

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

CONSERVATION LAW FOUNDATION, )  
et al. )  
 )  
Plaintiffs, )  
 )  
v. ) Case No. 1:00CV01134 GK  
 )  
DONALD L. EVANS, et al. )  
 )  
Defendants. )  
 )  
 )  
\_\_\_\_\_ )

**SETTLEMENT AGREEMENT AMONG CERTAIN PARTIES**

WHEREAS, plaintiffs Conservation Law Foundation, The Ocean Conservancy, National Audubon Society, and Natural Resources Defense Council filed this action on May 19, 2000, seeking judicial review of Framework 33 of the Northeast Multispecies (Groundfish) Fishery Management Plan (“Northeast Multispecies FMP”), on the grounds that Framework 33 does not comply with the overfishing, rebuilding, and bycatch provisions of the Sustainable Fisheries Act (“SFA”);

WHEREAS, the Court issued a Memorandum Opinion and Order on December 28, 2001, in which it concluded that Donald L. Evans (“the Secretary”), the National Oceanic and Atmospheric Administration, and the National Marine Fisheries Service (collectively “Federal Parties”) “have not complied with the [Sustainable Fisheries Act (“SFA”)]” and that Framework 33 of the Northeast Multispecies FMP “violates the overfishing, rebuilding, and bycatch provisions of the SFA, while Amendment 9 violates the bycatch provisions of the SFA;”

WHEREAS, subsequent to the issuance of the Memorandum Opinion and Order

intervention was sought by and granted to the State of Maine, the State of New Hampshire, the State of Rhode Island, the Associated Fisheries of Maine, Inc., the City of Portland, Maine, the City of New Bedford, Massachusetts, the Trawlers Survival Fund, the Northeast Seafood Coalition, Paul Parker, Craig A. Pendleton, Northwest Atlantic Marine Alliance, Inc., Stonington Fisheries Alliance, Saco Bay Alliance, and Cape Cod Commercial Hook Fishermen's Association, Inc.;

WHEREAS, leave to appear as amicus curiae was sought by and granted to the Commonwealth of Massachusetts;

WHEREAS, the Secretary prepared, in response to the Court's Memorandum Opinion and Order, a three-part plan to achieve full compliance with the rebuilding and bycatch provisions of the SFA, as well as the Magnuson Act and all other applicable law, consisting of three separate regulatory actions, including (1) a Secretarial interim action to be implemented by May 1, 2002, to reduce fishing effort and mortality on major groundfish stocks, (2) a Secretarial Amendment to the Northeast Multispecies FMP to continue the same or similar conservation measures on a longer term basis, and (3) an FMP Amendment ("Amendment 13") to the Northeast Multispecies FMP to bring the FMP into full compliance with all provisions of the SFA, the Magnuson Act, and other applicable law, for implementation by August, 22, 2003;

WHEREAS, the parties filed extensive papers regarding the question of appropriate remedial action in response to the Court's Memorandum Opinion and Order;

WHEREAS, all parties and amici in this litigation engaged in extensive negotiations, including mediation with the assistance of neutral mediators, during which the parties discussed

appropriate management measures and the principles of long-term rebuilding strategies;

WHEREAS, the Settling Parties identified below take note of the commencement of the 2002-2003 fishing season beginning May 1, 2002, and desire the implementation of an appropriate regime for management of the Fishery at the commencement of the fishing season;

WHEREAS, Conservation Law Foundation, the Federal Parties, the State of Maine, the Commonwealth of Massachusetts, the State of New Hampshire, the State of Rhode Island, the Associated Fisheries of Maine, Inc., the City of Portland, Maine, the City of New Bedford, Massachusetts, the Trawlers Survival Fund, Paul Parker, Craig A. Pendleton, Northwest Atlantic Marine Alliance, Inc., Stonington Fisheries Alliance, Saco Bay Alliance, and Cape Cod Commercial Hook Fishermen's Association, Inc. (collectively "Settling Parties"; all Settling Parties except the Federal Parties are collectively "Non-Federal Settling Parties") were able to reach an agreement to effect a settlement among them and present a unified position to the Court with respect to a remedial plan;

WHEREAS, the Settling Parties agree that compliance with these agreements will bring the Northeast Multispecies FMP into full compliance with the overfishing and rebuilding provisions of Amendment 9, as Amendment 9 may be amended through the implementation of Amendment 13, and will bring the Northeast Multispecies FMP into compliance with the overfishing, rebuilding, and bycatch minimization requirements of the SFA, while providing substantial reductions in fishing mortality in the interim;

WHEREAS, the Settling Parties take note of the Federal Parties commitment to increase observer coverage in the Fishery;

NOW THEREFORE, the Settling Parties hereby agree as follows:

A. Interim Rule to Reduce Overfishing During the First Quarter of the 2002-03 Fishing Season

1. Exhibit A identifies a suite of management measures that are intended and considered to reduce overfishing and bycatch during the first quarter of the 2002-03 fishing season, which begins on May 1, 2002.

2. If the Secretary promulgates, in final form, an Interim Rule that contains measures that substantially conform in all material respects to the measures set forth in Exhibit A, the Non-Federal Settling Parties shall not challenge or seek judicial review of any provision of the Interim Rule that substantially conforms to the measures set forth in Exhibit A or challenge the Interim Rule on any other basis.

B. Second Interim Rule to Reduce Overfishing Pending Development of Amendment 13

3. Exhibit B identifies a suite of management measures that are intended and considered to reduce overfishing and bycatch beginning with the second quarter of the 2002-03 fishing season, beginning August 1, 2002, and continuing through the anticipated implementation of Amendment 13 by August 22, 2003.

