KAMPMEIER & KNUTSEN PLLC

ATTORNEYS AT LAW

BRIAN A. KNUTSEN
Licensed in Oregon & Washington
503.841.6515
brian@kampmeierknutsen.com

September 6, 2017

Via Certified Mail – Return Receipt Requested

Office of the Administrator
U.S. Environmental Protection Agency
William Jefferson Clinton Building
Mail Code: 1101A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Administrator Scott Pruitt
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N.W.
Mail Code: 1101A
Washington, D.C. 20460

NOAA Fisheries
1315 East West Highway
Silver Spring, MD 20910

Assistant Administrator for Fisheries Chris Oliver
NOAA Fisheries
1315 East West Highway
Silver Spring, MD 20910

Secretary Wilbur L. Ross, Jr.
U.S. Department of Commerce
1401 Constitution Ave. N.W.
Washington, D.C. 20230

RE: Notice of Intent to Sue the U.S. Environmental Protection Agency and the National Marine Fisheries Service for Violations of the Endangered Species Act Associated with Consultation on Washington State's Revised Sediment Management Standards for Marine Finfish Facilities

Dear Honorable Civil Servants:

This letter provides notice of Wild Fish Conservancy's intent to sue the United States Environmental Protection Agency, Scott Pruitt in his official capacity as the Administrator of the United States Environmental Protection Agency (collectively, "EPA"), the National Marine Fisheries Service, and Chris Oliver in his official capacity as the Assistant Administrator for Fisheries for NOAA Fisheries (collectively, "NMFS") for violations of section 7 of the Endangered Species Act ("ESA") associated with EPA's approval of revisions to Washington Sediment Management Standards for Marine Finfish Facilities. This letter is provided pursuant to section 11(g) of the ESA, 16 U.S.C. § 1540(g). If the ESA violations described herein are not remedied before the expiration of the sixty day notice period, Wild Fish Conservancy (the "Conservancy") intends thereafter to file suit or amend and/or supplement its pleadings in the related pending suit—*Wild Fish Conservancy v. U.S. Envtl. Prot. Agency, et al.*, W.D. Wash. No. 2:15-cv-01731-BJR—to protect threatened and endangered species and to ensure compliance with the ESA.

EPA initiated informal consultation with NMFS under section 7 of the ESA in 2008 on the effects of EPA's proposed approval of revisions to Washington sediment management standards that were designed to enable commercial salmon farms in Puget Sound to be permitted under the Clean Water Act ("CWA").[1] Despite the known harm and significant risks these facilities pose to wild salmonids, NMFS issued a determination that EPA's action is not likely to adversely affect protected species on June 9, 2008.[2] The ESA consultation was thus concluded without fully evaluating the effects of commercial salmon farms through preparation of a biological opinion and without imposing monitoring and other requirements through an incidental take statement designed to protect wild salmonids.

The Conservancy challenged the 2008 consultation as insufficient under the ESA. Judge Coughenour of the Western District of Washington found the 2008 consultation inadequate and set aside EPA's approval of the revised Sediment Management Standards. *Wild Fish Conservancy v. U.S. Envtl. Prot. Agency*, No. C08-0156-JCC, 2010 U.S. Dist. LEXIS 41838 (April 28, 2010). The Court further ordered EPA and NMFS to reconsider whether formal consultation is required.

EPA reinitiated ESA consultation with NMFS on the Sediment Management Standards in 2010. Remarkably, NMFS again issued a determination that the Puget Sound commercial salmon farms are not likely to adversely affect threatened and endangered species on April 8, 2011.[3] Consultation was thus again concluded without any detailed analysis of these facilities and without the imposition of monitoring or other requirements.

There was an outbreak of the infectious hematopoietic necrosis virus ("IHNv") in May of 2012, at net pen complexes near Rich Passage at the southern end of Bainbridge Island. This occurred at a time when juvenile salmonids were migrating through the nearshore environment near the commercial salmon facilities. A document prepared by the Washington Department of Fish and Wildlife found that "certainly there is amplification occurring." It can hardly be disputed that this disease outbreak adversely affected threatened salmonids—or, at a minimum, demonstrates that commercial salmon farms in Puget Sound *may* adversely affect ESA-listed species.

