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*Counsel for Plaintiffs*

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

RAYMOND LOFSTAD and GUS  
LOVGREN,

Plaintiffs,

v.

GINA RAIMONDO, in her official  
capacity as Secretary of the United  
States Department of Commerce;  
JANET COIT, in her official capacity  
as Assistant Administrator of the  
National Marine Fisheries Service;  
and NATIONAL MARINE  
FISHERIES SERVICE,

Defendants.

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

**Petition for Review and  
Complaint for Declaratory  
and Injunctive Relief**

Plaintiffs Raymond Lofstad (177 B. Springville Rd., Hampton Bays, NY 11946) and Gus Lovgren (621 Kenmore Rd., Brick Township, NJ 08723) by their attorney, Jonathan Houghton (100 Clarendon Blvd., Suite 610, Arlington, VA 22201) of the Pacific Legal Foundation, allege the following:

### INTRODUCTION

1. Plaintiffs Raymond Lofstad and Gus Lovgren bring this action challenging the final rule implementing Amendment 22 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan. *See Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Amendment 22 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan*, 87 Fed. Reg. 68,925-01 (Nov. 17, 2022) (“Rule”).

2. The federal waters of the Mid-Atlantic are managed by the Mid-Atlantic Fishery Council in conjunction with the Secretary of Commerce under the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. §§ 1801–91d.

3. Along the Atlantic seaboard reside a dwindling number of small-boat commercial fishermen. These fishermen provide Americans

with fresh, sustainable seafood. They are an integral link in our food safety and supply chain that our nation cannot afford to lose.

4. Plaintiffs Raymond Lofstad and Gus Lovgren are two of the remaining commercial fishermen who earn their living catching in the fisheries managed by the Mid-Atlantic Council. Each has invested heavily in commercial fishing vessels and permits that allow them to fish in the waters of the Atlantic Ocean. And each has invested countless hours and resources into their respective operations, only to see their catch and revenues decrease, due to increased government regulation.

5. The cause of their financial distress and threatened livelihoods are regulations such as the Rule. Pursuant to a delegation from the Secretary, National Marine Fisheries Service (NMFS) issued the Rule on November 17, 2022. The Rule reduces the amount of summer flounder, scup, and black sea bass commercial fishermen may catch in a given year. The Rule does this by redividing the total annual catch limit for these species between commercial and recreational fishermen. For each species, the Rule reallocates the total annual catch limit in favor of recreational fishermen.

6. As set forth in detail below, the Rule’s reallocation of these species must be set aside because it was adopted by the Council, whose structure violates the Constitution’s Appointments Clause. That Clause provides that the President

shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

U.S. Const. art. II, § 2, cl. 2.

7. The Clause’s main purpose is to ensure that government officials wielding significant policymaking authority are accountable to the President and other democratically responsible officers.

8. The Appointments Clause reserves the exercise of significant federal power, including rulemaking and policymaking power, to “Officers of the United States” who have been properly appointed to their posts consistent with the Clause’s requirements. *See Buckley v. Valeo*, 424 U.S. 1, 140–41 (1976) (per curiam).

9. Though the Rule was approved for publication by NMFS, the policy choice behind the Rule was made by the Council. The Council is an independent policymaking body that manages fisheries between three and 200 nautical miles off the coasts of New York, New Jersey, Delaware, Pennsylvania, Maryland, Virginia, and North Carolina. Under the aegis of the Magnuson-Stevens Act, the Council adopts fishery management plans (“FMPs”), amendments to those plans, and implementing regulations. When the Council adopts a regulation, NMFS must issue it as a final rule, so long as the regulation is consistent with the Act and other applicable law. The Council thus decides the essential policy questions governing fishery management. Accordingly, Council members wield significant authority.

10. Furthermore, given the breadth of their policymaking power, combined with their statutory grant of discretion and independence, Council members must be appointed as non-inferior officers (often referred to as “principal” officers). Yet, no Council member is appointed by the President with the advice and consent of the Senate. Moreover, even if inferior officers could wield the Council’s power, the Council members were not properly appointed as inferior officers. Accordingly,

the Constitution forbade them from making the policy decision underlying the Rule's summer flounder, scup, and black sea bass reallocations.