4. If the Secretary promulgates, in final form, a Second Interim Rule that contains measures that substantially conform in all material respects to the measures set forth in Exhibit B, the Non-Federal Settling Parties shall not challenge or seek judicial review of any provision of the Second Interim Rule that substantially conforms to the measures set forth in Exhibit B or challenge the Second Interim Rule on any other basis.

### C. Amendment 13

5. The Settling Parties agree that the Secretary shall promulgate a proposed FMP Amendment (Amendment 13) that complies with the rebuilding and bycatch provisions of the SFA. The Settling Parties agree that Amendment 13 shall be developed through the Fishery Management Council process, consistent with the requirements of the Magnuson Act, the SFA, and other applicable law, and subject to Secretarial action if the Council does not meet the deadlines established by the Secretary for Council action. The Federal Parties agree to request, with the Non-Federal Settling Parties, entry of a Stipulated Order, as described in paragraph 8 below, requiring that Amendment 13 be implemented not later than August 22, 2003.

6. The Non-Federal Settling Parties agree among themselves to support and advocate certain matters, identified in Exhibit C, in the development of Amendment 13 before the Council and the Secretary. The Federal Parties acknowledge the separate agreement of the Non-Federal Settling Parties with respect to the matters in Exhibit C, provided that nothing in this agreement shall be construed to require or obligate the Federal Parties or the New England Fishery Management Council to take any action with respect to the matters in Exhibit C.

7. Nothing in this Agreement shall be construed to restrict the right of the Non-Federal Settling Parties or any other interested person to challenge or seek judicial review of Amendment 13.

### D. General Provisions

8. This Agreement is a contract among the Settling Parties and the Settling Parties do not intend that it be entered as a judicial order. The Settling Parties have agreed to separately

request that the Court enter the proposed Stipulated Order and Stay of Litigation, attached hereto as Exhibit D, establishing dates certain for promulgation of the Interim Rule, the Second Interim Rule, and Amendment 13, as well as to provide for continuing jurisdiction solely with respect to those matters.

9. The Settling Parties agree to support this Agreement, in combination with the proposed Stipulated Order (Exhibit D), as an appropriate remedial response to the Court's December 28, 2001 Memorandum Opinion and Order. Any Settling Party ("Objecting Party") may give written notice to the other Settling Parties within five business days of the entry of any further remedial order that the Objecting Party believes is inconsistent with the provisions of this Agreement in some material respect. After consultation among the Settling Parties for a period of five business days, the Objecting Party may declare this Agreement to be void and of no further binding effect.

10. Nothing in the terms of this Agreement shall be construed to limit or modify the discretion accorded the Secretary by the Magnuson Act, as amended, by other applicable law, or by general principles of administrative law. Nothing in the terms of this Agreement shall be construed to authorize or require the Secretary to take any action that is inconsistent with the Magnuson Act or other applicable law.

11. It is understood and agreed by the Settling Parties that the Secretary may take appropriate additional actions with respect to the Northeast Multispecies FMP not inconsistent with this Agreement, to extend the measures agreed to in this Agreement or to ensure compliance with all applicable law, including but not limited to Framework actions, additional interim

actions and Secretarial amendments. Nothing in this Agreement shall prevent the Secretary from taking emergency action consistent with the Magnuson Act and other applicable law.

12. In the event that the Secretary intends to adopt an Interim Rule or Second Interim Rule that does not substantially conform in all material respects to the measures identified in Exhibits A and B respectively, or that the Secretary intends to take other administrative action inconsistent with the provisions of this Agreement, the Federal Parties shall notify the Non-Federal Settling Parties in writing of such action not less than ten business days prior to taking such action. The Settling Parties shall consult for a period of not less than five business days. In the event that the Secretary adopts an Interim Rule or Second Interim Rule that does not substantially conform in all material respects to the measures identified in Exhibits A and B respectively, or that the Secretary takes other administrative action inconsistent with the provisions of this Agreement, any Settling Party may declare this Agreement to be void and of no further binding effect. Nothing in this Agreement shall be construed to restrict the Secretary's discretion to take such emergency actions as may be necessary, subject to judicial review as otherwise provided.

13. Except as expressly provided, nothing herein is intended to limit or constitute a waiver of any party's right to seek legal remedies for breach of this Agreement.

14. The terms of this Agreement shall not be construed as binding precedent for any future action taken by the Federal Parties.

15. This Agreement does not constitute an admission by the Federal Parties of any violation of law regarding any matter within the scope of the above-captioned litigation or

otherwise raised in this action.

16. This Agreement, including Exhibits A through D, contains the entire agreement of the Settling Parties.

EXECUTED BY:

\_\_\_\_\_/s/\_\_\_\_\_  
Peter Shelley  
Conservation Law Foundation  
  
Counsel for Conservation Law Foundation

\_\_\_\_\_/s/\_\_\_\_\_  
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Counsel for Plaintiff-Intervenors Paul  
Parker, Craig A. Pendleton, Northwest  
Atlantic Marine Alliance, Inc., Stonington  
Fisheries Alliance, Saco Bay Alliance, and  
Cape Cod Commercial Hook Fishermen's  
Association, Inc.

\_\_\_\_\_/s/\_\_\_\_\_  
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U.S. Department of Justice  
Environment and Natural Resources Div.

Counsel for Donald L. Evans, National  
Oceanic and Atmospheric Administration,  
and National Marine Fisheries Service

\_\_\_\_\_/s/\_\_\_\_\_  
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Assistant Attorney General  
State of Maine

Counsel for State of Maine

Conservation Law Foundation v. Evans  
Civ. No. 00-1134 GK (D.D.C.)  
Settlement Agreement

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New Bedford, Massachusetts, the Trawlers  
Survival Fund

Dated: April 16, 2002