

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CONSERVATION LAW FOUNDATION,)
et al.)
)
Plaintiffs,)
)
v.)
)
DONALD L. EVANS, et al.)
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Defendants.)
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)
_____)

Case No. 1:00CVO1134 GK

**FEDERAL DEFENDANTS’ STATEMENT IN SUPPORT OF
SETTLEMENT AGREEMENT AMONG CERTAIN PARTIES**

After an arduous process that included extensive negotiations among all parties and amici in the above-captioned litigation, some of the parties (“Settling Parties”) successfully concluded a Settlement Agreement (“Agreement”) among them that presents a unified position to the Court and proposes an appropriate response to the Court’s December 28, 2001 Memorandum Opinion and Order. The approach contemplated by the Settling Parties will effect immediately important reductions in overfishing, commencing with the start of the 2002-2003 fishing season on May 1, 2002, and will permit the New England Fishery Management Council and NMFS, as the expert agency, to develop and implement a fully SFA-compliant rebuilding program through a Fishery Management Plan Amendment, consistent with the requirements of the Magnuson Stevens Fishery Conservation and Management Act (“Magnuson Act”), and other applicable law. This approach is consistent with the Court’s own recognition that an appropriate response to the Court’s Memorandum Opinion and Order must involve both short-term and long-term solutions.

Federal defendants respectfully request that the Court look favorably upon the

Agreement, enter the proposed Stipulated Order and Stay of Litigation, and permit the agency to go forward with the contemplated administrative actions.

THE AGREEMENT

The Agreement provides for a remedial plan similar in structure to that defendants proposed to the court. The Secretary will implement an Interim Rule prior to May 1, 2002, to reduce overfishing during the first quarter of the 2002-2003 fishing season pursuant to statutory authority under 16 U.S.C. § 1854(e)(6). (See Proposed Settlement Agreement ¶¶ 1-2 & Exh. A). If the rule contains measures substantially similar to those negotiated by the settling parties, the non-federal settling parties will not seek judicial review of the Interim Rule or challenge the Interim Rule on other grounds. The measures set forth in Exhibit A are similar to those originally proposed by defendants for an Interim Rule (see Declaration of Patricia A. Kurkul, filed March 1, 2002 (“Kurkul Decl.”) Att. A), but omits or modifies some measures to minimize socioeconomic impacts to the extent appropriate consistent with the need for reductions in overfishing and the status of the stocks.^{1/}

The Agreement also contemplates that the Secretary will follow up with a Second Interim Rule to reduce overfishing beginning with the second quarter of the 2002-2003 fishing season on August 1, 2002, and continuing through implementation of Amendment 13. (See Settlement Agreement ¶¶ 3-4 & Exh. B). As above, if the Second Interim Rule contains measures

^{1/} NMFS presently intends to issue an Interim Rule in substantial conformity with the measures set forth in Exhibit A. This Rule will be issued in lieu of the interim rule NMFS previously had prepared. Barring unforeseen complications, to ensure publication by May 1, 2002, NMFS intends to file the Interim Rule with the Office of Federal Register by April 24, 2002. The agency also intends to send letters to all permit holders in the fishery describing the Interim Rule.

substantially similar to those negotiated by the settling parties, the non-federal settling parties will not challenge the Second Interim Rule. The measures set forth in Exhibit B further address the problem of overfishing and provide important conservation benefits. In addition, the proposal provides for a freeze and reduction of days-at-sea, thereby addressing the important issue of latent capacity.

The Agreement also contemplates that, as defendants originally proposed to the Court, the Secretary will develop and implement Amendment 13 through the Council process, with implementation to take effect not later than August 22, 2003. (See Settlement Agreement ¶¶ 5-7). Defendants stand by their commitment to take over the development of Amendment 13 if the Council fails to meet certain important milestones in the process. (See Settlement Agreement ¶ 5; see also Kurkul Decl. ¶ & Att. C).

Finally, the Settling Parties request entry of a Stipulated Order and Stay of Litigation requiring completion of each of the aforementioned administrative actions by the appropriate date as contemplated by the parties. (See Settlement Agreement Exh. D). The stipulated order also provides for continuing jurisdiction with respect to those matters. (Id.).

DISCUSSION

The Settling Parties' compromise provides for a reasonable approach to both the short- and long-term problems confronting the Fishery. In the short-term, the compromise provides for the Secretary to exercise authority conferred under section 304(e)(6) of the Magnuson Act, 16 U.S.C. § 1854(e)(6), to reduce overfishing pending development of an SFA-compliant FMP Amendment. (See Defs.' Remedy I (March 1, 2002), at 18-20; Defs.' Remedy II (April 1, 2002), at 12-15). By contemplating that the interim measures for both the first and second actions will

be substantially similar to those negotiated among the Settling Parties, the compromise ensures that the reductions from overfishing will contain real conservation benefits while minimizing, to the extent possible, adverse socioeconomic impacts and ensuring that those impacts are spread in an equitable manner. Importantly, the Agreement preserves the expert agency's discretion and authority to implement and enforce the measures.

Similarly, the Agreement is consistent with the process intended by Congress for development and implementation of rebuilding programs and FMP Amendments. By preserving the role of the Council and the expert agency in these matters, the Agreement ensures that an SFA-compliant rebuilding program will be developed and implemented in a manner that is consistent with both the best scientific information available and other applicable law. (See Defs.' Remedy I, at 21-24; Defs. Remedy II, at 15-16). Nevertheless, the Agreement, in combination with the requested Stipulated Order and Stay of Litigation, provide a Court-imposed deadline that will permit judicial action in the event that the Council and the agency fail to meet the deadline to which they have committed.

CONCLUSION

For the forgoing reasons, the Court should enter the requested Stipulated Order and Stay of Litigation and remand the matter to the agency for further administrative proceedings, should refrain from entering other mandatory or injunctive relief, and should decline to enter any relief that may be requested by any objecting party.

Dated: April 16, 2002

Respectfully submitted,

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