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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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MAY 28 2003

Civ. No: 1:99CV00982 (GK) PFMC

AMERICAN OCEANS CAMPAIGN, *et al.*,

Plaintiffs,

v.

DONALD L. EVANS, Secretary of Commerce,
et al.,

Defendants.

**JOINT STIPULATION AND [PROPOSED] ORDER TO AMEND DECEMBER 17,
2001, JOINT STIPULATION AND ORDER AS TO THE PACIFIC GROUND FISH
FISHERY MANAGEMENT PLAN**

WHEREAS, plaintiffs in this case challenged the federal defendants' approval (in whole or in part) of certain fishery management plan amendments concerning essential fish habitat (EFH) in the following fishery management regions: Caribbean, Gulf of Mexico, New England, North Pacific, and Pacific (hereinafter "the EFH Amendments");

WHEREAS, plaintiffs alleged that federal defendants' approval of the EFH Amendments violated the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and federal defendants' own regulations, because federal defendants had (1) failed to analyze adequately the potential adverse effects of fishing gear on EFH; (2) failed to analyze adequately whether there were any practicable steps to minimize any such adverse effects of fishing on EFH; and (3) failed to take all practicable steps to minimize any such adverse effects of fishing on EFH;

WHEREAS, plaintiffs also alleged that federal defendants' approval of the EFH Amendments violated the National Environmental Policy Act (NEPA), because federal defendants had failed to analyze adequately the potential direct and indirect environmental

impacts of fishing on EFH and to develop and analyze adequately a range of alternatives for minimizing any such adverse effects of fishing on EFH;

WHEREAS, the Texas Shrimp Association and Wilma Anderson (defendant-intervenors) intervened to defend the partial approval of the Gulf of Mexico EFH Amendment;

WHEREAS, in a Memorandum Opinion and Order filed on September 14, 2000, the Court denied defendant-intervenors' motion to dismiss plaintiffs' Magnuson-Stevens Act claim as to the Gulf of Mexico EFH Amendment, and granted federal defendants' and defendant-intervenors' summary judgment motions as to plaintiffs' Magnuson-Stevens Act claims;

WHEREAS, in its September 14, 2000, Memorandum Opinion and Order, the Court granted plaintiffs' summary judgment motion as to the NEPA claims relating to the EFH Amendments at issue in this case;

WHEREAS, in its September 14, 2000, Memorandum Opinion and Order, the Court remanded the EFH Amendments at issue in this case to the federal defendants to comply with NEPA; and

WHEREAS, in its September 14, 2000, Memorandum Opinion and Order, the Court enjoined federal defendants "from enforcing the EFH Amendments until such time as they perform a new, thorough, and legally adequate EA [(environmental assessment)] or EIS [(environmental impact statement)] for each EFH Amendment";

WHEREAS, the parties submitted a Joint Stipulation and [Proposed] Order on December 5, 2001, on a number of issues, including the preparation of the EISs for all of the fisheries that were challenged in this lawsuit; the schedule for the preparation and issuance of the EISs and Records of Decision (RODs); and NMFS's decisionmaking based on the EISs and RODs.

WHEREAS, the Court approved of the Joint Stipulation and entered it as an Order on December 17, 2001;

WHEREAS, pursuant to the December 17, 2001, Joint Stipulation and Order, NMFS is preparing an EIS concerning EFH for the Pacific Coast Groundfish Fishery Management Plan (FMP), that will include analyses of the environmental impacts of fishing on EFH — including direct and indirect effects (as defined in the EFH regulations at 50 C.F.R. § 600.810 (2002)) — and analyses of the environmental impacts of alternatives for implementing the requirement of the Magnuson-Stevens Act, 16 U.S.C. § 1853(a)(7), that the FMP “minimize to the extent practicable adverse effects on [EFH] caused by fishing”;

WHEREAS, NMFS has determined that it needs additional time to prepare and issue the EIS concerning EFH for the Pacific Coast Groundfish FMP; and

WHEREAS, plaintiffs have agreed that NMFS may have additional time to prepare and issue the EIS concerning EFH for the Pacific Coast Groundfish FMP;

NOW THEREFORE, the undersigned Parties have conferred and hereby agree to amend Paragraphs 6, 9, and 11 of the December 17, 2001, Joint Stipulation and Order, only insofar as those paragraphs affect the EIS concerning EFH for the Pacific Coast Groundfish FMP, as follows:

1. NMFS will prepare the EIS concerning EFH for the Pacific Coast Groundfish FMP, in accordance with the following revised schedule:

- Draft EIS published for public comment: February 11, 2005
- Draft EIS public comment period: February 11-May 11, 2005
- Issuance of Final EIS: December 9, 2005
- Issuance of ROD: February 28, 2006

2. The EIS concerning EFH for the Pacific Coast Groundfish FMP will consider a range of reasonable alternatives for minimizing the adverse effects (as defined by the EFH regulations at 50 C.F.R. § 600.810 (2002)) of fishing on EFH, including potential adverse effects. This range of alternatives will include "no action" or status quo alternatives and alternatives setting forth specific fishery management actions that can be taken by NMFS under the Magnuson-Stevens Act. The alternatives may include a suite of fishery management measures, and the same fishery management measures may appear in more than one alternative. The selected alternatives can be executed through either amendments to the Pacific Groundfish FMP or implementing regulations.
3. NMFS will propose to the Council that an alternative specified by plaintiffs be adopted and fully analyzed in the Draft EIS concerning EFH for the Pacific Coast Groundfish FMP. Plaintiffs will provide to NMFS their specified alternative as a specific fishery management action, before the Council meeting at which the alternatives are adopted for analysis in the Draft EIS. The alternative specified by plaintiffs will fall within the range of reasonable alternatives considered in the Draft EIS, as those alternatives relate to the purpose and need of the proposed action. Also, NMFS and the Council may adopt and analyze any other reasonable alternative in the Draft EIS proposed by other stakeholder groups before the Council meeting at which the alternatives are adopted for analysis in the Draft EIS.
4. After the issuance of the ROD, if NMFS determines that an FMP amendment and implementing regulations are necessary, NMFS will approve an FMP amendment and implementing regulations as quickly as practicable, but, in any event, no later than May 6, 2006.
5. NMFS will request that the Council extend the life of the *ad hoc* Groundfish Habitat Technical Committee and that the Council amend the mission of the Committee to

include the technical review of the range of alternatives that are adopted by the Council for analysis in the Draft EIS.

6. All terms in the December 17, 2001, Joint Stipulation and Order not inconsistent with this Joint Stipulation remain in force. Nothing in this Joint Stipulation shall be construed as requiring actions inconsistent with existing law, including the Magnuson-Stevens Act and NEPA.

Respectfully submitted this 20th day of May, 2003.

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Attorneys for Texas Shrimp Association and
Wilma Anderson

[PROPOSED] ORDER

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

_____, 2003.

HON. GLADYS KESSLER
United States District Judge

The following counsel should be notified of the entry of this Order:

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CERTIFICATE OF SERVICE

MAY 20 PM 6:48

On May 20, 2003, I served true copies of the Joint Stipulation and [Proposed] Order to Amend December 17, 2001, Joint Stipulation and Order as to the Pacific Groundfish Fishery Management Plan on the following by United States first class mail:

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