

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
CONSERVATION LAW FOUNDATION,)	
et al.,)	
Plaintiffs,)	
)	
v.)	Civil Action No. 00-1134 (GK)
)	
DONALD EVANS, et al.,)	
)	
Defendants.)	
_____)	

O R D E R

The Court has received the various motions for reconsideration of its Remedial Order, issued April 26, 2002, filed by the Conservation Law Foundation, the federal Defendants, Northeast Seafood Coalition, the State of New Hampshire, the State of Maine, the Commonwealth of Massachusetts, the State of Rhode Island, Stonington Fisheries Alliance, Saco Bay Alliance, Northwest Atlantic Marine Alliance, Cape Cod Commercial Hook Fishermen's Association, Craig A. Pendleton, Paul Parker, Associated Fisheries of Maine, Inc., the City of Portland, Maine, the City of New Bedford, Massachusetts, and the Trawlers Survival Fund.

An Opposition to these Motions has been filed by the National Audubon Society, Natural Resources Defense Council, and The Ocean

Conservancy.

The Court has carefully considered all the arguments presented and has concluded that the motions for reconsideration should be granted.¹ Movants are indeed correct that the important changes made by the Court in the complex and carefully crafted Settlement Agreement Among Certain Parties ("Settlement Agreement") would produce unintended consequences. Those changes would (1) not only fail to produce the results the Court was seeking to obtain, but might further imperil the particular vulnerable species for which the Court was trying to provide additional protection; (2) seriously unbalance the comprehensive partial Settlement Agreement which settling parties intended to be implemented as an integrated whole; and (3) cause grave economic and social hardship, as well as injustice to individuals, to families, to fishing communities, and to surrounding cities and states.²

¹ The Opposition is simply incorrect in arguing that Movants have failed to meet the standard for reconsideration under Fed. R. Civ. P. 59(e). As noted, *infra*, the moving parties have provided new evidence and have demonstrated manifest injustice, both of which provide more than sufficient justification for granting the motions for reconsideration.

² It would appear that some interests still went unrepresented in the mediation process despite efforts at involving all concerned. See, for example, the letter from the N.H. Hook Fishermen's Association, in Appendix A, which includes all post-Remedial Order correspondence received by the Court.

As Movants have noted in their papers, several of the changes made in the partial Settlement Agreement were never briefed or fully explored before the Court, even though some of them were advocated for by the government and other parties in the individual briefs filed during the lengthy process of briefing and mediation. The development of an appropriate remedy in this case is particularly complex given the vital interests that are at stake. The Court is mindful, not only of the importance of protecting the New England groundfish species, but also of the very real impact any regulation has on those individuals and communities that depend, and have depended for generations, on such fishing. The experience of the litigants, the public, and the Court during these last three months of intense work on development of a remedial order demonstrates the need for a participatory, collaborative, deliberative process that will thoroughly and thoughtfully explore, on the basis of the most current and widely accepted scientific data,³ the complexities of the issue and its many interrelated elements. The Court hopes that the experience with the mediation process, and the productive working relationships which developed during that process, can continue to motivate and guide the parties

³ National Standard Two requires use of "the best scientific information available." 16 U.S.C. § 1851(a)(2).

as all of them focus on the development of Amendment 13.

Wherefore, it is this _____ day of May 2002 hereby

ORDERED that the Court's Remedial Order of April 26, 2002, and its Amended Remedial Order of May 1, 2002, are **vacated**; and it is

FURTHER ORDERED that all motions for reconsideration are **granted** insofar as they request adoption of the provisions of the Settlement Agreement Among Certain Parties; and it is

FURTHER ORDERED that the Settlement Agreement Among Certain Parties, dated April 16, 2002, shall be **implemented** according to its terms, and this Court shall retain jurisdiction until promulgation of Amendment 13; and it is

FURTHER ORDERED that the Secretary shall, as was agreed in the Stipulated Order submitted to the Court on April 18, 2002, **promulgate** an **Amended Interim Rule**, to become effective no later than **June 1, 2002**, to reduce overfishing during the first quarter of the 2002-2003 fishing season; and it is

FURTHER ORDERED that the Secretary shall, as was agreed in the Stipulated Order submitted to the Court on April 18, 2002, **promulgate** an **Amended Second Interim Rule**, to become effective no later than **August 1, 2002**, to reduce overfishing beginning with the second quarter of the 2002-2003 fishing season, beginning August 1,

2002, and continuing until implementation of a Fishery Management Plan Amendment that complies with the overfishing, rebuilding, and bycatch provisions of the SFA; and it is

FURTHER ORDERED that the Secretary shall, as was agreed in the Stipulated Order submitted to the Court on April 18, 2002, promulgate, no later than **August 22, 2003**, a **Fishery Management Plan Amendment** that complies with the overfishing, rebuilding, and bycatch provisions of the SFA; and it is

FURTHER ORDERED that the Secretary shall, no later than **December 1, 2002**, develop, prepare, publicize, and make public the most current and reliable scientific information available to enable completion of the Fishery Management Plan Amendment referred to in the preceding paragraph no later than **August 22, 2003**; the Secretary shall, no later than **December 1, 2002**, calculate the TAC for all species governed by Amendment 9; and it is

FURTHER ORDERED that for all gear sectors, NMFS shall provide 5% observer coverage, or higher, if necessary to provide statistically reliable data. Effective May 1, 2003, NMFS shall provide 10% observer coverage for all gear sectors, unless it can establish by the most reliable and current scientific information available that such increase is not necessary; and it is

FURTHER ORDERED that the present action is temporarily stayed pending such further proceedings as may be required with respect to each of the three administrative actions set forth above; and it is

FURTHER ORDERED that the parties shall submit a Joint Praecipe no later than September 5, 2002, informing the Court of the steps that have been taken to comply with this Order and to meet the deadlines herein for December 1, 2002, and August 22, 2003.

Gladys Kessler
U.S. District Judge