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SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT BETHEL

ERIC FORRER Plaintiff, vs. **STATE OF ALASKA** and **DOUGLAS VINCENT-LANG**, Commissioner of the Alaska Department of Fish & Game, in his capacity as an official of the State of Alaska. Defendants.	**4BE-22- 00324 Civil**

ORDER ON MOTION TO AMEND
Civil Rule 15(A)

Plaintiff, Eric Forrer, having moved the court through counsel to file an amended Complaint, and; having considered this matter, including the opposition filed by State of Alaska as well as any reply submitted by the Forrer,

IT IS ORDERED that the pending motion to amend and allow for the filing of an *Amended Verified Complaint for Declaratory Relief and Potential Equitable Relief* is **APPROVED.**

DATED this 10th day of April, 2023 at Bethel, Alaska.

Nathan Peters

Superior Court Judge

I certify that on 4/10/23
copies of this form were sent to: J. Geldof
N. Star
A Peterson

CLERK KC

#8

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT BETHEL

ERIC FORRER,
Plaintiff,
v.

STATE OF ALASKA, the ALASKA BOARD of FISHERIES,[1] DOUGLAS VINCENT-LANG, Commissioner of the Alaska Department of Fish & Game, in his capacity as an official of the State of Alaska, and, MICHAEL J. DUNLEAVY, in his official capacity as an official of the State of Alaska,
Defendants.

Case No. 4BE-22-00324CI

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

I. Overview

On September 26, 2022, Eric Forrer ("Plaintiff") filed a Verified Complaint for Declaratory Relief and Potential Equitable Relief against the State of Alaska and Douglas Vincent-Lang, Commissioner of the Alaska Department of Fish and Game ("Defendants"). This complaint was filed by Plaintiff as a public interest suit seeking declaratory relief, a consent decree, injunctive relief, and costs related to the suit for the alleged deficiencies in Defendants' management under the "sustained yield" principle[2] as it relates to the Chinook and Chum salmon species of the Kuskokwim and Yukon rivers.[3]

[1] Plaintiff's Amended Complaint added "Board of Fish" as a new party. This Court will assume Plaintiff intended to add the Board of Fisheries and will correct the typo accordingly.
[2] ALASKA CONST. art. VIII, § IV ("Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.").
[3] *See generally* Plaintiff's Verified Complaint for Declaratory Relief and Potential Equitable Relief ("Complaint") (Sept. 26, 2022).

#1

On November 15, Defendants filed a Motion to Dismiss Under Rule 12(b)(6) for failure to state a claim and articulated four points to support their argument.[4] On November 30, Plaintiff filed a Response in Opposition, a Motion to Allow Filing an Amended Complaint, a Memorandum in Support of that motion, and a copy of the Amended Complaint, which added the Board of Fisheries and Governor Michael J. Dunleavy as Defendants. On December 1, Plaintiff filed a Request for Oral Argument in relation to the Defendants' Motion to Dismiss. On December 12, Defendants filed an Opposition to Plaintiff's Motion to Amend Complaint. On December 13, Plaintiff Filed a Reply to the Defendants' Opposition. The Motion to Amend and Motion for Oral Argument were granted by this Court. Oral argument in relation to this Motion was held on March 20, 2023. For the following reasons, the Court GRANTS Defendants' Motion to Dismiss.

II. Plaintiff's Complaint

In his Complaint, Plaintiff maintains this suit is brought on behalf of the public interest in order to "interpret and enforce Alaska's constitutional mandate requiring sustained yield management" of its natural resources, with a focus on the Chinook and Chum salmon species of the Kuskokwim and Yukon rivers.[5] In the original Complaint, Plaintiff names the State of Alaska and Douglas Vincent-Lang, Commissioner of the Alaska Department of Fish and Game ("Commissioner") as Defendants. In Plaintiff's Amended Complaint, he adds the Board of Fisheries ("Board") and Governor Michael J. Dunleavy as additional Defendants.

