreme Court ruled CIFF had not adequately briefed the constitutionality of the PU Fishery. CIFF had cited and relied on this Court's holding in *Hughes v. Oklahoma*.

The Department and the Alaska courts referenced king conservation in July of 2022 as an excuse for closing much of the UCI commercial fishery, but the regulations stay in effect, until changed. The changes in 2024 still contain most of the offensive language. CIFF included a statement from the Department's season outlook in 2022 stating the Department planned the closure of the UCI commercial fishery on weekends to facilitate movement of fish to the rivers. The Alaska court dismissed that statement as "advisory." However, CIFF also provided the state's Annual Management Report (AMR) for Commercial Fisheries from 2021, where the following quotes occur on pages 11 and 12 for three weeks in July 4-10, 11-17 and 18-24 respectively:

"During this week, commercial fishing periods were not allowed on Saturday to facilitate fish movement into the Kenai and Kasilof Rivers for harvest in the personal use fisheries."

"During this week, commercial fishing periods were not allowed on Saturday or Sunday to facilitate fish movement into the Kenai and

Kasilof Rivers for harvest in personal use fisheries”

“During this week, commercial fishing periods were not allowed on Saturday and the open period on Sunday, July 18, was opened only in the afternoon to facilitate fish movement into the Kenai and Kasilof Rivers for harvest in the personal use fisheries.”

These quoted statements from the 2021 AMR were ignored by the Alaska Supreme Court but they refute the premise that these fish were past the commercial fishery and therefore not commerce. Not only did the Department decide to not allow commercial fishing on the weekends, the Board decided the fishery would be closed beginning at 7:00 P.M. on Thursday for 36 hours for these three weeks in July also. The salmon in question normally begin returning in mid-June and continue returning into September. The simplistic claim that the fish were past the commercial fishery is not factually accurate, and does not justify the regulatory restrictions on Fridays or the Department’s inaction on the weekends, allowing thousands of salmon daily to escape far above what is necessary for escapement to reach the maximize sustained yield (“MSY”). Additionally, because huge over-escapements have occurred in 18 of the last 20 years in both the Kenai and Kasilof Rivers, the Alaska court’s reasoning fails.

The UCI salmon fishery is a disaster and is now plagued with unscientific allocative commercial fishing restrictions and closures that intentionally prevent the commercial harvest of millions of surplus salmon and allows them to be wasted through gross over escapements. The scientific accepted exploitation rates

of 60% to 70% for the different salmon species is now less than 30% for sockeye and less than 1% to 2% for the other salmon species. In some years 10 to 20 million surplus pink salmon are allowed to go unharvested. This is a waste of 20 to 50 million dollars a year and hundreds of millions of high protein meals for the Nation. Because Alaska's mismanagement is creating unnecessary economic hardship, only half of the UCI commercial drift fishermen are fishing, and the ESSN have been closed for the last three years, to prevent them from harvesting only 36 (*i.e.*, less than 100) so called large king salmon, which is not even in the margin of error for counting. There is no sign the ESSN will be opened in the near future. Processors have dwindled from 15 to only 3 major ones left, and those three struggle to keep viable. Thousands of fishing and fish related jobs have disappeared. This is all happening not because of a lack of surplus salmon but because of NMFS and the State's neglect and mismanagement. This has resulted in repeated economic disasters and irreparable harm to the commercial fishery, processors, local communities, salmon resource, the National food supply, and the national interest. When is enough?

5 AAC 21.359 has been in the regulations since 1978, through good and bad king runs, and has been changed every three years. This has resulted in a continual erosion of commercial fishing rights and wasted salmon over the last 47 years, to where the set gillnet fishery (450 permits) has been completely closed in two of the last three years and only open for two 8 hour periods during 2025. There have been numerous economic disasters declared under the MSA in the UCI commercial fishery since 2012, including

for the last several years in a row. Unless these insidious regulations are stricken there will be more disasters in 2026 and beyond. Alaska should not be allowed to ignore 50-70 percent of the stock as if they were not there, no matter how much Alaska may desire to have bigger king salmon. Before concluding that conservation of kings of a particular size was necessary, they should have decided if the goal was legal. It was not, and is not.