11. The Court should therefore set aside those reallocations, returning the Summer Flounder, Scup, and Black Sea Bass FMP to its pre-Amendment 22 allocations.

### **JURISDICTION AND VENUE**

12. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction); *id.* § 2201 (authorizing declaratory relief); *id.* § 2202 (authorizing injunctive relief); 16 U.S.C. § 1855(f) (providing for judicial review of Magnuson-Stevens Act regulations pursuant to the Administrative Procedure Act); and *id.* § 1861(d) (providing district court jurisdiction over cases arising under the Magnuson-Stevens Act).

13. Venue in the District of New Jersey is proper because Plaintiff Lovgren resides in this District, and the action does not involve real property. 28 U.S.C. § 1391(e)(1)(C).

## **PARTIES**

### *Plaintiffs*

14. Raymond Lofstad and Gus Lovgren are active commercial fishermen possessing the necessary state and federal permits to catch in the Atlantic Ocean. Most of their fishing operations are conducted in federal waters.

15. Raymond Lofstad is a commercial fisherman operating a single boat out of Shinnecock Hills, New York. Mr. Lofstad is a fourth-generation fisherman who has fished commercially in Long Island for over 45 years.

16. Summer flounder, scup, and black sea bass represent over 50 percent of Mr. Lofstad's annual gross revenue. The Rule's further reductions in Mr. Lofstad's annual allowable catch for these species threatens this reliable stream of income.

17. Mr. Lofstad also operates a profitable retail business connected with his fishing operation. As fish sales decline, so will sales of his retail merchandise. In all, Mr. Lofstad predicts an annual loss of between \$15,000 and \$30,000 gross.

18. Gus Lovgren is a commercial fisherman operating out of Point Pleasant, New Jersey. Mr. Lovgren is a fourth-generation fisherman who proudly bought his father's boat in 2020 to carry on his family's fishing legacy. He has worked in the fishing industry in some capacity for over 20 years. Mr. Lovgren has two young daughters—six and eight years old—and is the main source of income for his family.

19. Summer flounder, scup, and black sea bass constitute between 70 and 80 percent of Mr. Lovgren's annual fishing operation. His total annual catch is consistently over 600,000 pounds and valued at an estimated \$900,000 gross. Because of the Rule's increased catch restrictions on summer flounder, scup, and black sea bass, Mr. Lovgren estimates an annual loss of between \$75,000 and \$100,000 gross. Mr. Lovgren estimates that, as a consequence of the Rule, his personal income will decrease between \$20,000 and \$25,000 in the coming year.

20. Losses caused by the Rule are not just financial. Mr. Lovgren anticipates having to spend more time at sea in an attempt to make up for his lost earnings, resulting in less time with his wife and children.

21. Plaintiffs' lost income is compounded by various debts and other financial obligations associated with their fishing operations.



Deferrals of boat maintenance, potential reductions in crewmates and other staff, and an inability to pay business-related fees and debts threaten to further injure and possibly even bankrupt their businesses.

22. Moreover, the Rule inflicts economic injury on Plaintiffs by reducing the value of their fishing assets, including transferable fishing permits, vessels, and gear.

23. In all, both Plaintiffs face a substantial economic injury as a result of the Rule's quota reallocations.

### *Defendants*

24. Gina Raimondo is the Secretary of Commerce and is charged with administering the Magnuson-Stevens Act. She is sued in her official capacity only.

25. Janet Coit is the Assistant Administrator for the National Marine Fisheries Service. The Assistant Administrator approved the Rule as being consistent with applicable law. She is sued in her official capacity only.

26. The National Marine Fisheries Service is an agency within the Department of Commerce. The Secretary of Commerce has delegated to the National Oceanic and Atmospheric Administration ("NOAA") the

authority to administer the relevant portions of the Act; and NOAA has sub-delegated that authority to NMFS.

## **LEGAL BACKGROUND**

### **Federal Fisheries Management**

27. In the United States, the state and federal governments share authority to regulate ocean fisheries. States govern nearshore waters, from the shoreline to three nautical miles offshore, while federal authority extends from three nautical miles to 200 nautical miles offshore.

28. Federal fisheries are regulated principally through the Magnuson-Stevens Act. The Act's purpose is to provide a framework for the management of fisheries to maximize their long-term benefits, including for commercial fishermen. *See* 16 U.S.C. §§ 1801, 1851.