Plaintiff begins his "Facts" section with a brief overview of the geography of the two rivers and the historical use of the sustained yield principle from Alaska's inception as a state to the

[4] *See generally* Defendants' Motion to Dismiss Under Rule 12(b)(6) ("Motion to Dismiss") (Nov. 15, 2022).
[5] Plaintiff's Complaint at 2.

present.[6] Plaintiff then comes to the crux of his argument. He states:

> "[Plaintiff] believes the management decisions made by the State of Alaska in regard to the Chinook and Chum salmon that have historically made their home in the Kuskokwim and Yukon Rivers during the last sixty-four years illustrate a failure to adhere to the constitutional directive regarding sustained yield."[7]

Plaintiff claims his personal conclusion of "degradation" of the two species is based on "available data and other obvious indicators."[8] Plaintiff states "[m]ining activities," "[e]xtensive industrial capture," "[w]ater pollution issues," and "[c]limate changes" have all led to habitat degradation of the two species.[9] Despite these conclusory statements and routine environmental concerns—and with no actual data, studies, or research of any kind for support—Plaintiff states, "it is obvious the historic runs of Chum and Chinook salmon in the Yukon and Kuskokwim Rivers are massively depleted."[10]

Plaintiff admits "[n]o genuine baseline data exists illustrating" past runs of the two species. However, Plaintiff claims "[s]tories advanced by indigenous people" and "[t]estimony from Native Alaskans" should be given more weight and not simply dismissed as "hearsay" and "hyperbole" to supplement "sonar and other modern sampling techniques."[11] Plaintiff discusses "abundant evidence" and "oral history" and legend of "the big run" as baselines which should be included by the State in their management under the sustained yield principle.[12]

Plaintiff continues by discussing his personal history in the area of southwest Alaska. He discusses the legend of "the big run" and stories conveyed to him by fishing instructors in the

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[6] *Id.* at 4-5.
[7] *Id.* at 5.
[8] *Id.* at 6.
[9] *Id.* at 6-7.
[10] Plaintiff's Complaint at 7.
[11] *Id.*
[12] *Id.* at 8.

1960's. Plaintiff states, "[t]he reduction of "big run" of Chinook salmon from the 1940's to the mid-1960's was obvious – a reduction by a factor of 24 over roughly 25 years."[13] This number, while seemingly based on scientific evidence, is attributed in a footnote to "[p]ersonal conversations over two commercial salmon seasons."[14]

Plaintiff goes on to state there is not only "anecdotal information" to support the reduction in salmon runs, but also "a number of scientific papers and peer-reviewed articles."[15] To support this statement, Plaintiff includes eight articles which cover the historical practice of salmon fishing in the region. These papers primarily focus on the practice of fishing to establish evidence of historical settlement in the region; issues of climate change and its impact on the oceans, rivers, and fish species; and production in terms of historical run patterns.[16] Plaintiff states, "based on abundant scientific studies, common sense and credible anecdotal stories . . . the Chinook and Chum salmon have been in decline for much of the twentieth century through the present."[17]

Plaintiff's "Allegations" section states: (1) "The State of Alaska has not utilized, developed, and maintained . . . the salmon runs . . . according to the sustained yield principle mandated by the Alaska Constitution." (2) "The principles of fishery management used by the State of Alaska . . . are inconsistent with the sustained yield requirements in the Alaska Constitution." (3) "[T]he obvious results of this management regime are that the biggest fish in the biggest numbers on the biggest river systems in Alaska are reduced and gone or nearly gone." (4) "The State of Alaska has adopted a management system that has systematically reduced" these salmon, which

[13] *Id.* at 9.
[14] *Id.* at 9 n.2.
[15] Plaintiff's Complaint at 12.
[16] *Id.* at 13.
[17] *Id.* at 14.

"disproportionately harms individuals and communities living along the Yukon and Kuskokwim Rivers." and (5) "The Alaska Constitution requires" these rivers and salmon "be utilized and maintained on sustained yield principles, a mandate that has primacy over any preference among beneficial uses."[18]

Finally, Plaintiff lists his "Prayers for Relief," which include: (1) declaratory relief; (2) entry of a mutually agreeable consent decree; (3) injunctive relief, if necessary; (4) costs and reasonable fees associated with maintenance of the suit; and (5) other relief necessary to protect the rights of the Plaintiff and citizens of Alaska.[19]