CIFF is a litigant in another lawsuit that began in 2009 challenging National Marine Fisheries Service's neglect in Cook Inlet to create an FMP for the Cook Inlet Fishery as required by MSA. In 2016 the 9th Circuit ruled that NMFS could not put the word "federal" in front of the phrase for determining if an FMP is required, "management and conservation is necessary" as a way of accepting Alaska's management practices. The decision further stated that an FMP was required for the "Fishery." The NMFS has since created 3 FMP's for Alaska, now basically placing the word "FEDERAL" in front of waters and fishery, thereby creating FMPs for the EEZ only. The Federal District Court in Anchorage ruled Amendment 12 and 14 violate the MSA and the 9th ruling in 2016. Amendment 16 is currently being briefed for the 9th Circuit because the FMP only covers the EEZ, not the whole fishery, as required.

The PU Fishery has now been in effect for over 30 years with non-residents excluded in both good and bad salmon return years. In other words, there is no need for conservation. While CIFF has challenged the PU Fishery partly on the exclusion of non-residents, CIFF makes no pretext that it seeks inclusion of non-residents in the PU fishery as a means of making it

legal. Including non-residents in the PU Fishery would only cause more loss of interstate commerce for the commercial fishery. In their most recent ruling the superior court, quoted on page 6 of the Alaska Supreme Court opinion, stated:

“The court concluded that the personal use fishery did not “facially discriminate” against interstate commerce, and any incidental effect that the Upper Cook Inlet commercial closures had on interstate commerce was insignificant.” [Emphasis added.]

*CIFF v. State*, Case No. S-19034, App7a-8a. CIFF disagrees strenuously with this contention. Actually, the lost harvest in most years since the illegal PU Fishery began in 1995 is well over 1 to 2 million sockeye annually, or roughly 10 to 20 million dollars a year in first wholesale value. The loss of harvest of other species is also significant. In 2025 for instance as a result of these arbitrary and illegal closures, 4 million sockeye salmon escaped into the Kenai and Kasilof Rivers above the maximum sustainable escapement. Harvests in other fisheries plus 500,000-700,000 taken in the PU fishery amount to 2.5 to 4.0 million pounds of salmon. That loss to interstate commerce is just short of 50 million dollars in first wholesale value, which is not insignificant. In fact, the lost harvest in most years since the illegal PU Fishery began is well over 1 million sockeye annually, or roughly 10 to 20 million dollars a year in first wholesale value just for sockeye, and the loss of harvest of other species is likewise significant. When the UCI commercial fishery is closed without a need for conservation as has been occurring for years, there is a direct loss to interstate commerce. It is a loss implicating the dormant commerce

clause as over half of the commercial permit holders are no longer fishing, especially the non-resident commercial fishermen because it is no longer profitable.

That is why CIFF is here. Travel, fuel, food, maintenance, insurance, etc. are no longer affordable for many commercial fishermen because of these unjustified closures and restrictions. CIFF would not contest a closure when actual conservation is necessary, however that should not occur when the return is the second biggest in the history of the fishery, as was the case in 2025. This commercial salmon fishery dates back to 1888, 130 years, and was never closed for the season until 2023, especially while huge runs of salmon are flooding into the Inlet. A closure of the UCI commercial fishery for conservation of king salmon over 34 inches prevents the harvest of many more numerous salmon, pink, chum, sockeye and coho. These salmon are wasted by the millions above what is harvested by the PU and sport fisheries or necessary for escapement.. The UCI salmon fishery is now plagued by repeated economic disaster declarations and fishery closures, not from lack of salmon, but from intentional mismanagement of the fishery that is increasing the irreparable harm with no end in sight.