29. This purpose is realized through FMPs and amendments, which typically are developed by the eight regional fishery management councils and then approved by the Secretary or her delegate. *See id.* §§ 1852, 1854(a).

30. FMPs and amendments are implemented through regulations, which typically are proposed by the regional councils and

then approved by the Secretary or her delegate. *See id.* §§ 1853(c), 1854(b).

31. The Secretary has delegated her authority under the Act to approve FMPs, amendments, and implementing regulations to NMFS.

32. The Secretary, and thus NMFS, may not reject Councils' fishery management plans, amendments, and implementing regulations unless they violate "applicable law." *See id.* § 1854(a)(3), (b)(1). The Act does not authorize the Secretary or NMFS to reject Councils' fishery management plans, amendments, or implementing regulations for any other reason, such as policy disagreement. *See id.*

33. NMFS is led by the NOAA Assistant Administrator for Fisheries. The Assistant Administrator for Fisheries is neither nominated by the President nor confirmed by the Senate.

### **The Regional Fishery Management Councils**

34. The Mid-Atlantic Fishery Management Council is one of the eight regional fishery councils established by the Magnuson-Stevens Act. The Council is composed of the states of New York, New Jersey, Delaware, Pennsylvania, Maryland, Virginia, and North Carolina. *Id.*

§ 1852(a)(1)(B). The Council manages fisheries within federal waters off the coasts of these member states. *Id.*

35. The Council is an independent entity within the Executive Branch, not contained within any other agency or Executive Department.

36. The Council has 21 voting members. *Id.* A quorum is a majority of the Council, and the Council acts by majority vote of those present and voting. *Id.* § 1852(e)(1).

37. One voting member of the Council is “[t]he regional director of the National Marine Fisheries Service for the geographic area concerned, or his designee.” *Id.* § 1852(b)(1)(B). The relevant official here is NMFS’s Greater Atlantic Regional Administrator.

38. The Greater Atlantic Regional Administrator has not been appointed by the President, a head of department, or a court of law.

39. The Greater Atlantic Regional Administrator is a career official in the Senior Executive Service. He is therefore removable only for cause. 5 U.S.C. §§ 7541–43.

40. Seven voting members of the Council are the principal State officials with marine fishery management responsibility and expertise in each constituent state, who are designated as such by the governors of

their respective states, so long as the officials continue to hold such position, or the designees of such officials. *See* 16 U.S.C. § 1852(b)(1)(A). In other words, none of these Council members was appointed to the Council consistent with the Appointments Clause.

41. The Act does not permit the President or the Secretary to remove the seven state fishery officials from the Council.

42. The remaining thirteen members are appointed by the Secretary of Commerce. *Id.* § 1852(a)(1)(B).

43. The Secretary's selection is limited to a list of nominees provided by the governors of New York, Pennsylvania, New Jersey, Delaware, Maryland, Virginia, and North Carolina. *Id.* § 1852(b)(2)(C).

44. One obligatory member must be appointed from each member state, and the remaining six at-large members may be appointed from any governor of any member state. *See id.*; 50 C.F.R. § 600.215(a)(2)(iii). The governors need provide no more than three nominees for each vacancy. 16 U.S.C. § 1852(b)(2)(C).

45. The Secretary may reject a slate of nominees for a position only if the nominees fail to satisfy certain minimal statutory qualifications, in which case the governor may revise the list or resubmit

the original list with additional explanations of the individuals' qualifications. *Id.* The Secretary may not reject a slate of nominees on the basis of the nominees' judgment, policy prescriptions, or character. *See id.*

46. The Secretary has delegated appointment of these Council members to the NOAA Administrator. The NOAA Administrator has, in turn, delegated this appointment power to the Assistant Administrator for Fisheries, who leads NMFS. The Assistant Administrator appoints these thirteen Council members. Thus, as with the state fishery management official appointees, so too with these governor-nominated, NMFS-appointed Council members: none has been appointed consistent with the Appointments Clause.

47. The Act permits the Secretary to remove a governor-nominated member only if the Council first recommends removal by a two-thirds majority of voting members and states the basis for the recommendation, or the member violates § 1857(1)(O), a financial conflict-of-interest provision. *Id.* § 1852(b)(6).

