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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

NATURAL RESOURCES DEFENSE )  
COUNCIL, INC., and OCEANA, INC. )

Plaintiffs. )

v. )

NATIONAL MARINE FISHERIES )  
SERVICE. et al. )

Defendants. )

CASE NO. C 02-1650 CRB

**DECLARATION OF  
D. ROBERT LOHN IN  
SUPPORT OF FEDERAL  
DEFENDANTS'  
OPPOSITION TO  
MOTION FOR ORDER ON  
REMEDY**

WESTCOAST SEAFOOD PROCESSORS )  
ASSOCIATION. et al. )

Defendant-Intervenors. )

I, D. Robert Lohn, declare as follows:

1. I am the Regional Administrator of the Northwest Region of the National Marine Fisheries Service (NMFS), an agency within the National Oceanic and Atmospheric Administration (NOAA) of the Department of Commerce, a position I have held since October 2001. Prior to coming to NMFS, I have, over the past decade, held various positions in the Pacific Northwest. From 1987 to 1994 I served as the General Counsel to the Northwest Power Planning Council, now known as the Northwest Power and Conservation Council. After that I managed the fish and wildlife division of the Bonneville Power Administration from 1994 to 1999. Most recently, before coming to NMFS, I held the position of Director of the Fish and Wildlife Division for the Northwest Power and Conservation Council.

2. As Regional Administrator, I have been delegated the authority to approve (with the concurrence of NOAA's Assistant Administrator for Fisheries), and implement fishery management plans and amendments for Pacific Coast groundfish developed by the Pacific

1 Fishery Management Council (Council) pursuant to the Magnuson-Stevens Fishery  
2 Conservation and Management Act (Magnuson-Stevens Act). I, or my designee, am a  
3 voting member of the Council. NMFS and the Council share responsibilities under the  
4 Magnuson-Stevens Act for managing the Pacific Coast groundfish fishery and other  
5 federally managed fisheries off Washington, Oregon, and California. In particular, the  
6 Council develops and recommends fishery management plans (FMPs), FMP amendments,  
7 and regulations to NMFS for approval and implementation. Both Council staff and agency  
8 staff, particularly the NMFS NWR's Sustainable Fisheries Division that I oversee, are  
9 responsible for drafting documents such as fishery management plan amendments, and  
10 implementing regulations; documents required by the National Environmental Policy Act  
11 (NEPA); and documents required by other applicable federal statutes such as the  
12 Regulatory Flexibility Act. The agency also compiles data for use by the Council,  
13 provides guidance on regulatory requirements, and reviews and comments on the  
14 Council's regulatory proposals.

15 3. NMFS intends to implement the 2007-2008 specifications (including the overall  
16 harvest levels and optimum yield (OY) for the various species) and management measures  
17 (specific regulatory measures designed to keep the total harvest within the OYs) for the  
18 Pacific Coast groundfish fishery so that they are based on rebuilding plans for all  
19 overfished species that are consistent with the 9<sup>th</sup> Circuit Court of Appeals decision in  
20 Natural Resources Defense Council v. National Marine Fisheries Service, No. 03-16842  
21 (D.C. No. CV-02-01650-CRB)(9<sup>th</sup> Cir., August 24, 2005)(NRDC v. NMFS). Consistent  
22 with the decision, it is the agency's intent that all rebuilding periods will be as short as  
23 possible, taking into account the status and biology of the overfished stocks, the needs of  
24 fishing communities, and the interaction of the overfished stocks within the marine  
25 ecosystem.