The PU Fishery is a violation of the MSA. It was adopted in secrecy and imposed on an already fully allocated fishery, and should never have been allowed because of the harm to the commercial fishery. The Magnuson–Stevens Act was enacted in 1976 “to take immediate action to conserve and manage the fishery resources found off the coasts of the United States” and “to promote domestic commercial and recreational fishing under sound conservation and management principles. 16 U.S.C. §§ 1801(b)(1), (3).

Congress has expressed the federal interest in utilization of the Nation's fish stocks and has shown a desire to promote domestic commercial and recreational fishing without mention of the Alaska PU Fishery, even though Alaska Senator Sullivan tried to add it to the most recent reauthorization. Alaska has yet to identify what state benefit or interest this PU fishery provides that cannot be satisfied by a less offensive attack on interstate commerce as was discussed in the balancing test in *Hughes*. Alaska also ignored the CIFF challenge that it is inapposite to the Alaska Legislature's stated goal in AS 16.43, Limited Entry, where the purpose of the Act is to create a self-sustaining commercial fishery.

The reasoning of the Alaska courts is premised on outdated and mistaken concepts of state ownership of resources. What constitutes the need for conservation to justify the discrimination? The following quote from *Toomer v. Witsell*, 334 U.S. 385 (1948), has been noted in cases including *Hughes*;

“The whole ownership theory, in fact, is now generally regarded as but a fiction expressive in legal shorthand of the importance to its people that a State have power to preserve and regulate the exploitation of an important resource. And there is no necessary conflict between that vital policy consideration and the constitutional command that the State exercise that power, like its other powers, so as not to discriminate without reason against citizens of other States.” (Emphasis added.)

The original 38,000 sockeye allocated to the urban subsistence fishery has been allowed to increase to well over 500,000 for this PU Fishery. Nearly all salmon

stocks statewide have been fully allocated at least since statehood in 1959. This is especially true in Upper Cook Inlet. Both the spawning escapement and sport harvest have also increased dramatically so there is no doubt the fish for this PU fishery are being removed from the stream of commerce upon which the commercial fishery depends and impacts interstate commerce well in excess of “insignificant.” The hollow argument provided by the State that these fish are past the commercial fishery is counter to reasonable logic for all the reasons covered above.

Personal Use is open for Alaska state residents only, statewide, without even trying to claim that this discrimination is reasonable or necessary for conservation, which violates federal law. While the UCI salmon stocks have been fully allocated for over 50 years, they are not scarce, endangered, overfished, or in short supply. In fact Alaska wastes millions of Cook Inlet salmon every year. So why are non-residents excluded from the PU fishery without any need for conservation or justification? The South Dakota Supreme Court reasoned that South Dakota could restrict waterfowl hunting by non-residents traveling to the state to hunt pheasants because of the need for conservation, quoting *State v. Kemp*:

“Acting under the police power the state may discriminate against citizens of other states provided there is substantial reason for the discrimination beyond the mere fact that they are citizens of other states.”

*State v. Kemp*, 44 N.W.2d 214, 217 (S.D. 1950).

This Court ruled in *Hughes v. Oklahoma* that the whole premise of State ownership of fish and game

relied upon in *Geer v. Connecticut* was wrong. Cases prior to *Hughes* need to be viewed carefully to see if they rely on the overturned *Geer* premise. The Alaska PU Fishery for state residents only violates the holdings in *Hughes* on several fronts. First it places the entire burden of conservation on non-residents by placing an embargo on their participation. Alaska has ignored the dormant commerce clause implications in restricting the fishery to residents only when conservation and protection of wild animals, in this case salmon, are not necessary. The following four passages quoted from *Hughes* illustrate the point.