The Conservancy initiated a second lawsuit on November 4, 2015, challenging NMFS's 2011 determination that commercial salmon farming in Puget Sound is not likely to adversely affect ESA-listed species. *Wild Fish Conservancy v. U.S. Envtl. Prot. Agency, et al.*, W.D. Wash. No. 2:15-cv-01713-BJR. That lawsuit also challenges EPA's and NMFS's failure to reinitiate consultation on the effects of ESA-listed species in light of the 2012 outbreak of IHNV at several Puget Sound net pen facilities. That litigation is ongoing.

---

[1] The revisions to the Washington sediment management standards at issue include Wash. Admin. Code 173-204-412, which addresses regulation of discharges from net pens and exempts such operations from sediment management standards within an impact zone of 100 feet in all directions from the net pens.

[2] NMFS Tracking No. 2008/02328.

[3] NMFS Tracking No. 2010/06071.

Starting on or about Saturday, August 19, 2017, one of the Puget Sound net pen facilities located in Deepwater Bay of Cypress Island began suffering structural failures. The net pen suffered a near-complete structural failure and collapsed on or about Sunday, August 20, 2017. The failure of those facilities caused a massive release of farmed Atlantic salmon into Puget Sound—current estimates are that between 160,000 and 305,000 fish escaped. These escaped fish, which are adults at or near-marketable size, are able to prey on wild Pacific salmon and other fish, compete with ESA-listed salmonids for food and habitat, and pose other threats associated with diseases and parasites and the potential for colonization of local waters by this non-native species. This maritime disaster also resulted in large amounts of debris and pollution being discharged to Puget Sound—available information suggests that structures such as walkways and nets, cables, machinery, and fuels and greases were discharged to public waters. This pollution further degrades critical habitat for imperiled species. These events have required extensive salvage efforts to clean up the industrial wastes littered into Puget Sound and massive recovery efforts to remove as many spilled non-native fish as possible. These efforts have imposed further burdens on ESA-listed species, including those associated with non-target fish being captured and harmed during efforts to remove the Atlantic salmon from Pacific waters.

While the full extent of harm to ESA-listed species caused by this industrial disaster may not be known for some time, it is abundantly apparent that commercial salmon farming in Puget Sound, at a minimum, *may* have some adverse impacts on threatened and endangered species and their critical habitat. This undermines NMFS's 2011 determination that these operations are not likely to have *any* adverse effect on ESA-salmonids. EPA and NMFS are therefore required to reinitiate ESA consultation and finally prepare a biological opinion that fully evaluates the effects to ESA-listed species caused by commercial salmon farming in Washington State. The agencies are in violation of the ESA for failing to failing to do so and for failing to insure that these facilities do not jeopardize protected species.

I. Legal Framework.

Section 7 of the ESA imposes a substantive obligation on federal agencies to "*insure* that any action authorized, funded, or carried out by such agency…is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of" habitat that has been designated as critical for such species. *See* 16 U.S.C. § 1536(a)(2) (emphasis added); *Pyramid Lake Paiute Tribe of Indians v. U.S. Dep't of the Navy*, 898 F.2d 1410, 1415 (9th Cir. 1990). Jeopardy results where an action reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species. 50 C.F.R. § 402.02. Destruction or adverse modification of critical habitat occurs where there is a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. *Id.*

In fulfilling the substantive mandates of section 7 of the ESA, federal agencies planning to fund, authorize, or undertake an action (the "action agency") that "may affect" ESA-listed species or their critical habitat are required to consult with NMFS (the "consulting agency") regarding the effects of the proposed action. 50 C.F.R. § 402.14(a). Formal

consultation concludes with NMFS's issuance of a biological opinion determining whether the action is likely to jeopardize ESA-protected species or result in the destruction or adverse modification of critical habitat. 50 C.F.R. § 402.14(h)(3). If NMFS determines that jeopardy is not likely, or that reasonable and prudent alternatives to the proposed action will avoid jeopardy and that any taking of listed species incidental to the proposed action will not violate section 7(a)(2) of the ESA, NMFS must issue an incidental take statement with its biological opinion. 16 U.S.C. § 1536(b)(4). The incidental take statement includes reasonable and prudent measures considered by NMFS as necessary or appropriate to minimize impacts on ESA listed species. 16 U.S.C. § 1536(b)(4)(C)(ii); 50 C.F.R § 402.14(i)(1)(ii).