III. Defendants' Response

In their Motion to Dismiss, the State briefly, yet thoroughly, states their argument for dismissal.[20] To begin, the State raises four primary reasons for dismissal. (1) Plaintiff "does not state a constitutional claim under the sustained yield clause in Article VIII, section 4." (2) Plaintiff "does not challenge or cite to a specific management decision by the Commissioner that violated the Constitution." (3) Plaintiff's "vague and unspecific allegations invite this court to violate the Alaska Supreme Court's longstanding rule against intervening in fisheries management." and (4) Plaintiff "is not entitled to his requested relief because the Department cannot act in contravention of the management plans adopted by the Board of Fisheries."[21] At the outset of their "Argument" section, the State notes, "[t]here is no material factual dispute because the Department does not disagree that the Yukon and Kuskokwim chum and chinook fisheries have produced historically low runs. But [Plaintiff] fails to state a legal claim for four

[18] *Id.* at 17-18.
[19] *Id.* at 18-19.
[20] *See generally* Defendant's Motion to Dismiss; Defendants' Memorandum Supporting Motion to Dismiss ("Memorandum") (Nov. 15, 2022).
[21] Defendants' Motion to Dismiss at 1-2.

independent reasons."[22]

In their first reason for dismissal, the State notes, "[t]he primary purpose of Article VIII is "to balance maximum use of natural resources with their continued availability for future generations."[23] The State notes this language has created a requirement of applying the sustained yield principle to the management of natural resources but, as interpreted by the Alaska Supreme Court, it does not "mandate the use of a predetermined formula, quantitative or qualitative."[24] To this end, the State reiterates, "[Plaintiff] fails to state a claim because he does not articulate how management of the Yukon and Kuskokwim River fisheries departed from the sustained yield principle."[25]

More aptly, the State notes, "[m]erely demonstrating that the Department managed the fisheries over a period in which the fisheries declined fails to state a constitutional claim under Article VIII, section 4." [26] The State maintains that "Alaska's successful management of complex multi-stock salmon fisheries relies in large part on the sustained yield principle."[27] The State notes the "area-specific regulations" (referring specifically to the Yukon and Kuskokwim Rivers) additionally apply the sustained yield principle.[28] Finally, the State cites the Department's frequent and adaptive in-season use of closures, modifications of subsistence fishing allowances, and as-needed full closures of fisheries as evidence of efforts to maintain

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[22] Defendants' Memorandum at 4.
[23] *Id.* at 5 (quoting West v. State Bd. of Game, 248 P.3d 689, 696 (Alaska 2010) (citing THE ALASKA CONSTITUTIONAL CONVENTION, PROPOSED CONSTITUTION FOR THE STATE OF ALASKA (1956))).
[24] Native Village of Elim v. State, 990 P.2d 1, 6-7 (Alaska 1999).
[25] *Id.* at 6.
[26] *Id.* (referencing *Elim*, 990 P.2d at 8).
[27] *Id.* at 8 (referencing AS 16.05.251(h) ("The Board of Fisheries shall adopt by regulation a policy for the management of mixed stock fisheries. The policy shall provide for the management of mixed stock fisheries in a manner that is consistent with sustained yield of wild fish stocks.")).
[28] Defendants' Memorandum at 9 (referencing 5 AAC 07.365(a) (Kuskokwim salmon); 5 AAC 05.360 (Yukon Chinook); 5 AAC 05.352 (Yukon Chum)).

stocks and runs under the sustained yield principle.[29]

In their second reason for dismissal, the State notes, "[Plaintiff] does not even identify which specific management decisions or regulations violate the sustained yield provision."[30] The State referenced the case of *Cook Inlet Fisherman's Fund v. State, Department of Fish and* Game in which the Alaska Supreme Court noted the plaintiffs' failure to "cite any specific management plan provision" warranted dismissal by the trial court.[31] Applying that holding, the State maintains dismissal in this case is similarly warranted since Plaintiff's Complaint lacks any reference to a specific management decision by the Commissioner or Board of Fisheries.[32]

