

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

Case No. 1:00CV01134 GK

**JOINT STIPULATION
WITH PROPOSED ORDER**

WHEREAS, plaintiffs Conservation Law Foundation, The Ocean Conservancy, National Audubon Society, and Natural Resources Defense Council filed this action on May 19, 2000, seeking judicial review of Framework 33 of the Northeast Multispecies (Groundfish) Fishery Management Plan (“Northeast Multispecies FMP”), on the grounds that Framework 33 does not comply with the overfishing, rebuilding, and bycatch provisions of the Sustainable Fisheries Act (“SFA”);

WHEREAS, the Court issued a Memorandum Opinion and Order on December 28, 2001, in which it concluded that Donald L. Evans (“the Secretary”), the National Oceanic and Atmospheric Administration, and the National Marine Fisheries Service (collectively “Federal Parties”) “have not complied with the [Sustainable Fisheries Act (“SFA”)]” and that Framework 33 of the Northeast Multispecies FMP “violates the overfishing, rebuilding, and bycatch provisions of the SFA, while Amendment 9 violates the bycatch provisions of the SFA”;

WHEREAS, subsequent to the issuance of the Memorandum Opinion and Order

intervention was sought by and granted to the State of Maine, the State of New Hampshire, the State of Rhode Island, the Associated Fisheries of Maine, Inc., the City of Portland, Maine, the City of New Bedford, Massachusetts, the Trawlers Survival Fund, the Northeast Seafood Coalition, Paul Parker, Craig A. Pendleton, Northwest Atlantic Marine Alliance, Inc., Stonington Fisheries Alliance, Saco Bay Alliance, and Cape Cod Commercial Hook Fishermen's Association, Inc.;

WHEREAS, leave to appear as amicus curiae was sought by and granted to the Commonwealth of Massachusetts;

WHEREAS, the Court entered an Order on May 23, 2002 ("Remedial Order") requiring, among other things, that the Secretary promulgate, not later than, August 22, 2003, a Fishery Management Plan Amendment that complies with the overfishing, rebuilding, and bycatch provisions of the SFA (Amendment 13);

WHEREAS, the New England Fishery Management Council has been scheduled to meet on November 5 through 7, 2002, to evaluate and approve a draft of a draft supplemental environmental impact statement for the Fishery Management Plan Amendment referred to in the preceding paragraph;

WHEREAS, NOAA Fisheries recently discovered incorrect marks on the cables used by the NOAA Ship ALBATROSS IV to tow bottom trawls for surveys that are a critical source of information used to estimate abundance of New England groundfish, and shortly thereafter commenced efforts to analyze the potential impacts of this discovery;

WHEREAS, research regarding the potential impacts of improperly marked trawl survey gear is continuing, including a cruise by the NOAA Ship Albatross IV intended to examine the

impact of cable length discrepancies and other gear configuration issues on the accuracy of trawl survey data;

WHEREAS, the research cruise will not be completed until at least November 8, 2002, and the full results of the research will not be available until approximately December 1, 2002;

WHEREAS, NOAA Fisheries would like to undertake further independent peer review of the scientific information on which management of the Groundfish fishery is based;

WHEREAS, the undersigned parties unanimously agree that additional time would permit more in-depth consideration of scientific information;

WHEREAS, the existing schedule for Amendment 13 does not leave time for the 90-day public review and comment period required by the Joint Stipulation and Order in the separate litigation *American Oceans Campaign v. Evans*, Civ. No.99-982 (GK) (D.D.C.), which requires that the Secretary prepare an amendment to the Groundfish FMP to address essential fish habitat, and the existing schedule for Amendment 13 permits, at best, limited time for the Council to consider and evaluate public comments received on the DSEIS;

NOW THEREFORE, the undersigned Parties hereby agree as follows:

1. The deadline for implementation of a Fishery Management Plan Amendment that complies with the overfishing, rebuilding, and bycatch provisions of the SFA (Amendment 13) shall be extended until May 1, 2004.

2. The provision of the Remedial Order that presently requires that the total allowable catch ("TAC") for all species governed by Amendment 9 be determined by the Secretary, and that the Secretary develop, prepare, publicize, and make public the most current and reliable scientific information available to enable completion of Amendment 13 by

December 1, 2002, shall be vacated and, instead, the Secretary shall calculate the TACs for all species governed by Amendment 9, and shall develop, prepare, publicize, and make public the most current and reliable scientific information available to enable completion of Amendment 13, through the draft supplemental environmental impact statement for Amendment 13.

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ORDER

APPROVED and ENTERED as an Order of this Court on this _____ day of _____,
2002.

United States District Judge

Serve copies upon:

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