

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

**MIDCOAST FISHERMEN'S
ASSOCIATION, et al.,**

Plaintiffs,

v.

OTTO WOLFF, et al.,

Defendants.

Civil Action 07-02336 (HHK) (JMF)

**JOINT CASE MANAGEMENT REPORT
AND PROPOSED BRIEFING SCHEDULE**

Pursuant to this Court's Order entered on January 28, 2009, the parties convened an initial planning meeting by conference call on February 23, 2009, and now respectfully submit this Joint Case Management Report and Proposed Briefing Schedule.

INTRODUCTORY STATEMENT

This is an action for review based upon an administrative record, and involves a dispute arising under the Magnuson-Stevens Fishery Conservation and Management Act concerning the defendants' management of the herring fishery in New England. The plaintiffs challenge defendants' denial of a petition for rulemaking to eliminate herring fishing in areas of the ocean that are closed to fishing for groundfish (fish that live on or near the ocean floor).

CASE MANAGEMENT

Pursuant to Fed. R. Civ. P. 16 and Fed. R. Civ. P. 26(f), the parties provide the following responses to the items contained in Fed. R. Civ. P. Form 35:

1. Participants in the Planning Meeting. The following counsel participated in the February 23, 2009 conference call:

(a) Roger Fleming and Stephen Roady for the Plaintiffs Mid-Coast Fishermen's Association, et al.

(b) Lawson Fite for the Defendants Otto Wolff¹ and National Marine Fisheries Service.

2. Pre-Discovery Disclosures. As an action for review on administrative record, this case is exempted from pre-discovery disclosure requirements pursuant to Local Civil Rule 16.3(b)(1).

3. Discovery Plan. Absent any need formally to resolve issues regarding amending the pleadings, the parties do not intend to engage in discovery.

4. Other Items.

(a) **Conference with the Court.** The parties do not request a conference with the Court before entry of the scheduling order.

(b) **Pre-trial Conference.** Inasmuch as the parties believe this case will be decided on summary judgment, they do not request a pre-trial conference.

(c) **Additional parties and amended pleadings.** Plaintiffs should be allowed until March 16, 2009 to join additional parties and amend their pleadings. Defendants should be allowed until March 30, 2009 to join additional parties and amend their pleadings, or to oppose any proposed amendment to the complaint.

¹ Acting Secretary of Commerce Otto Wolff is substituted for his predecessor, Carlos M. Gutierrez, pursuant to Fed. R. Civ. P. 25(d).

(e) Dispositive motions. Absent any need formally to resolve issues regarding any amended complaint, this case should be resolved through summary judgment proceedings. Because this is a record review case, the parties have agreed that there is no need to file statements of material facts as to which there is no genuine issue in connection with their summary judgment papers; therefore, they respectfully request that the requirement of Local Civil Rule 56.1 for the filing of such statements be waived.

(f) Settlement. Settlement of this case is a possibility but cannot be evaluated prior to discussions between the parties.

BRIEFING SCHEDULE

As noted in the Introductory Statement, absent any need for motions addressing disputes over any amended complaint, the parties anticipate that this case will be briefed on summary judgment. The parties therefore submit the following proposed briefing schedule:

1. Plaintiffs' Motion for Summary Judgment: May 11, 2009.
2. Defendants' Cross-Motion for Summary Judgment: June 8, 2009.
3. Plaintiffs' Reply: June 26, 2009.
4. Defendants' Reply: July 15, 2009.

Dated: February 25, 2009.

Respectfully submitted,

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