

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

**ANGLERS CONSERVATION
NETWORK, et al.,**

Plaintiffs,

v.

PENNY PRITZKER, et al.,

Defendants.

:
:
:
:
:
:
:
:
:
:
:

Civil Action No. 14-509 (GK)

ORDER

On October 5, 2015, this Court ruled that Defendants had not violated the Magnuson-Stevens Fishery Conservation and Management Act (“MSA”), when it approved Amendment 14 to the Atlantic Mackerel, Squid and Butterfish Fishery Management Plan (“MSB FMP”) [Dkt. Nos. 46, 47]. However, the Court also ruled that Defendants did violate the National Environmental Policy Act (“NEPA”) and the Administrative Procedure Act (“APA”) when they approved Amendment 14 because (1) they failed to take a “hard look” at the environmental impacts of its definition of the fishery, without analyzing a reasonable range of alternatives; (2) those alternatives failed to include at least one alternative that would have immediately added River Herring and Shad to the MSB FMP, (3) failed to examine the environmental impacts of not adding River Herring and Shad to the FMP, and (4) failed to examine the direct, indirect, and cumulative impacts of its decision.

Given the failure of the Government to meet the requirements of NEPA (and the APA), and the fact that Amendment 14 had already been passed by the Mid-Atlantic Fishery Management Council and the National Marine Fishery Service, the Court believed that the situation was so muddled that it ordered the Parties to:

[P]resent[] their views as to what action taken by the Court would be appropriate and realistic at this stage of the proceeding, especially in light of the fact that, despite substantial public support, the Council suspended further consideration of Amendment 15, and created a new working group to study--for three more years--whether river herring and shad should be added as stocks in the fishery.

Order at 3 (emphasis added).

As the Plaintiffs correctly noted, “[t]he case is complex procedurally” -- to say the least.

Both Parties have now submitted their Remedial Briefs [Dkt. Nos. 50 and 52-1]. In issuing the following Orders, the Court is attempting to set forth those actions which must be taken in a reasonable time in order to complete the important environmental studies that need to be done. Taking into account recent regulatory developments, obstacles that could occur, and attempting to ensure that this time around, the Defendants will be complying with NEPA and will be taking a “hard look” at the environmental impacts of its definition of fishery, and whether River Herring and Shad should be included in the Fishery Management Plan, it is this 19th day of January, 2016, hereby

ORDERED, that the case shall be remanded to the Agency; and it is further

ORDERED, that Plaintiffs’ request to vacate Amendment 14 is **denied**;¹ and it is further

ORDERED, that, given the fact that the Council has voted to finally place the issue of stocks in the fishery in its 2016 Implementation Plan, the Government shall ensure that the Council addresses the issue of adding River Herring and Shad as stocks in the fishery and makes a final decision on that issue **no later than December 31, 2016**; and it is further

¹ While the Court has carefully considered Plaintiffs’ strongly sought vacatur of Amendment 14, in light of the additional Orders and, in light of the significant disruption of important existing conservation measures contained in Amendment 14, the Court is convinced there is more to be gained than lost by denying Plaintiffs’ request. See Defs.’ Memorandum on Remedy [Dkt. No. 50] at 6-7.

ORDERED, that, given the timeline already prepared by the Council's Executive Director for action to be taken in 2016 on the issue of stocks in the fishery, the Government shall ensure that the Council reexamines a 2013 "White Paper" prepared by the Council's River Herring and Shad Committee, addressing conservation of River Herring and Shad **before April 21, 2016**; and it is further

ORDERED, that the Government shall ensure that the Council prepares and updates the White Paper cited above, to include an environmental analysis of the action that Plaintiffs prefer, namely, immediately adding River Herring and Shad to the fishery and managing it by use of proxies before **April 30, 2016**; and it is further

ORDERED, that the Government shall ensure that the Council prepares a draft decision document on the issue of stocks in the fishery, including an analysis of the regulatory course Plaintiffs advocate, and that draft decision document shall be completed and presented to the Council's River Herring and Shad Committee for discussion, and suggested changes **no later than August 1, 2016**; and it is further

ORDERED, that the Government shall ensure that the Council, **at its October 2016 meeting of the full Council**, reviews the revised draft of the previously mentioned draft decision document, and at that meeting takes a final vote on whether to undertake preparation of a proposed Amendment and EIS to consider adding River Herring and Shad as stocks in the fishery; the public shall be invited and allowed to participate in these processes; and it is further

ORDERED, that in developing the EIS and the final draft of the Council's River Herring and Shad Committee, the Government shall ensure that there is full consideration, as Plaintiffs have

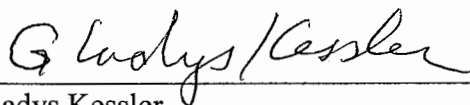
urged, of the earlier decision by the full Council to not add to Amendment 14 River Herring and Shad; and it is further

ORDERED, that the Government shall ensure that there be full consideration of the impact of failing to include River Herring and Shad in the fishery, and that there be full consideration of the direct, indirect, and cumulative impacts of those decisions; and it is further

ORDERED, that Defendants shall file a Status Report, containing a time line for completion of these Orders, **every 45 days starting February 1, 2016**; and it is further

ORDERED, that the Court expects the Remedial Action to be completed **within a period of 18 months from February 1, 2016**.

Jan. 19, 2016



Gladys Kessler
United States District Judge

Copies via ECF to all counsel of record