In their third reason for dismissal, the State notes, the "Alaska Supreme Court has plainly warned that "[c]ourts are singularly ill-equipped to make natural resource management decisions" and are loathe to "substitute [their] judgment for that of the Board.""[33] As the State argues, it is not the role of the courts to manage the fisheries, and such an overstep would violate the "long-standing policy of not second-guessing the Department's management decisions based on its specialized knowledge and expertise."[34] The State reiterates that such deference is all the more appropriate in the present case given the lack of specificity in the Plaintiff's Complaint.[35]

Finally, in their fourth reason for dismissal, the State argues the division of authority and responsibility for planning and implementation between the Board of Fisheries and the Commissioner of Fish and Game means the Commissioner cannot act independently of the

[29] Defendants' Memorandum at 9-11.
[30] *Id.* at 11.
[31] 357 P.3d 789, 798 (Akaka 2015).
[32] Defendants' Memorandum at 12.
[33] *Id.* at 12-13 (quoting *Elim*, 990 P.2d at 8).
[34] *Cook Inlet*, 357 P.3d at 804.
[35] Defendants' Memorandum at 14.

Board's management decisions.[36] The State notes the Alaska Supreme Court, in *Peninsula Marketing Ass'n v. Rosier*, has recognized "this statutory division means that the Commissioner cannot act independently, even on an emergency basis, of a Board management plan."[37] With this understanding, the State argues the relief sought by Plaintiff would be a violation as it would ask "the Commissioner to act independently of the Board's management plan for the Yukon and Kuskokwim chum and chinook fisheries."[38] Of course, this reason is arguably remedied by Plaintiff's Amended Complaint in which he adds the Board of Fisheries as a Defendant.

IV. Legal Standard

A motion to dismiss looks to the sufficiency of the complaint and whether the plaintiff has articulated a claim for which relief can be granted. In analyzing a motion to dismiss, a court will construe the complaint "liberally and [accept] as true all factual allegations."[39] The review by a court is limited to the contents of the complaint.[40] "Because motions to dismiss are disfavored, "[a] complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts that would entitle him or her to relief.""[41] This Court will focus solely on the Complaint and maintain its analysis as to the Motion to Dismiss standard and not fully convert this to a motion for summary judgment since, in this Court's view, the case "presents no material factual dispute and can be resolved purely through the exercise of legal reasoning."[42]

V. Analysis

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[36] *Id.* at 14-15 (citing Peninsula Mktg. Ass'n v. Rosier, 890 P.2d 567 (Alaska 1995)).
[37] *Id.* at 15.
[38] *Id.*
[39] Pedersen v. Blythe, 292 P.3d 182, 184 (Alaska 2012).
[40] Kanuk ex rel. Kanuk v. State, Dep't of Natural Res., 335 P.3d 1088, 1092 (Alaska 2014) ("Kanuk").
[41] Adkins v. Stansel, 204 P.3d 1031, 1033 (Alaska 2009) (quoting Catholic Bishop of N. Alaska v. Does 1-6, 141 P.3d 719, 722 (Alaska 2006)).
[42] Forrer v. State, 471 P.3d 569 (Alaska 2020).

To begin, this Court will acknowledge we are currently sitting just a few hundred yards from the Kuskokwim river. As such, we are acutely aware of the continuing and troublesome issues connected with salmon runs, fisheries, sustainability, and subsistence in relation to the environment, natural resources, and peoples of this region and state. That being said, we must set that aside and look only to the substance of this case and what is appropriate given the positions of the parties, laws of this state, and proper role of the courts. Adherence to the separation of powers and deference to the expertise of a state agency are central tenets of our legal system. These familiar and proper positions held by the courts are certainly strengthened when the plaintiff seeking relief points to no particular concrete offense or injury, offers no credible factual or relevant scientific basis for their claims, and instead relies on anecdotes, hyperbole, and conclusory statements to maintain their positions.