“The ‘ownership’ language of cases such as those cited by appellant must be understood as no more than a 19th-century legal fiction expressing ‘the importance to its people that a State have power to preserve and regulate the exploitation of an important resource.’ [Citing *Toomer.*] Under modern analysis, the question is simply whether the State has exercised its police power in conformity with the federal laws and Constitution.” [*Douglas v. Seacoast Prods., Inc.*] 431 U.S. at 284]”

“16 We now conclude that challenges under the Commerce Clause to state regulations of wild animals should be considered according to the same general rule applied to state regulations of other natural resources, and therefore expressly overrule *Geer*. We thus bring our analytical framework into conformity with practical realities. Overruling *Geer* also eliminates the anomaly, created by the decisions distinguishing *Geer*, that statutes imposing the most extreme burdens on the

interstate commerce (essentially total embargoes) were the most immune from challenge. At the same time, the general rule we adopt in this case makes ample allowance for preserving, in ways not inconsistent with the Commerce Clause, the legitimate state concerns for conservation and protection of wild animals underlying the 19th-century legal fiction of state ownership.”

“[w]hen discrimination against commerce . . . is demonstrated, the burden falls on the State to justify it both in terms of the local benefits flowing from the statute and the unavailability of non-discriminatory alternatives adequate to preserve the local interests at stake.” *Hunt v. Washington Apple Advertising Comm’n*, 432 U.S. 333, 353 (1977).

“We consider the State’s interests in conservation and protection of wild animals as legitimate local purposes similar to the States’ interests in protecting the health and safety of their citizens. *See, e.g., Firemen v. Chicago, R. I. & P. R. Co.*, 393 U.S. 129 (1968). But the scope of legitimate state interests in ‘conservation’ is narrower under this analysis than it was under *Geer*. A State may no longer ‘keep the property, if the sovereign so chooses, always within its jurisdiction for every purpose.’ *Geer v. Connecticut*, 161 U.S., at 530. The fiction of state ownership may no longer be used to force those outside the State to bear the full costs of ‘conserving’ the wild animals within its borders when equally

effective nondiscriminatory conservation measures are available.”

CIFF does not argue that Alaska cannot charge a license fee differential for non-residents, or that they cannot exclude non-residents in times of shortage; however, the permanent exclusion cannot be justified under any of the holdings in *Hughes* because there is no conservation necessary, and the complete exclusion is not the least discriminatory means of achieving that objective.

Under the general rule applied to regulations of natural resources, differential burdens on out-of-state access to natural resources are subject to the dormant Commerce Clause whenever the burden substantially affects interstate commerce, even if the resource itself, such as the beauty of Maine’s lakes, *Camps*, 520 U.S. at 574, is not an article of commerce per se. The Supreme Court has never construed *Hughes* to exempt from dormant Commerce Clause scrutiny state discrimination in the harvesting of resources destined for interstate commerce. To the contrary, “[f]or over 150 years, our cases have rightly concluded that the imposition of a differential burden on any part of the stream of commerce . . . is invalid.” *W. Lynn Creamery, Inc. v. Healy*, 512 U.S. 186, 202 (1994). Thus, even though fishing, like hunting, is an activity that takes place before the animal becomes an article of commerce, the Supreme Court explained in *Douglas* that the “proliferation of residency requirements for commercial fishermen would create precisely the sort of Balkanization of interstate commercial activity that the Constitution was intended to prevent.” *Douglas*, 431 U.S. at 285-86.

The Court has interpreted Congress’ authority to regulate commerce “to its utmost extent,” *Gibbons*, 22

U.S. at 196, and has long interpreted the Clause to have a “negative aspect,” referred to as the dormant Commerce Clause, “that denies the States the power unjustifiably to discriminate against or burden the interstate flow of articles of commerce.”

Discrimination against interstate commerce in favor of local business or investment is per se invalid, save in a narrow class of cases in which the municipality can demonstrate, under rigorous scrutiny, that it has no other means to advance a legitimate local interest. *Maine v. Taylor*, 477 U.S. 131 (1986).

Even a nondiscriminatory regulation may nonetheless impose an excessive burden on interstate trade when considered in relation to the local benefits conferred. See *Brown-Forman Distillers*, 476 U.S., at 579. Indeed, we have long recognized that “a burden imposed by a State upon interstate commerce is not to be sustained simply because the statute imposing it applies alike to . . . the people of the State enacting such statute.” *Brimmer v. Rebman*, 138 U.S. 78, 83 (1891). The *Brimmer* decision confirms that the Alaska Supreme Court ruling there was no Commerce Clause violation because there are resident commercial fishermen is just wrong.