## The Appointments Clause

48. As noted above, the Appointments Clause of the United States Constitution provides that the President “shall nominate, and by and with the Advice and Consent of the Senate, shall appoint” all “Officers of the United States.” U.S. Const. art. II, § 2, cl. 2. This requirement applies to both principal (non-inferior) officers and inferior officers, except that “Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.” *Id.*

49. “[A]ny appointee exercising significant authority pursuant to the laws of the United States is an ‘Officer of the United States,’ and must, therefore, be appointed in the manner prescribed by” the Appointments Clause. *Buckley*, 424 U.S. at 126.

50. The Appointments Clause is not limited to officials with authority to “enter a final decision” on behalf of the United States; it applies to any official who “exercise[s] significant discretion” in “carrying out . . . important functions.” *Freytag v. Comm’r*, 501 U.S. 868, 881–82 (1991).

51. Rulemaking is significant authority which only an officer may exercise. *Buckley*, 424 U.S. at 140–41.

52. A person exercising officer powers may be appointed as an inferior officer only if his “work is directed and supervised at some level by others who were appointed by presidential nomination with the advice and consent of the Senate.” *Edmond v. United States*, 520 U.S. 651, 663 (1997). It is necessary but “not enough that other officers may be identified who formally maintain a higher rank or possess responsibilities of a greater magnitude.” *Id.* at 662–63. The key question, rather, is “how much power an officer exercises free from control by a superior.” *United States v. Arthrex, Inc.*, 141 S. Ct. 1970, 1982 (2021)

53. Three factors bear on whether an official wielding officer powers may be appointed as an inferior officer: (1) whether the officer is subject to oversight in the conduct of his duties; (2) whether the officer is subject to removal without cause; and (3) whether the officer has “no power to render a final decision on behalf of the United States unless permitted to do so by other Executive officers.” *Edmond*, 520 U.S. at 664–65. Supervision over inferior officers must extend to “matters of law as well as policy.” *Arthrex*, 141 S. Ct. at 1983; *see Collins v. Yellen*, 141 S.



Ct. 1761, 1783 (2021). A head of department may not be appointed as an inferior officer. *Freytag*, 501 U.S. at 884 (identifying heads of departments as “principal federal officers” who must be appointed with Senate confirmation).

54. The Appointments Clause requires that officers possessing broad discretion be appointed by nomination and confirmation, while allowing officers possessing narrower, supervised authority to be appointed with less scrutiny (if allowed by Congress). Only nonofficers—those who lack any significant federal authority—may be selected by other means.

55. A “timely” petitioner challenging a final action of an improperly appointed officer, if successful, is “entitled” to “whatever relief may be appropriate,” including have the action set aside. *See Ryder v. United States*, 515 U.S. 177, 182–83 (1995) (the de facto officer doctrine does not apply where “basic constitutional protections [are] designed in part for the benefit of litigants,” such as challenges to an officer’s title, are decided (citation omitted)).

## FACTUAL ALLEGATIONS

56. Plaintiffs make their living fishing for summer flounder, scup, and black sea bass in the fisheries managed by the Mid-Atlantic Council.

57. The federal fisheries of the Atlantic are governed, in part, by the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (“Fishery Management Plan” or “Plan”), which regulates and manages those named species, in large part, to ensure healthy and stable fisheries.

58. In December 2021, the Council approved Amendment 22 to the Fishery Management Plan. Under the Plan, the annual catch limits for summer flounder, scup, and black sea bass are divided between recreational and commercial fishermen. Neither group of fishermen may exceed their allocated catch. Under the Plan, allocations for each species are as follows: summer flounder, 60 percent commercial to 40 percent recreational; scup, 78 percent commercial to 22 percent recreational; black sea bass, 49 percent commercial to 51 percent recreational.

59. Amendment 22, in part, reallocates these existing quotas. After Amendment 22, allocations for each species are as follows: summer flounder, 55 percent commercial to 45 percent recreational; scup, 65

percent commercial to 35 percent recreational; black sea bass, 45 percent commercial to 55 percent recreational.

60. The result of Amendment 22's quota reallocation is a transfer of hundreds of thousands of dollars, potentially millions, from commercial to recreational fishermen.