Informal consultation is an optional process that includes all discussions between NMFS and the action agency prior to formal consultation, if required. 50 C.F.R. § 402.02. If, through this process, the action agency determines that its proposed action is "not likely to adversely affect" protected species and NMFS issues a written concurrence in that determination, the consultation requirements of section 7 of the ESA are fulfilled and formal consultation is not required. 50 C.F.R. § 402.13(a). "NMFS must conduct a formal consultation and write a biological opinion if any take is likely;" ***i.e.,*** if at least one ESA-listed fish is likely to be harmed. *Preserve Our Island v. U.S. Army Corps of Eng'rs*, Case No. C08-1353RSM, 2009 U.S. Dist. LEXIS 71198, at *25 (W.D. Wash. Aug. 13, 2009). Further, if the nature of the effects cannot be determined, the benefit of the doubt is given to the species and formal consultation is required. *See Endangered Species Consultation Handbook*, p. 3-1 (U.S. Fish & Wildlife Service & NMFS) (March 1998).

Federal agencies have a continuing duty under section 7 of the ESA after consultation is concluded to insure that their actions will not jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat. The agencies must reinitiate consultation whenever "the amount or extent of taking specified in the incidental take statement is exceeded," "new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered," where the action in question is "subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion," or where "a new species is listed or critical habitat designated that may be affected by the identified action." 50 C.F.R. § 402.16(a)-(d). "The duty to reinitiate consultation lies with both the action agency and the consulting agency." *Salmon Spawning & Recovery Alliance v. Gutierrez*, 545 F.3d 1220, 1229 (9th Cir. 2008).

II. Factual Background.

A. Affected Species and Critical Habitat.

NMFS listed the Puget Sound Chinook salmon evolutionary significant unit ("ESU") as a threatened species in 1999. 64 Fed. Reg. 14,308 (March 24, 1999); 70 Fed. Reg. 37,160 (June 28, 2005); 50 C.F.R. §§ 223.102(c)(8) and 223.203(a). Critical habitat has been designated for this species. 70 Fed. Reg. 52,630 (Sept. 2, 2005).

The Puget Sound distinct population segment ("DPS") of steelhead was listed as a threatened species in 2007. 72 Fed. Reg. 26,722 (May 11, 2007). NMFS has designated critical habitat for this species. 81 Fed. Reg. 9,252 (Feb. 24, 2016).

The Hood Canal summer-run chum salmon ESU is listed as a threatened species. 64 Fed. Reg. 14508 (March 25, 1999). NMFS has designated critical habitat for this species. 70 Fed. Reg. 52,630 (Sept. 2, 2005); 50 C.F.R. § 226.212(m)(5).

Chinook salmon in Puget Sound are predominately "ocean-type," meaning they migrate to saltwater during their first year after spending little or no time in freshwater. These fish make extensive use of the estuary and nearshore environments, which they enter when they are extremely small (less than 50 mm in length). The nearshore habitat—defined to extend outward from shore (including islands) to a water depth of approximately 30 meters (98.4 feet)—is therefore particularly important to Puget Sound Chinook salmon and has been designated as critical habitat for this species throughout Puget Sound. 50 C.F.R. § 226.212(i)(16); 70 Fed. Reg. 52630, 52637-38 (Sept. 2, 2005) (the significance of the nearshore environment to juvenile salmonids was the primary basis for its designation as critical habitat).

When NMFS listed Puget Sound Chinook salmon under the ESA, it found:

> Overall abundance of Chinook salmon in the Puget Sound ESU has declined substantially from historical levels, and many populations are small enough that genetic and demographic risks are likely to be relatively high.

Several populations within this ESU have already become extinct, and several others—including those within the Nooksack, Lake Washington, mid-Hood Canal, Puyallup, and Dungeness basins—have experienced critically low returns of less than 200 adult fish in recent years.

Summer chum do not rear in freshwater, but rather migrate to natal estuaries almost immediately upon emergence. These fish are the same size when they enter estuaries as emerging fry—less than 40 millimeters. Some summer chum may rear in natal estuaries for a period, while others move directly into shoreline habitats. The "continued survival [of this species] depends substantially on estuarine conditions." NMFS has therefore designated the nearshore environment throughout Puget Sound as critical habitat for this species. 50 C.F.R. § 226.212(m)(5); 70 Fed. Reg. 52630, 52637-38 (Sept. 2, 2005) (the significance of the nearshore environment to juvenile salmonids was the primary basis for its designation as critical habitat). Hood Canal summer-run chum experienced a severe drop in abundance in the 1980's, and returns decreased to all-time lows in 1989 and 1990 with less than a thousand spawners each year.