A. Plaintiff Has Failed to Identify Any Specific Decision or Policy of the Commissioner or Board That Could Be Viewed as a Violation of the Constitutionally Mandated Sustained Yield Principle

In this case, broadly speaking, we are presented with a public interest suit brought forth by a Plaintiff taking issue with the State's management decisions relating to a public resource. While the wide-ranging issues presented by the Plaintiff are noble and relevant points of concern both to this jurisdiction and to the State of Alaska as a whole, an overly generalized disagreement with six decades of State policy and management is not a case or controversy for which the courts should be involved. In reviewing a Complaint at the Motion to Dismiss stage, a court will look solely to the content of the Complaint to decide whether there is sufficient basis to warrant the forward progress of the claim. For a dismissal to be proper, it must appear "beyond doubt" that the Plaintiff can present no set of facts that would entitle them to the relief they seek.[43]

[43] *Adkins*, 204 P.3d at 1033; *see also* Basey v. State, 408 P.3d 1173 (Alaska 2017).

In the recent Alaska Supreme Court case of *Sagoonick v. State*,[44] that court was presented with a similarly overly broad complaint brought against the State by a group of concerned citizens. In that case, "[a] number of young Alaskans—including several Alaska Natives—sued the State, alleging that its resource development is contributing to climate change and adversely affecting their lives."[45] The Supreme Court affirmed the trial court's dismissal on the basis that the "injunctive relief claims presented non-justiciable political questions better left to the other branches of government and that the declaratory relief claims should, as a matter of judicial prudence, be left for actual controversies arising from specific actions by Alaska's legislative and executive branches."[46]

The present case similarly presents non-justiciable political questions concerning the appropriate policies and management of the Alaskan fisheries in compliance with the sustained yield principle. This conclusion is based on the two-part test articulated in *Kanuk*.[47] First, we must determine whether a decision on the matter is better left to another branch of government (i.e., a "political question"). Second, if that first answer is not determinative, then we must ask whether other reasons (ripeness, mootness, standing, or prudence) would incline a court to not rule on such an issue.[48]

The first prong essentially asks whether the issue is recognized as under the purview of the legislative or executive. For that, this State's courts apply the familiar six-part test promulgated in *Baker v. Carr*.[49] Applying that test, this Court finds the issues presented in this case to be

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[44] 503 P.3d 777 (Alaska 2022).
[45] *Id.* at 782.
[46] *Id.*
[47] 335 P.3d 1088.
[48] *Kanuk*, 335 P.3d at 1096; *see also Sagoonick*, 503 P.3d at 793.
[49] 396 U.S. 186, 217 (1962); *see also Sagoonick*, 503 P.3d at 793 ("[1] a textually demonstrable constitutional commitment of the issue to a coordinate political department; or [2] a lack of judicially discoverable and manageable standards for resolving it; or [3] the impossibility of deciding without an initial policy determination of

political questions due to the clear constitutional commitment of this issue to the legislature,[50] the lack of manageable standards, the impropriety of a court determining State policy, and the respect owed to our sister branches and their determinations. Matters such as resource management—dealing with questions of policy and sustainability—are best left to the legislature and executive agencies and not an area in which the courts should insert themselves. Additionally, permitting the continuation of such nebulous claims would not be in the prudential interests of the courts.

In *Sagoonick*, the Supreme Court noted, "even if plaintiffs' declaratory relief claims do not present non-justiciable political questions, justiciability is not guaranteed."[51] They went on to reiterate a foundational justiciability standard that "[a] claim must present an "actual controversy" that "is appropriate for judicial determination" because it is "definite and concrete, touching the legal relations of parties having adverse legal interests . . . ."[52] An identifiable, concrete injury must be present and some reasonable judiciary relief must be available. Alaska does "not require courts to conduct trials based on the suggestion that some unidentified relief possibly could be available."[53]

In the present case, going beyond the justiciability issues discussed above, this Court finds Plaintiff's Complaint to be lacking any identifiable, concrete injury to himself or the public and we have no doubt that the relief he seeks is not available for the present set of facts.[54] In the

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a kind clearly for nonjudicial discretion; or [4] the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or [5] an unusual need for unquestioning adherence to a political decision already made; or [6] the potentiality of embarrassment from multifarious pronouncements by various departments on one question.").

[50] *See* ALASKA CONST. art. XIII, § 2.

[51] *Sagoonick*, 503 P.3d at 799.

[52] *Id.* at 799 (quoting *Kanuk*, 335 P.3d at 1100).

[53] *Id.* at 803.