61. The Council approved Amendment 22 in December 2021, transmitting it to NMFS on June 24, 2022. NMFS then approved the amendment as consistent with applicable law. *See* 87 Fed. Reg. 49,796 (Aug. 12, 2022); 87 Fed. Reg. 68,925 (Nov. 17, 2022).

62. The Council submitted proposed regulations implementing Amendment 22 to NMFS on July 19, 2022. NMFS, having determined that the Rule as transmitted by the Council was consistent with applicable law, published it for comment. *See* 87 Fed. Reg. 49,573 (Aug. 11, 2022); 87 Fed. Reg. 49,796 (Aug. 12, 2022).

63. On November 17, 2022, NMFS published the Rule as a final rule. The Rule takes effect January 1, 2023.

## **DECLARATORY AND INJUNCTIVE RELIEF ALLEGATIONS**

64. Each of the Plaintiffs has a significant interest in whether the Rule was lawfully promulgated. A substantial portion of each Plaintiff's income depends on commercial summer flounder, scup, or black sea bass fishing in Mid-Atlantic federal waters. Further, Plaintiffs' fishing permits, vessels, and gear comprise a significant portion of Plaintiffs' assets. Decreasing the commercial catch limit of these species will create significant economic hardship on Plaintiffs, in addition to reducing the value of their permits, vessels, and gear. A decision declaring the Rule's quota allocations violate the Appointments Clause and are therefore void would remedy these injuries by preserving the value of Plaintiffs' assets and enabling Plaintiffs to continue to catch these species at their current rates.

65. Plaintiffs have no plain, speedy, and adequate remedy at law for their injuries. Money damages in this case are not available.

66. This case is currently justiciable because the Rule reduces the commercial catch rate of these affected species, beginning January 1, 2023.

## CLAIM FOR RELIEF

### ***Exercise of Powers Reserved to Officers of the United States by Persons Not Appointed Consistent with the Appointments Clause (U.S. Const. art. II, § 2, cl. 2; 5 U.S.C. § 706(2)(B))***

67. The preceding paragraphs are incorporated herein by reference.

68. Council members wield power reserved for officers of the United States because they exercise significant authority pursuant to the laws of the United States, including rulemaking powers.

69. Council members hold a continuing office established by law. *See* 16 U.S.C § 1852.

70. Although Council members cannot promulgate regulations on their own, proposed Council regulations may be blocked only for inconsistency with law, not policy. *See id.* § 1854(b). Thus, the Council and its members are endowed with significant authority to make federal fishery policy.

### ***Unlawful Principal Officers***

71. Council members must be appointed as principal officers because they are not effectively supervised by anyone who is appointed by the President with the advice and consent of the Senate. By design,

the Council is insulated from both the President and other executive officers. Council members are not removable at will but rather enjoy extraordinarily strong protections against removal. *See id.* § 1852(b)(6). They have wide discretion over policy decisions. *See id.* § 1854(a)(3), (b). And they operate largely independent of external direction: they set their own priorities, establish and direct their own staff, and create their own operating procedures. *Id.* § 1852(e), (g)–(i).

72. Council members must be appointed as principal officers for an independent reason. Because the Council is a freestanding entity within the Executive Branch, it constitutes an Executive department for constitutional purposes, and the Council members collectively constitute a head of a department. *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 511 (2010). Heads of departments, by definition, must be appointed as principal officers. *Freytag*, 501 U.S. at 884.

73. Despite the requirement that they be appointed as principal officers, Council members are not appointed through presidential nomination and Senate confirmation. They therefore exercise their powers unconstitutionally.

*Unlawful Inferior Officers—Appointment  
by Constitutionally Ineligible Persons*

74. Even if Council members need only be appointed as inferior officers, such appointment has not taken place, and they therefore still exercise their powers unconstitutionally.

75. The default appointment procedure for inferior officers is presidential appointment with Senate confirmation. *Edmond*, 520 U.S. at 660.

76. The Constitution permits Congress to loosen this requirement within strict limits: Congress may only vest the appointment of inferior officers in the President, the courts of law, or the heads of departments; and Congress must do so “by law.” U.S. Const. art. II, § 2, cl. 2.