Puget Sound wild steelhead numbers are approximately 1 to 4% of their historical abundance. NMFS's 2011 "status review" of this species stated that "[m]ost populations within the [Puget Sound steelhead] DPS are showing continued downward trends in estimated abundance, a few sharply so." The estimated mean population growth rates for all but a few

populations within the Puget Sound steelhead DPS are declining—typically by -3 to -10% annually. The Puget Sound Steelhead Technical Recovery Team recently assessed the extirpation risk of twenty of the twenty-three component populations of the Puget Sound steelhead DPS. Twelve of the twenty were rated as having a "high" extirpation risk ($\geq$ 70% probability in the next 20-100 years) and one additional one was rated as having a "moderately high" extirpation risk (50% probability in the next 100 years). Only seven of the twenty populations, or 35%, were rated as having a "low" risk of extirpation.

B. Commercial Salmon Farms in Puget Sound.

There are currently eight Atlantic salmon net pens operated in Puget Sound that produce over 10 million pounds of salmon annually. Three of the facilities are located in or around Deepwater Bay of Cypress Island, which is north of Anacortes; one is north of Hope Island in Skagit Bay; three are south of Bainbridge Island in Rich Passage; and one is northeast of Port Angeles Harbor, just south of Ediz Hook. For each facility, fish are hatched at freshwater hatcheries and the smolts are then transferred to the marine net pens in Puget Sound where they are cultivated to a marketable size.

Net pens are floating facilities that contain salmon in permeable enclosures in open marine water. Due to characteristics conducive to commercial success, non-native Atlantic salmon species are raised. The salmon are given feed, antibiotics, and other medications and treatments as necessary.

Atlantic salmon farms have negative environmental and ecological effects. Environmental concerns include biological pollution (escaped farmed fish can compete with and prey on native salmonids and farmed fish can transmit disease and parasites to wild fish), organic pollution and eutrophication (fish feces, uneaten fish food, and dead fish contribute to nutrient loading which can lead to low- or no-oxygen "dead-zones"), chemical pollution (a wide range of chemicals are used, including antibiotics and pesticides), and habitat modification.

C. EPA's Approval of Revised Sediment Management Standards and the Associated ESA Consultation.

Washington has adopted sediment management standards as part of its water quality standards required under the CWA, which EPA approved in 1991 under section 303(c) of the Clean Water Act ("CWA"). The Washington State Legislature enacted legislation in 1993 that directed the Washington Department of Ecology ("Ecology") to adopt standards and criteria specifically for salmon net pens. Rev. Code Wash. 90.48.220. The legislation was specifically intended to require revisions to state water quality standards so that salmon net pens could receive permits that would allow these facilities to operate within the mandates of the CWA.

Ecology responded in 1995 with the promulgation of WAC 173-204-412, which specifically addresses regulation of marine finfish rearing facilities under Washington's CWA permitting program. "Marine finfish rearing facilities," commonly referred to as "net pens," are defined as "facilities located within state waters where finfish are fed, nurtured, held,

maintained, or reared to reach the size of release or for market sale." WAC 173-204-200(13). This regulation includes various revisions to Washington's sediment management standards, one of which exempts net pens from the sediment management standards within an impact zone of 100 feet in all directions from the net pen facilities. WAC 173-204-412(2).

Ecology submitted WAC 173-204-412 to EPA in 1996 for approval as part of a package of revised water quality standards, but EPA failed to act on the submission for twelve years—until the Conservancy provided notice of its intent to commence a CWA citizen suit for EPA's failure to act on the proposed standards within 90 days of Ecology's submission as required under section 303(c) of the CWA.

EPA subsequently notified NMFS of its intent to approve the revisions to WAC 173-204 and requested that NMFS concur in its determination that the action was "not likely to adversely affect" threatened and endangered species. EPA supported its request with a Biological Evaluation. EPA informed NMFS on multiple occasions that it wished to move quickly through the ESA consultation process because EPA was being sued for its failure to act on the revised water quality standards.

NMFS subsequently concurred with EPA's "not likely to adversely affect" determination on June 9, 2008, thereby concluding the ESA section 7 consultation process. EPA then approved the revised water quality standards on September 18, 2008. As noted, the Western District of Washington found this consultation inadequate and set aside EPA's approval. *Wild Fish Conservancy v. U.S. Envtl. Prot. Agency*, No. C08-0156-JCC, 2010 U.S. Dist. LEXIS 41838 (W.D. Wash. April 28, 2010). The Court further ordered EPA and NMFS to reconsider whether formal consultation is required.