1 4. During the process of reconsidering and revising the rebuilding plans, it is both  
2 necessary and important for NMFS to work through the process established in the  
3 Magnuson-Stevens Act. Significantly, the Council includes representatives of the various  
4 fishing interests along the entire Pacific coast of the United States; representatives of the  
5 states of Washington, Oregon and California (who coordinate the development of  
6 associated fishery management regulations within state waters. The state of Alaska is also  
7 represented but for Pacific groundfish there is no need to coordinate Federal and Alaska  
8 regulations); Federal representatives (NMFS, U.S. Department of Fish and Wildlife, U.S.  
9 Department of State, and U.S. Coast Guard); and a representative of the Indian tribes with  
10 Federally recognized fishing rights off the Pacific coast. (There are four Indian tribes who  
11 participate in Pacific groundfish fisheries.) Also, significantly, the deliberations of the  
12 Council are open to the public, and include extensive opportunity for public comment.  
13 Coordinating with the states through the Council process is particularly important; the  
14 states manage the groundfish fishery in state waters, and manage and develop many of the  
15 data programs NMFS and the Council use in management (such as fish tickets, logbooks,  
16 and port sampling).

17 5. The Council has five meetings per year to address fishing resource, habitat, industry,  
18 community and tribal issues associated with groundfish, salmon, halibut, highly migratory  
19 species like tuna, coastal pelagic species like sardines, and marine sanctuaries. The  
20 Council has several advisory panels that provide advice on specific aspects of  
21 management, including the Groundfish Management Team (GMT), the Science and  
22 Statistical Committee (SSC), and the Groundfish Advisory Subpanel (GAP). The Council  
23 has its next regularly scheduled meeting next week, October 30 - November 4, 2005, in  
24 San Diego, CA (agenda attached as Exhibit 1). For groundfish, the Council has begun  
25 developing the 2007-2008 specifications and management measures, in an extensive  
26 biennial management public process that is required by the Pacific Coast Groundfish  
27 Fishery Management Plan (FMP)(schedule attached as Exhibit 2).

1 6. The biennial management process was recently implemented through Amendment 17 to  
2 the groundfish FMP. The Council adopted Amendment 17 at its November 2002 meeting  
3 and NMFS approved it on August 20, 2003; the final rule implementing regulations was  
4 published September 4, 2003 (68 FR 52519), with an effective date of October 6, 2003.  
5 Under this biennial cycle, management measures are implemented for a two year period.  
6 Separate harvest specifications for each species are established for each year of the two-  
7 year management period. The development cycle for harvest specifications requires  
8 extensive technical preparation and review, as well as extensive Council consideration and  
9 opportunity for public comment. The adoption of new harvest specifications takes place  
10 over roughly a 14-month period using three Council meetings (November, April, and  
11 June). This provides more time for the Council and NMFS to develop the measures based  
12 on the most recent stock assessments and advice from the GMT, SSC, and GAP. It also  
13 provides significant opportunity for public comment.

14 7. Each stock assessment process typically involves development of a stock assessment,  
15 an independent review of the stock assessment by NOAA and academic scientists, and for  
16 rebuilding species, updates of the associated rebuilding analysis. The Council decision to  
17 adopt a stock assessment is based on a review of the advice of its SSC who provide an  
18 additional scientific review of these analyses, the recommendations of other Council  
19 committees such as the GMT and GAP, and public comment. Once adopted, the stock  
20 assessment and associated rebuilding analysis form the basis for OY determinations. For  
21 example, the new Darkblotched Assessment was completed in June 2005 after  
22 incorporating May 2005 comments from independent reviewers, which included  
23 nongovernment reviewers from the Center of Independent Experts. After the  
24 Darkblotched Assessment was completed, the associated rebuilding analysis was then  
25 completed in October 2005.

26 8. The three meeting Council process and the associated NMFS regulatory processes take  
27 14 months to complete. At its November meeting, the Council decides on preliminary  
28 ranges of harvest levels and management measures (e.g. bimonthly, trip limits, area  
closures, allocations, seasons, recreational bag limits, etc.) for over 80 groundfish species

1 harvested by different gear types within four major fishing sectors-- each of which contain  
2 several subsectors. At its April meeting, the Council decides on final harvest levels, and  
3 refines management measures, the impacts of which will then be further analyzed. At its  
4 June meeting, the Council decides on final management measures. The Council's June  
5 decisions are presented to NMFS in the form of a draft NEPA document (EA or EIS). The  
6 draft NEPA document and associated references includes information that compares  
7 various management alternatives and detailed analyses of their effects on groundfish  
8 resources, fishing industry sectors and sub-sectors, and on fishing communities. NMFS  
9 then publishes the proposed specifications and management measures in the Federal  
10 Register and provides the public with additional opportunity to comment. Following the  
11 close of the comment period on the proposed rule, NMFS completes the decisionmaking  
12 process and publishes a final rule in the Federal Register in November.

