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

COMMONWEALTH OF
MASSACHUSETTS, by its DIVISION OF
MARINE FISHERIES,

and,

STATE OF NEW HAMPSHIRE, by its
FISH & GAME DEPARTMENT,
DIVISION OF MARINE FISHERIES,

Plaintiffs,

v.

OTTO WOLFF, Acting Secretary of
Commerce, et al.,

Defendants.

Case No. 06-cv-12110 (EFH)

**FEDERAL DEFENDANTS'
NOTICE OF ERRATA
REGARDING MEMORANDUM IN
SUPPORT OF MOTION TO ALTER
OR AMEND THE COURT'S
ORDER AND IN SUPPORT OF
MOTION FOR STAY PENDING
RESOLUTION OF MOTION**

Federal Defendants^{1/2} hereby notify the Court and the parties of an inadvertent factual error in the Declaration of Patricia A. Kurkul, Northeast Regional Administrator of the National Marine Fisheries Service (“NMFS”), Dkt. No. 40-2 (“Kurkul Declaration”), filed as an exhibit to Federal Defendants’ Memorandum in Support of Federal Defendants’ Motion to Alter or Amend the Court’s Order and in Support of Motion for Stay Pending Resolution of Motion, Dkt. No. 40 (February 2, 2009) (“Memorandum”).

The Kurkul Declaration states that the suspension of Framework 42 would remove the 2:1 differential days-at-sea (“DAS”) counting in the Gulf of Maine and Southern New England, resulting in fishing effort of up to twice the number of DAS permitted under Framework 42. Kurkul Declaration at ¶ 9. This statement is cited in Federal Defendants’ Memorandum. See Memorandum at 12 (“Suspension of the DAS measures would lead to a race to fish for groundfish stocks, resulting in fishing effort of up to twice the number of DAS permitted under Framework 42.”), citing Kurkul Declaration at ¶ 9.

NMFS has informed the undersigned counsel that the Kurkul Declaration is correct with respect to fishing in the Gulf of Maine (DAS counting will be at a rate of 1:1, rather than 2:1 as provided by Framework 42, resulting in fishing effort of up to twice the number of DAS). However, DAS counting in the mid-Atlantic and Southern New England areas would be at a rate of 1.5:1. This clarification is reflected in the Revised Kurkul Declaration, attached hereto (with Attachments A, B, and C). Attachment C to the Kurkul Declaration has also been revised to reflect the correct rate of DAS counting in the mid-Atlantic and Southern New England areas.

^{1/2} Mr. Wolff, Acting Secretary of Commerce, is substituted for Carlos M. Gutierrez pursuant to Fed. R. Civ. P. 25(d)(1).

The Revised Kurkul Declaration supercedes the prior declaration, Dkt. No. 40-2.

Dated: February 3, 2009

Respectfully submitted,

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/s/ Kristen Byrnes Floom

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (“NEF”) and paper copies will be sent to those indicated as non registered participants on February 3, 2009.

/s/ Kristen Byrnes Floom