[54] *Compare Elim*, 990 P.2d 1 (challenging specific actions by the Board in relation to chum salmon stocks in Norton Sound) *and Cook Inlet*, 357 P.3d 789 (challenging a specific action by the Commissioner in closing the set net

Complaint, Plaintiff offers a post hoc argument claiming "a renewable resource belonging to the citizens of Alaska [is] not being utilized or maintained in accord with the sustained yield principle in the Alaska Constitution."[55] Plaintiff claims that the reduction in salmon runs over the past six decades, as he observes them, is based on the policies and decisions of the Board and Commissioner. However, throughout the Complaint, Plaintiff fails to articulate any plausible causal connection between the actions of the Board and Commissioner and the reduction in salmon runs within the Yukon and Kuskokwim rivers.

A simple conclusion that there are less salmon and such reduction has occurred under the watch of the Board and Commissioner does not create a causal connection on which a court can base a finding. In prior cases raising similar issues, courts of this State have noted the "boom and bust" nature of salmon runs.[56] It might well be that the reduction is due to a certain policy or decision, but without facts, data, or even reference to a particular policy or decision, that is impossible to determine. Absent such things, a court might simply presume that the reduction in salmon is possibly due to facts such as that State's population increasing from a little over 200,000 at its founding in 1959 to more than 700,000 at present.[57] A court might also presume such reduction is possibly due to the rise in salmon harvested by commercial fisheries from just under 140 million pounds in 1975 to just under 1.1 billion pounds in 2015.[58]

However, we acknowledge these are presumptions based purely on quick searches of

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fishery of the Upper Cook Inlet fishery).

[55] Plaintiff's Complaint at 12.

[56] Phillip v. State, 347 P.3d 128, 130 (Alaska Ct. App. 2015).

[57] Alaska Dep't of Labor and Workforce Development, Research and Analysis Section, *Alaska Population, 1946-2022*, https://live.laborstats.alaska.gov/pop/estimates/data/TotalPopGraph.pdf (last visited March 13, 2023); Alaska Dep't of Labor and Workforce Development, Research and Analysis Section, *Population Estimates*, https://live.laborstats.alaska.gov/pop/index.cfm (last visited March 13, 2023).

[58] Alaska Dep't of Fish and Game, *All Salmon Species Combined Historical Harvest Rankings*, https://www.adfg.alaska.gov/index.cfm?adfg=commercialbyfisherysalmon.salmon_combined_historical (last visited March 13, 2023).

relevant facts and not enough to adequately determine the true cause of the reduction in salmon runs in recent times. With that understanding in mind, and without a reasonable reference to a particular policy, action, or decision by the Board or Commissioner, combined with a particular, fact-based injury to the Plaintiff or peoples of this State, it is impossible for this Court to not find dismissal of this suit proper for lack of specificity or identifiable injury.

B. Even Were Dismissal Not Appropriate Based on Overbreadth and Lack of Specificity, Deference to Agency Expertise Is Appropriate

Deference to the decisions of an executive agency is a central pillar of our legal system, both at the federal and state level.[59] This principle is all the more appropriate when issues arise concerning policies and decisions requiring a combination of experience and expertise in particular fields, such as resource management. It has often been observed that courts are "singularly ill-equipped to make natural resource management decisions."[60] Even leading up to statehood and the ratification of our State Constitution, the importance of Alaska's natural resources was recognized — with the management and development of those resources by the legislature and executive given priority.[61]

The Alaska Supreme Court has reiterated this deferential standard on numerous occasions. They have noted, "[w]e apply the reasonable basis standard, under which we give deference to the agency's interpretation so long as it is reasonable, when the interpretation at issue implicates agency expertise or the determination of fundamental policies within the scope of the agency's statutory functions."[62] In *Marathon Oil Co.*, they also noted, "[w]e give more deference to

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[59] *See* Chevron, U.S.A., Inc. v. NRDC, Inc., 467 U.S. 837, 842-45 (1984); Braun v. Borough, 193 P.3d 719, 726 (Alaska 2008).
[60] Frank v. State, 604 P.2d 1068, 1073 (Alaska 1979).
[61] *See* VICTOR FISCHER, ALASKA'S CONSTITUTIONAL CONVENTION 129-40 (1975).
[62] Marathon Oil Co. v. Dep't of Nat'l Resources, 254 P.3d 1078, 1082 (Alaska 2011).

