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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

STATE OF ALASKA,)
)
Plaintiff,)
)
v.)
)
JANE LUBCHENCO, in her official capacity)
as Administrator, National Oceanic and)
Atmospheric Administration; NATIONAL)
MARINE FISHERIES SERVICE; JAMES W.)
BALSIGER, in his official capacity as NMFS)
Alaska Region Administrator; and GARY)
LOCKE, in his official capacity as the United)
States Secretary of Commerce,)
)
Defendants.)

Case No. 3:10-cv-00271-TMB

**JOINT REQUEST FOR
SCHEDULING CONFERENCE**

Plaintiff State of Alaska and Federal Defendants, through undersigned counsel and pursuant to Fed. R. Civ. P. 16(a) and 42, hereby submit this report of the parties on the status of the proceedings. Plaintiffs in the three related cases before this Court, the State of Alaska (No. 3:10-cv-00271-TMB), Alaska Seafood Cooperative *et alia* (No. 3:11-cv-00001-TMB), and the Freezer Longline Coalition (No. 3:11-cv-00004-TMB), and the Federal Defendants in all three cases have conferred and agreed to jointly file this request and status report. Although the parties have separately filed a Joint Request for a Scheduling Conference in each of the three cases, the substance of this Joint Request and the report below is identical to those filed in the other two cases.

A. Request for Scheduling Conference

The parties respectfully request a scheduling and status conference with the Court at its earliest convenience during the weeks of February 14 or February 28, 2011. Counsel for Federal Defendants are unavailable for a scheduling conference on February 11 and the morning of February 16. Counsel for Plaintiffs are unavailable on February 16, 22-25, and March 1, 2, 7-11, and 18. The parties further request that, given the various geographic locations of counsel, telephonic participation be allowed for the scheduling and status conference.

B. Overview of Status Report and Background on Scheduling Timeframes

Plaintiffs have recently filed the three separate suits identified above. Plaintiffs and Federal Defendants in all three cases concur that all three cases are related, and have filed notices of related cases pursuant to Local Rules (“D.Ak LR”) 40.2.¹ *See* No. 10-cv-271-TMB, Dkts.

¹ *Alaska Seafood Cooperative, et al. v. National Marine Fisheries Service, et al.*, No. 11-cv-001-TMB and *Freezer Longline Coalition v. Lubchenco et al*, No. 11-cv-004-TMB were reassigned

13-16; No. 11-cv-001-TMB, Dkts. 3 and 14; No. 11-cv-004-TMB, Dkt. 3. The parties have filed this joint status report to raise certain matters with the Court that they believe will expedite disposition of the cases. The Plaintiffs respectfully request that the Court expedite consideration of these cases pursuant to section 305(f)(4) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1855(f)(4). Federal Defendants do not oppose expedited consideration of these cases as specified below. Plaintiffs' aim is for a schedule that allows the Court to have the briefing and argument before it to issue a ruling on the challenges to the Federal Defendants' decisions in time for all parties to be able to respond to such a ruling and to make the necessary planning, financing, and other arrangements, or any regulatory changes depending on the outcome of that ruling, in time for same to be implemented by the commencement of the 2012 groundfish fishing season in the Bering Sea and Aleutian Islands fishery management area on January 1, 2012. A decision from this Court by the first week of September 2011 would allow sufficient time for such activities to take place. Federal Defendants do not oppose the proposed timeframes for scheduling suggested by Plaintiffs. In providing this scheduling goal, Plaintiffs do not waive any claims arising from the actions and regulations imposed by Federal Defendants for the 2011 fishing season.

The parties have conferred with each other to discuss a variety of case scheduling issues, summarized below, and agree that it would be more efficient to bring these matters to the attention of the Court by means of this status report summarizing the views of the parties, rather than separate motions in these three cases.

to the Honorable Timothy M. Burgess on January 24, 2011. *See* No. 11-cv-001-TMB, Dkt. 16; No. 11-cv-004-TMB, Dkt. 9.

C. All three cases are to be reviewed pursuant to the Administrative Procedure Act.

The parties agree that D.Ak LR 16.3 is applicable to all three of these cases, and provides the appropriate framework for adjudicating these cases, except for the modifications proposed by the parties herein.

D. Consolidation

The parties respectfully request that the Court issue an order adopting the terms set forth in Sections E and F below as a measure to “avoid unnecessary cost or delay.” *See* Fed. R. Civ. P. 42(a)(3).² In particular, the parties agree that it would be appropriate for the Court to issue one briefing schedule applicable to all three cases, to make all court filings in only one docket for the Court irrespective of the specific case to which it pertains, and to hold one oral argument for all three cases. Each of the three plaintiffs (which reference includes the set of plaintiffs in Case No. 11-cv-001) reserves the right to file individual motions and briefs and to present oral argument individually should the Court hold a hearing on motions for summary judgment. The parties’ joint proposal for a consolidated briefing schedule is set forth below.