13 9. The major conservation theme underlying this process is the rebuilding of eight  
14 overfished species, including darkblotched rockfish. At the beginning of each year, a  
15 "Bycatch Scorecard" is developed to provide the amount of each overfished species each  
16 subsector is likely to harvest. At each Council meeting during the fishing year, current  
17 harvest estimates of all species are reviewed to determine whether management measures  
18 need adjustment to prevent the fishing from exceeding OYs for any species while allowing  
19 the fishery to harvest as much of the healthy stocks as possible. The September 2005  
20 Bycatch Scorecard exemplifies the inter-relatedness of these species with the various  
21 sectors and subsectors of the industry (Scorecard attached as Exhibit 3). It also  
22 demonstrates that measures to protect one rebuilding species need to account for the  
23 effects on other rebuilding species. The January 2006 Scorecard is now under  
24 development and among other things will be based on estimates of 2005 harvests  
25 including and estimated darkblotched harvest of 163.6 metric tons (mt.), the 23 new stock  
26 assessments adopted by the Council, and projections for harvest and mortalities associated  
27 with the planned 2006 management regime, including revised 2006 projections of  
28 harvest/mortality for darkblotched rockfish. Very preliminary estimates suggest a

1 projected harvest/mortality in 2006 of darkblotched on the order of 170-190 mt. against a  
2 projected 2006 OY of 294 mt. These preliminary estimates are based on new observer  
3 data and a management regime that discourages targeting on darkblotched while  
4 simultaneously closing areas where darkblotched are more abundant.

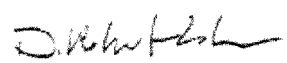
5 10. At next week's meeting, I or my designee plan to discuss with the Council potential  
6 actions needed to make the FMP consistent with the 9<sup>th</sup> Circuit Court of Appeals decision  
7 in NRDC v. NMFS. Within these discussions, if not already suggested by another Council  
8 member, I or my designee, will recommend to the Council that it use this biennial process  
9 and adapt its 2007-2008 biennial process to include development of Amendment 16-4,  
10 which would amend all the current rebuilding language and plans in the FMP to make  
11 them consistent with the 9th Circuit decision in NRDC v. NMFS. Amendments 16-1 to  
12 16-3 established the FMP's current rebuilding plans and policies. Amendment 16-1  
13 addressed National Standard 1 in the Magnuson-Stevens Act by establishing procedures  
14 for adopting and periodically reviewing rebuilding plans for overfished groundfish stocks.  
15 It also specifies what elements of rebuilding plans will be incorporated into the FMP and  
16 federal groundfish regulations. Amendments 16-2 and 16-3 implemented rebuilding plans,  
17 consistent with the framework established in Amendment 16-1, and set strategic  
18 rebuilding parameters to guide stock rebuilding for canary rockfish, darkblotched rockfish,  
19 lingcod, Pacific ocean perch, bocaccio, cowcod, widow rockfish, and yelloweye rockfish.  
20 By developing Amendment 16-4 in conjunction with this ongoing specification process,  
21 the result will be that the 2007-2008 specifications and management measures will be  
22 based on rebuilding timeframes for all the rebuilding species, not just for darkblotched,  
23 that are consistent with the 9<sup>th</sup> Circuit decision.  
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11. In addition, at next week's meeting, NMFS and the Council plan to consider the issue of reducing the darkblotched optimum yield (OY) for 2006. This consideration will be based on the most current stock assessment, completed fall 2005 and other current relevant information.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed this 28 day of October, 2005.



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D. Robert Lohn

