

2. This action was filed December 2, 2009. Plaintiffs' Complaint challenges a provision of the Final Rule that permits small amounts of fish in a trawl net to be released without being brought aboard ship. See 50 C.F.R. § 648.80(d)(7)(ii)(D). Plaintiffs seek to remand the Final Rule for further notice and comment and to vacate the cited provision under the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 551, 553, 701-706, and National Standards One, Two, and Nine of the Magnuson-Stevens Fishery Conservation Act ("MSA"), 16 U.S.C. §§ 1801-1883. Amend. Compl. at 20-24 (Dkt. 4).

3. The parties take note that the primary fishing season for mid-water herring trawl vessels in Closed Area I of the Northeast Multispecies Fishery typically takes place in the late summer and early fall of the year. The parties further acknowledge that the Plaintiffs would like NMFS to consider their concerns regarding the Final Rule before the fall 2010 fishing season.

4. NMFS intends to publish a proposed rule for the purpose of receiving additional public comment on whether to retain, delete, or amend the specific regulatory provision codified at 50 C.F.R. § 648.80(d)(7)(ii)(D), which was included in the Final Rule at issue in this case (AR 2006; 74 Fed. Reg. 56,562 (Nov. 2, 2009)). NMFS intends to submit the proposed rule to the Federal Register by September 1, 2010.

5. After receiving public comment, Defendants intend to issue a final rule or other appropriate Federal Register Notice that addresses public comments received and makes changes, if necessary, to the Final Rule based on such public comment and any other relevant factors. NMFS intends to submit the final rule or other appropriate Federal Register Notice to the Federal Register by November 15, 2010.

6. NMFS intends to exercise a high level of diligence to meet the dates stated in paragraphs 4 and 5 above. The parties agree that during the time necessary to conduct the

regulatory actions described in paragraphs 4-5, the existing Final Rule shall remain in full force and effect as currently promulgated.

7. Nothing in the terms of this Motion shall be construed to dictate the outcome of the regulatory actions described above or to limit or modify the discretion accorded the Secretary by the MSA, other applicable law, or general principles of administrative law.

8. If a new final rule or other appropriate Federal Register Notice is issued before November 15, 2010, Plaintiffs shall promptly either dismiss their Complaint or seek leave to amend their Complaint to challenge the new rule. NMFS agrees not to oppose Plaintiffs' request for leave to amend, but reserves all defenses to any amended or supplemental Complaint.

9. Nothing in this Motion shall be construed to be an admission by Defendants of any unlawful activity or wrongdoing regarding the Final Rule at issue in this action, or any matter within the scope of the above-captioned litigation or otherwise raised in this action. Defendants maintain that the Final Rule, including the regulatory provision at issue, was promulgated consistent with the APA, the Magnuson-Stevens Act and all other applicable law.

10. If a new final rule or other Federal Register Notice is not issued by November 15, 2010, the parties shall submit a status report within 7 days proposing a schedule for further proceedings, if any.

WHEREFORE, the parties request that this Court stay all proceedings until November 15, 2010.

Respectfully submitted this 19th day of July, 2010.

IGNACIA S. MORENO, Assistant Attorney General
SETH M. BARSKY, Acting Section Chief

/s/ Lawson E. Fite

LAWSON E. FITE, Trial Attorney (Oregon Bar No. 055573)

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

_____)	
PETER TAYLOR, et al.,)	
)	No. 09-CV-02289-HHK
Plaintiffs,)	
)	CERTIFICATE OF SERVICE
v.)	
)	
GARY F. LOCKE, et al.,)	
)	
Defendants.)	
_____)	

I hereby certify that on July 19, 2010, I electronically filed the foregoing JOINT MOTION TO STAY with the Clerk of the Court via the CM/ECF system, which will send notification of such to the attorneys of record.

/s/ Lawson E. Fite

LAWSON E. FITE