The ‘negative’ aspect of the Commerce Clause prohibits economic protectionism—that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors. Thus, state statutes that clearly discriminate against interstate commerce are routinely struck down, unless the discrimination is demonstrably justified by a valid factor unrelated to economic protectionism. *New Energy Co. of Ind. v. Limbach*, 486 U.S. 269, 273-274 (1988) (citations omitted).

This Court observed that, more recently, that the power of states to prefer their own residents concerning the harvest of fish and game had been limited in cases where the asserted state power was in conflict with paramount federal interests. *Baldwin*, 436 U.S. at 385-86[.]

This Court noted at earlier times in our history there was some doubt whether Congress had power under the Commerce Clause to regulate the taking of fish in state waters, there can be no question today that such power exists where there is some effect on interstate commerce. *Perez v. United States*, 402 U.S. 146 (1971); *Heart of Atlanta Motel v. United States*, 379 U.S. 241 (1964).

Intervention by this Court is needed to bring Alaska authorities in line with major salmon management decisions in place in the Pacific Northwest for over 50 years such as *United States v. State of Washington*, 384 F. Supp. 312 (J. Boldt W.D. Wash. 1974) (203 page decision).

The definitions by the Alaska Legislature are worthy of note. Under AS 16.05.940 Definitions:

“#27 ‘personal use fishing’ means the taking, fishing for or possession of finfish, shellfish, or other fishery resources, by Alaska residents for personal use and not for sale or barter, with gill or dip net, seine, fish wheel, long line, or other means defined by the Board of Fisheries;”

“#31 ‘sport fishing’ means the taking of or attempting to take for personal use, and not for sale or barter, any fresh water, marine,

or anadromous fish by hook and line . . . or other means defined by the Board of Fisheries”

Does the mere fact that personal use is defined, as is murder, fraud, and other activities, create a state interest that justifies creation of an Alaska-resident-only PU fishery, by a lay board when the less discriminatory alternative of retaining fish from their sport catch is a viable option. The bag and possession limits in the sport fishery are generous, 3 per day 6 in possession, which doubles to 6 and 12 when the escape-ment warrants, with no annual limit. Conversely the PU fishery has an annual limit of 25 salmon per head of household with an additional 10 fish per dependent residing therein. Both activities require a sport fishing license, however the PU fishery requires a “resident sport license” ostensibly to finance enforcement, thereby defrauding the remaining 49 states of their fair share of those funds. The state court ignored this challenge as a means of identification, however there were other alternatives available to prove residency.



## CONCLUSION

CIFF prays that this Court accept this Petition for a Writ of Certiorari to stop the egregious abuses inflicted on the commercial fishery in Cook Inlet. The commercial fishery and fishing communities will not survive otherwise. CIFF asks this Court to reverse and remand with the following rulings and instructions:

1. that the Alaska-resident-only PU fishery violates the Commerce Clause and is an abuse of the National Interest in the MSA promoting commercial and recreational fisheries and the national food supply;

2. that restricting the UCI commercial fishery to provide more salmon for the Alaska-resident-only PU fishery is illegal, due to violation of case law, the Commerce Clause, and the MSA;

3. that the removal of fish from the UCI commercial fishery, absent the need for conservation cannot be justified due to lack of a significant state benefit;

4. that managing the Kenai River king and other UCI salmon stocks primarily for PU, sport and guided sport uses, violates the MSA and the Commerce Clause;

5. that the Kenai River king salmon stock may not be managed for only part of the stock over 34 inches, ignoring the definition of “fish stock” in state law and the MSA;

6. that the MSA and its 10 national standards apply to all state of Alaska salmon fisheries;

Respectfully submitted,

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March 20, 2026