By letter dated December 13, 2010, EPA notified NMFS of its intent to approve again the revisions to the sediment management standards and requested that NMFS concur in EPA's determination that the action is not likely to adversely affect ESA-listed species. EPA supported this request with an update to its previous Biological Evaluation. NMFS issued a letter dated April 8, 2011, concurring in the not likely to adversely affect determination, thereby concluding the ESA consultation. EPA then approved the revisions to sediment management standards on April 22, 2011, including the exemptions for commercial salmon farms at WAC 173-204-412.

III. EPA's and NMFS's Violations of the ESA.

EPA and NMFS are in violation of the ESA for not reinitiating their ESA consultation on EPA's approval of the revised sediment management standards applicable to the Puget Sound commercial salmon farms. Further, EPA is in violation of section 7 of the ESA for failing to insure that its approval of the revised sediment management standards is not likely to jeopardize ESA-listed species or destroy or adversely modify their critical habitat.

A. Failure to Reinitiate Consultation.

EPA and NMFS are in violation of section 7(a)(2) of the ESA, 16 U.S.C. § 1536(a)(2), for failing to reinitiate consultation on the effects of EPA's approval of the revised sediment management standards on Puget Sound Chinook salmon, Puget Sound steelhead, and Hood Canal summer-run chum salmon and these species' designated critical habitat. Various events since the agencies concluded their previous consultation on April 8, 2011, have triggered the duty to reinitiate consultation. One such event is the 2012 outbreak of IHNv at the net pen complexes near Rich Passage, which is the subject of the Conservancy's pending lawsuit challenging NMFS's and EPA's ESA consultation efforts.

Now, a few years after the IHNv outbreak, commercial Atlantic salmon farms have caused another catastrophic environmental and ecological disaster in Puget Sound. The complete structural failure of a commercial salmon net pen in Deepwater Bay of Cypress Island has dumped a massive amount of non-native farmed fish, crumpled nets and metal structures, and oils, greases, and fuels into Puget Sound, posing a myriad of short- and long-term threats to ESA-listed species and their critical habitat.

The release of farmed Atlantic salmon into Puget Sound—estimated to be between 160,000 and 305,000 fish—harm ESA-listed species through several direct and indirect mechanisms. These adult non-native fish are able to prey on ESA-listed species, and may do so at greater rates as the time from their last feeding in captivity increases. News coverage has indicated that recently captured Atlantic salmon's bellies contained juvenile Pacific salmon. The released Atlantic salmon will also compete with ESA-listed salmonids for food and for spawning and rearing habitat. Any diseases, parasites, or funguses carried by the farmed fish pose additional risks to ESA-listed salmonids. Harm caused by this release could extend long past this summer if some of the escaped Atlantic salmon are able to reproduce in Puget Sound waters, as has been reported in British Columbia. *See* Volpe, John P., *et al.*, Evidence of Natural Reproduction of Aquaculture-Escaped Atlantic Salmon in a Coastal British Columbia River, 14 CONSERVATION BIOLOGY 899–903 (2000).

The spill of more than one hundred thousand non-native fish into Puget Sound has generated extensive recovery efforts to remove as many of the farmed fish as possible. These include efforts by Tribal and other fishermen, some of which were facilitated by odifications to fishing regulations to increase fishing pressure. The owner of the net pens also participated in the removal of its spilled non-native fish, using tools such as beach seining and a large suction pump on a vessel that pumped dead and live fish. Such removal efforts harm ESA-listed salmonids through incidental by-catch, which can harm and kill fish even when they are returned to surface waters.

The collapse of the net pen facilities resulted in the spill of significant amounts of debris and pollution into Puget Sound. Available information suggests that spilled materials include nets, ropes, cables, structures, machinery, equipment, feed, pharmaceuticals, oils, greases, and fuels. These discharges can harm ESA-listed salmonids by entrapping fish and degrading their habitat. The salvage operations necessitated by the net pen failure will likely

require extensive over-water sawing, cutting, and deconstructing that will impose further burdens on ESA-listed species and their critical habitat.

The complete failure a commercial salmon farm and the resulting environmental and ecological harms and threats constitute new information that reveals effects to ESA-listed species and their critical habitat in manners and to extents not previously considered. These events also undermine any contention that existing regulatory structures—those outside of the ESA—sufficiently protect imperiled salmonids and their critical habitat from the threats posed by the commercial salmon farming industry in Puget Sound. The Conservancy therefore urges EPA and NMFS to reinitiate ESA consultation and fully evaluate the effects to ESA-listed species from the Atlantic salmon farms in Puget Sound.