agency interpretations that are "longstanding and continuous.""[63] While that case dealt specifically with statutory interpretation, the same is true when looking to an agencies application of a constitutional principle. The role of the courts in such a case is only to ensure that the agency has taken a "hard look" at the problem and "engaged in reasoned decision making" under the sustained yield principle.[64]

Of course, the deference discussed above is typically applied when a court is presented with a particular interpretation, policy, or decision that appears to run afoul of a constitutional provision or statute. That is not what this Court is presented with in this case. Plaintiff asks this Court to not simply say that one particular policy or decision concerning salmon runs or subsistence fishing is in violation of our State's Constitution. Instead, they ask us to invalidate six decades of policy and admonish an agency based on nothing more than the personal observations of one individual and scant, tenuous factual claims. This is something this Court cannot do. Deference to an agency's expertise is the norm, even when presented with a particular decision unless it can be clearly shown that such decision is not based in reason. When presented with no particular policy or action to review, as is the case at present, deference is all the more appropriate.

VI. Conclusion

As noted from the outset, the issues presented in this case are important and far-reaching. However, they are not issues which are appropriate for a court to decide in the current iteration of this suit. As noted in the *Sagoonick* case, the best path forward would be for the Plaintiff to seek to challenge a specific action concerning the State's management of its natural resources, to pursue change by public initiative, or to attempt change through the ballot box or legislative

[63] *Id.* at 1082 (quoting Premera Blue Cross v. State, Dep't of Commerce, Cmty. & Econ. Div. of Ins., 171 P.3d 1110, 119 (Alaska 2007)).
[64] Gilbert v. Dep't of Fish & Game, Bd. of Fisheries, 803 P.2d 391, 397-98 (Alaska 1990).

process.[65] Bottom line, there are multiple avenues open to seek the change they wish to see. However, in the present case, the courts are not one of those avenues.

This Court finds that the declaratory relief sought in the Complaint is not warranted due to the Plaintiff failing to identify any specific policy or action on the part of the Board or Commissioner that could in anyway be viewed as a violation of the sustained yield principle. Additionally, the lack of a reasonably identifiable injury to the Plaintiff or citizens of this State counts against the awarding of declaratory relief. Without an "actual controversy" that "is appropriate for judicial determination," such relief is not appropriate.[66]

This Court finds that the consent decree sought in the Complaint is not warranted due to the judicial principles of deference and separation of powers, and the risk of encroachment on the purview of our sister branches such a decree would entail. The Alaska Constitution has delegated the management of this State's natural resources to the legislature, not the judiciary.[67]

This Court finds that the injunctive relief sought in the Complaint is not warranted, once again, due to the Plaintiff failing to identify any specific policy or action on the part of the Board or Commissioner that could be reasonably viewed as a violation of the sustained yield principle.[68] Even if a specific policy or action were identified, as discussed above, such matters would likely be found by this Court and others to present non-justiciable political questions that would not be proper for a court to decide.[69]

Finally, this Court finds that, due to the failings described above, any award of costs or fees

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[65] 503 P.3d at 798.
[66] *Sagoonick*, 503 P.3d at 799 (quoting *Kanuk*, 335 P.3d at 1100).
[67] *Id.* at 795.
[68] *See* Alaska Rules of Civil Procedure Rule 65 (This rule requires prospective injunctive relief to be described with specific terms and in reasonable detail. Even were such relief to be available in the present case, Plaintiff has provided no indication in specific terms or reasonable detail as to what such relief would be.).
[69] *See, e.g., Id.*; *Kanuk*, 335 P.3d at 1097-99.

to the Plaintiff would be unwarranted.

For the foregoing reasons, the Court GRANTS the Defendants' Motion to Dismiss. The State is directed to file an appropriate proposed judgment within twenty days of the distribution of this order.

IT IS SO ORDERED.

DATED at Bethel, Alaska, this 10th day of April, 2023.

HON. NATHANIEL K. PETERS
SUPERIOR COURT JUDGE

I certify that on 4/11/23
copies of this form were sent to: J. Geldhof
N. Star
A. Peterson
CLERK KC