²In the event the Court does not, without a specific motion, order consolidation of these three cases, the parties wish to reserve their right to formally move the Court for consolidation pursuant to Fed. R. Civ. P. 42(a).

E. Proposed Briefing Schedule

1. Deadline for Filing Agency Administrative Record(s): February 28, 2011³

Federal Defendants specifically request leave of Court pursuant to D.Ak LR 5.3 to file the agency records with the Court on DVDs in word searchable PDF files. Given the large volume of the agency records at issue (anticipated to be in excess of 125,000 images/pages), it would impose an undue burden to otherwise prepare the agency records prior to the deadline above.

2. Deadline to File Motions to Augment Agency Record(s): The parties will attempt to resolve informally any issues relating to the scope and contents of the Administrative Record. Any motion to augment, or concerning the scope or contents of, the Administrative Record (“motion to augment”) must be filed by April 1, 2011. In the event a motion to augment is filed, the parties hereby agree to an expedited briefing schedule in which the Federal Defendants’ response brief will be filed within ten (10) calendar days of the date the motion to augment is filed. The movant’s reply brief will be filed within four (4) calendar days of the date Federal Defendants’ response brief is filed. Plaintiffs shall use their best efforts to coordinate their filing of any motion(s) to augment and shall not assert duplicative requests to augment. Federal Defendants may, in their discretion, file one consolidated response to any motions to augment.

³ On January 26, 2011, Federal Defendants produced in excess of 22,000 pages of the agency records to counsel for Plaintiffs. On February 4, 2011, Federal Defendants produced an additional 43,419 pages of agency records to counsel for Plaintiffs. Federal Defendants will produce the final portion of the agency records in these cases (estimated at 70,000 pages) no later than February 28, 2011. Federal Defendants’ privilege log will also be produced no later than February 28, 2011.

3. Plaintiffs' Principal Brief(s): No later than April 18, 2011, the plaintiff in each case (which reference includes the set of plaintiffs in Case No. 11-cv-001) may file one principal opening brief not to exceed 50 pages each. In the event Federal Defendants' compliance with any order on a motion to augment, as described in Section E.2 above, occurs after April 8, 2011, each plaintiff may file one brief supplementing its principal brief.⁴ Any such supplemental brief shall not exceed ten (10) pages, shall be limited to a discussion of the document(s) at issue in the motion to augment, and shall be filed no later than fourteen (14) days after Federal Defendants have fully complied with any order on a motion to augment.

4. Defendants' Principal Brief in Opposition: Federal Defendants shall file one consolidated principal brief in opposition to Plaintiffs' opening briefs no later than 60 days following the filing of the last of the Plaintiffs' principal (not supplemental) briefs.⁵ Federal Defendants request leave of Court pursuant to D.Ak LR 10.1(m) to file a consolidated response brief not to exceed 150 pages, based on the expectation that each of the three Plaintiffs will file their separate principal briefs of up to fifty (50) pages each, the anticipated need to respond to arguments of any intervenors, and the complex nature of the subject matter and multiple claims at issue.⁶ If any Plaintiff files a supplemental brief, Federal Defendants may file a supplemental

⁴ By way of illustration and example, Federal Defendants' compliance with an order to supplement the record would be complete upon plaintiffs' receipt of all supplemental records.

⁵ One of Federal Defendants' counsel has a prior personal obligation the week of May 15-20, 2011. Accordingly, Federal Defendants respectfully request that the Court not set a briefing schedule in this case making the Federal Defendants' Principal Brief due before June 2, 2011 (45 days after April 18, 2011).

⁶ Although the parties have agreed in principle as to the scheduling matters stated above, Federal Defendants note that they reserve the right to file a motion to strike extra-record evidence and/or to stay active litigation if Plaintiffs submit inadmissible evidence with their merits briefs and/or

brief of no more than 10 (ten) pages in response to Plaintiffs' supplemental brief within fourteen (14) days after the later of either (a) Plaintiffs' supplemental brief is filed or (b) Federal Defendants' Principal Brief in Opposition is filed.

5. Plaintiffs' Reply Briefs: No later than thirty (30) days following the filing of Federal Defendants' principal brief in opposition, the plaintiff in each case (which reference includes the set of plaintiffs in Case No. 11-cv-001) may file one reply brief not to exceed 25 pages each.

6. The parties agree that the Court may alter or amend any Scheduling Order entered in these cases, and that no party has waived or surrendered its right to seek such alteration or amendment by the Court.

F. Oral Argument

The parties respectfully request oral argument in this matter. The parties further request that the Court schedule oral argument on a date no later than 30 days following the filing of plaintiffs' reply briefs. Given the number of parties and the complexity of the issues, the parties expect that oral argument will require at least four (4) hours.

to seek to take discovery on standing after Plaintiffs submit standing declarations with their summary judgment briefs.

Respectfully submitted this 11th day of February, 2011,

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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of February, 2011, I electronically filed the foregoing Joint Request for Scheduling Conference with the Clerk of the Court via the CM/ECF system, which will send notification of such to the attorneys of record:

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