77. Here, one Council seat is taken by NMFS’s Greater Atlantic Regional Administrator, *see* 16 U.S.C. § 1852(b)(1)(B), whose appointment Congress has not vested by law in the President, the courts of law, or a head of department. This seat is therefore unconstitutionally occupied.

78. Seven seats on the Council are filled by each state’s “principal State official with marine fishery management responsibilit[ies] and

expertise,” as designated by their respective governors. *Id.* § 1852(b)(1)(A).

79. Because these seven Council members hold their seats by virtue of their state positions, and because they may be appointed to their state positions by entities other than state governors, their appointments to their Council seats may be even more diffuse than governor-appointment alone.

80. Further, the state fishery management officials themselves do not necessarily sit on the Council. Each state fishery management official may appoint a designee to take his place, further diffusing the appointment responsibility. *Cf. id.* § 1852(b)(1)(A) (allowing either the state official with principal fishery responsibilities “or the designee of such official” to sit on the Council). At the time the Council approved Amendment 22, five of the seven state officials had appointed a designee to sit on the Council in their place.

81. None of these seven Council positions is filled by the President, the courts of law, or a head of department. *See id.* They are therefore unconstitutionally occupied.



82. The majority of the Council—thirteen members—are appointed by the Secretary from lists provided by the governors of each member state. 16 U.S.C. § 1852(b)(1)(C), (b)(2)(C). The Secretary may reject a governor-prepared list only if it fails to meet objective statutory criteria, not for policy or character reasons. *See id.* § 1852(b)(2)(C). Because the governors may designate as few as three individuals per obligatory vacancy, they can effectively force the Secretary to appoint individuals whose judgment and character she mistrusts and whose policy prescriptions she disagrees with.

83. This arrangement unconstitutionally constrains the appointment power. *See Myers v. United States*, 272 U.S. 52, 128 (1926) (holding that statutory limitations on an appointment power cannot “so limit selection and so trench upon executive choice as to be in effect legislative designation”); *United States v. Espy*, 145 F.3d 1369, 1372 (D.C. Cir. 1998) (quoting *Myers* and acknowledging that Congress faces “constitutional limits” in restricting executive appointments).

84. These thirteen, governor-designated appointments are unconstitutional for a separate reason: the Secretary did not actually fill these seats. Rather, the Assistant Administrator for Fisheries—who is

not a head of department—did so pursuant to authority delegated from the Secretary and the NOAA Administrator. National Oceanic & Atmospheric Administration, U.S. Department of Commerce, *NOAA Organizational Handbook: Transmittal No. 61*, at PDF 2–3 (Feb. 24, 2015), <https://bit.ly/3k9XRlj>.

85. For this independent reason, the thirteen governor-designated Council seats requiring the Secretary’s appointment are unconstitutionally filled.

86. Because the Rule was proposed by the Council, and its members are unconstitutionally appointed, the Rule is contrary to constitutional right, power, privilege, or immunity. 5 U.S.C. § 706(2)(B). The Rule is contrary to constitutional right, power, privilege, or immunity as well because it implements Amendment 22, which was formulated by the Council, whose members are unconstitutionally appointed. *Id.*

## **PRAYER FOR RELIEF**

Plaintiffs Raymond Lofstad and Gus Lovgren request the following relief:

1. A judgment declaring that the quota allocations of summer flounder, scup, and black sea bass as incorporated by the Rule and Amendment 22 are void because they were decided upon by the Council, the structure of which violates the Appointments Clause;

2. A permanent prohibitory injunction setting aside the quota allocations of summer flounder, scup, and black sea bass as incorporated by the Rule and Amendment 22 and forbidding Defendants from enforcing those allocations;

3. An award of reasonable attorney fees and costs, pursuant to 28 U.S.C. § 2412, or any other applicable authority; and

4. An award of any further relief that this Court deems just and proper.

DATED: December 16, 2022.

Respectfully submitted,

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*Counsel for Plaintiffs*

**CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 11.2**

I, Jonathan Houghton, hereby certify that, to the best of my knowledge, the matter in controversy is not the subject of any other action pending in any court or of any pending arbitration or administrative proceeding.

Dated: December 16, 2022.

/s/ Jonathan Houghton  
JONATHAN HOUGHTON