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17 **IN THE UNITED STATES DISTRICT COURT**
18 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

19 HOMER T. MCCRARY,

20 Plaintiff,

21 v.

22 CARLOS M. GUTIERREZ, in his official
23 capacity as Secretary of Commerce,
24 the NATIONAL MARINE FISHERIES
25 SERVICE, and RUSS M. STRACH, in
26 his official capacity as Assistant
27 Regional Administrator of the Protected
28 Resource Division of the Southwest
29 Region of the National Marine Fisheries
30 Service,

31 Defendants.

No.

COMPLAINT

For their complaint, plaintiff alleges:

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Parties and Jurisdiction

1. HOMER T. MCCRARY is an individual residing in Davenport, California, who owns land and timber interests along the California coast south of San Francisco, and has suffered economic loss as a result of the listing, pursuant to 16 U.S.C. § 1533, of the so-called Central California Coast Evolutionarily Significant Unit (ESU) of coho salmon. He is an "interested person" within the meaning of 5 U.S.C. § 553(e).

2. CARLOS M. GUTIERREZ, is the U.S. Secretary of Commerce, who has statutory authority over Endangered Species Act (ESA) decisions concerning the coho salmon; the NATIONAL MARINE FISHERIES SERVICE is a subunit of the U.S. Department of Commerce to which, upon information and belief, CARLOS M. GUTIERREZ has delegated his ESA authority with respect to coho salmon, and RUSS M. STRACH is the Assistant Regional Administrator of the Protected Resource Division of the Southwest Region of the National Marine Fisheries Service who has primary responsibility for formulating the position of the NATIONAL MARINE FISHERIES SERVICE with respect to the issues raised by this action.

3. This Court has jurisdiction under 28 U.S.C. §§ 1331 (federal question), 2201 (declaratory relief), and 2202 (injunctive relief). Venue is properly vested in this Court pursuant to 28 U.S.C. § 1391(e), as the defendant RUSS M. STRACH is located in this district, and the acts or omissions complained of occurred, in part, in this district.

CLAIM FOR RELIEF—AGENCY ACTION WRONGFULLY WITHHELD

4. On or about November 6, 2003, plaintiff transmitted to defendant NATIONAL MARINE FISHERIES SERVICE a petition to redefine the southern boundary of the California Central Coast Coho ESU, a true copy of which is attached hereto as Exhibit 1 and incorporated as if set forth herein.

5. Pursuant to 16 U.S.C. § 1533(b)(3)(A): "To the maximum extent