Additionally, since EPA and NMFS concluded their prior ESA consultation in 2011 (and since the Conservancy initiated its pending lawsuit related thereto in 2015), NMFS designated critical habitat for Puget Sound steelhead. 81 Fed. Reg. 9,252 (Feb. 24, 2016). The commercial salmon farming in Puget Sound that is associated with EPA's approval of revised sediment management standards, at a minimum, *may* affect this newly designated critical habitat. EPA and NMFS are therefore required to reinitiate consultation to evaluate such effects and are in violation of section 7(a)(2) of the ESA for failing to do so. *See* 50 C.F.R. § 402.16(d).

B. Failure to Insure No Jeopardy.

In addition to the procedural consultation requirements of section 7 of the ESA, EPA is required to insure that any action it authorizes and/or carries out is not likely to jeopardize the continued existence of any threatened or endangered species or result in the destruction or adverse modification of designated critical habitat. 16 U.S.C. § 1536(a)(2). The Conservancy's pleadings in its pending ESA suit describe various ways in which the EPA, in approving the revised sediment management standards applicable to Puget Sound commercial salmon farms, has failed to fulfill this substantive duty of section 7 of the ESA. In addition to those, EPA has failed to insure that its approval is not likely to jeopardize the continued existence of Puget Sound Chinook salmon, Puget Sound steelhead, and Hood Canal summer-run chum salmon, or result in the destruction or adverse modification to those species' critical habitat, by failing to reinitiate ESA consultation with NMFS for the reasons described herein.

IV. Party Giving Notice of Intent to Sue.

The full name, address, and telephone number of the party giving notice is:

Wild Fish Conservancy
15629 Main Street N.E.
P.O. Box 402
Duvall, WA 98019
Tel: (425) 788-1167

V. Attorneys Representing Wild Fish Conservancy.

The attorneys representing Wild Fish Conservancy in this matter are:

Brian A. Knutsen
Kampmeier & Knutsen, PLLC
833 S.E. Main St., No. 318
Portland, Oregon 97214
Tel: (503) 841-6515
Email: Brian@KampmeierKnutsen.com

Paul A. Kampmeier
Kampmeier & Knutsen, PLLC
615 Second Avenue, Suite 360
Seattle, Washington 98104
Tel: (206) 223-4088 x 4
Email: Paul@KampmeierKnutsen.com

VI. Conclusion.

This letter provides notice under section 11(g) of the ESA, 16 U.S.C. § 1540(g), of the Conservancy's intent to sue EPA and NMFS for the violations of the ESA discussed herein. Unless these ongoing and imminent violations described herein are corrected within sixty days, the Conservancy intends to file suit or to amend/supplement the pleadings in its pending suit—*Wild Fish Conservancy v. U.S. Envtl. Prot. Agency, et al.*, W.D. Wash. No. 2:15-cv-01731-BJR—to enforce the ESA. The Conservancy is available during the sixty-day notice period to discuss effective remedies and actions that will assure future compliance with the ESA.

Very truly yours,

KAMPMEIER & KNUTSEN, PLLC

By: _____
Brian A. Knutsen

c. Doug Steding, litigation counsel for Cooke (via email only)
Trent S.W. Crable, litigation counsel for USEPA and NMFS (via email only)

CERTIFICATE OF SERVICE

I, Brian A. Knutsen, declare under penalty of perjury of the laws of the United States that I am counsel for Wild Fish Conservancy and that on September 6, 2017, I caused copies of the foregoing to be served on the following by depositing them with the U.S. Postal Service, postage prepaid, via certified mail, return receipt requested:

Office of the Administrator
U.S. Environmental Protection Agency
William Jefferson Clinton Building
Mail Code: 1101A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Administrator Scott Pruitt
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N.W.
Mail Code: 1101A
Washington, D.C. 20460

NOAA Fisheries
1315 East West Highway
Silver Spring, MD 20910

Assistant Administrator for Fisheries Chris Oliver
NOAA Fisheries
1315 East West Highway
Silver Spring, MD 20910

Secretary Wilbur L. Ross, Jr.
U.S. Department of Commerce
1401 Constitution Ave. N.W.
Washington, D.C. 20230

Brian A. Knutsen