

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MAINE LOBSTERMEN'S
ASSOCIATION, INC.,

Plaintiff,

and

STATE OF MAINE, DEPARTMENT
OF MARINE RESOURCES, *et al.*,

Intervenor-Plaintiffs,

v.

NATIONAL MARINE FISHERIES
SERVICE, *et al.*,

Federal Defendants,

and

CONSERVATION LAW
FOUNDATION, *et al.*,

Intervenor-Defendants.

Case No. 1:21-cv-2509 (JEB)

STIPULATION TO SETTLE
PLAINTIFF MAINE LOBSTERMEN'S
ASSOCIATION'S CLAIMS FOR
ATTORNEYS' FEES AND COSTS
AND ~~PROPOSED~~ ORDER

Plaintiff, the Maine Lobstermen's Association ("Plaintiff") and Federal Defendants, National Marine Fisheries Service ("NMFS"); Gina Raimondo, in her official capacity as Secretary of Commerce; and Janet Coit, in her official capacity as Assistant Administrator for Fisheries, NMFS (collectively, "Federal Defendants"), by and through their attorneys, stipulate as follows:

WHEREAS, on September 27, 2021, Plaintiff filed its Complaint in the U.S. District Court for the District of Columbia, alleging, *inter alia*, that NMFS violated the Endangered

Species Act and the Administrative Procedure Act in issuing (1) its May 27, 2021, Endangered Species Act Section 7 Biological Opinion on the (a) Authorization of the American Lobster, Atlantic Bluefish, Atlantic Deep-Sea Red Crab, Mackerel/Squid/Butterfish, Monkfish, Northeast Multispecies, Northeast Skate Complex, Spiny Dogfish, Summer Flounder/Scup/Black Sea Bass, and Jonah Crab Fisheries and (b) Implementation of the New England Fishery Management Council's Omnibus Essential Fish Habitat Amendment 2 ("Biological Opinion"); and (2) its September 17, 2021 Final Rule amending the regulations implementing the Atlantic Large Whale Take Reduction Plan ("Final Rule");

WHEREAS, on September 8, 2022, this Court denied Plaintiff's motion for summary judgment and granted Federal Defendants' cross-motion for summary judgment (Dkt. 75, 76);

WHEREAS, on September 13, 2022, Plaintiff appealed this Court's September 8, 2022, decision to the U.S. Court of Appeals for the D.C. Circuit (Dkt. 77);

WHEREAS, on June 16, 2023, the U.S. Court of Appeals for the D.C. Circuit issued an opinion reversing this Court's judgment and directing this Court to enter judgment in favor of Plaintiffs, vacate the Biological Opinion, and remand the Final Rule to NMFS;

WHEREAS, on September 7, 2023, the U.S. Court of Appeals for the D.C. Circuit issued its Mandate (Dkt. 90);

WHEREAS, on October 30, 2023, this Court issued a Minute Order granting Plaintiff summary judgment as to Counts 1 and 4 of its Complaint, vacating the Biological Opinion as applied to the lobster and Jonah crab fisheries, and remanding the Final Rule to NMFS;

WHEREAS, on November 20, 2023, Plaintiff filed a Bill of Costs (Dkt. 96);

WHEREAS, on November 29, 2023, Plaintiff filed a Motion for Award of Attorney Fees and Costs, Dkt. 99-1 (corrected version);

WHEREAS, Plaintiff and Federal Defendants agreed that they would attempt to resolve Plaintiff's claim for fees and costs expeditiously, without further litigation, and on November 30, 2023, February 22, 2024, and March 29, 2024, the Court granted Plaintiff's and Federal Defendants' joint motions to stay briefing on Plaintiff's Motion for Award of Attorney Fees and Costs (11/30/2023 Minute Order; 02/22/2024 Minute Order; 03/29/2024 Minute Order);

WHEREAS, Plaintiff and Federal Defendants have agreed to the following settlement that they consider to be a just, fair, adequate, and equitable resolution of Plaintiff's demand for attorneys' fees and costs;

WHEREAS, Plaintiff and Federal Defendants agree that settlement of attorneys' fees and costs in this manner is in the public interest and is an appropriate way to resolve the dispute between them;

WHEREAS, Plaintiff and Federal Defendants enter into this Stipulation without any admission of fact or law, or waiver of any claims or defenses, factual or legal;

ACCORDINGLY, PLAINTIFF AND FEDERAL DEFENDANTS AGREE AND STIPULATE AS FOLLOWS:

1. Federal Defendants shall pay Plaintiff a total of \$200,000.00 for attorneys' fees, costs, and other litigation expenses for this lawsuit.
2. Federal Defendants shall make the payment required by Paragraph 1 via electronic funds transfer.
3. No later than five (5) business days after the Court approves this Stipulation, Plaintiff, through its counsel, shall provide counsel for Federal Defendants the following information necessary to process the payment set forth in Paragraph 1: the Plaintiff's name, the payee's name, the payee's address, the payee's bank name and bank address, the payee's bank

account name and account number, the account type, the Automated Clearing House (“ACH”) routing number or the American Banking Association (“ABA”) routing number for FedWire payment, the bank routing transit number (“RTN”), and Plaintiff’s tax identification number.

Upon the request of counsel for Federal Defendants, counsel for Plaintiff shall provide additional information, if needed, to process the payment set forth in Paragraph 1, or, if such information is not available, a written explanation under oath for the reasons such information is not available. Federal Defendants agree to submit all necessary paperwork for the processing of the attorneys’ fees award within thirty (30) days of the Court’s approval of this Stipulation or the receipt of the information described in this Paragraph, whichever is later.

4. Plaintiff agrees to accept Federal Defendants’ payment of \$200,000.00 in full satisfaction of any and all claims for attorneys’ fees and costs of litigation incurred in this matter to date. Plaintiff agrees that receipt of this payment from Federal Defendants shall operate as a release of Plaintiff’s claims for attorney’s fees and costs in this matter to date.

5. Plaintiff agrees to send confirmation of the receipt of the payment to counsel for Federal Defendants within fourteen (14) days of such payment.

6. Plaintiff acknowledges that under 31 U.S.C. §§ 3711, 3716, 26 U.S.C. § 6402(d), 31 C.F.R. §§ 285.5, 901.3, and other authorities, the United States will offset against the attorney fee award Plaintiff’s delinquent debts to the United States, if any. *See Astrue v. Ratliff*, 560 U.S. 586 (2010).

7. Federal Defendants reserve the right to contest fees claimed by Plaintiff or Plaintiff’s counsel, including hourly rates and the number of hours billed, in any future litigation or continuation of the present action. Further, this Stipulation as to attorneys’ fees and costs has no precedential value and shall not be used as evidence in any other attorneys’ fees litigation.

8. Nothing in this Stipulation shall be interpreted as, or shall constitute, a requirement that Federal Defendants are obligated to pay any funds exceeding those available, or take any action in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other appropriations law.

9. This Stipulation shall be binding on the parties and their successors, agents, designees, employees, and all those acting by and through their authority. The parties agree that this Stipulation was negotiated in good faith and that this Stipulation constitutes a resolution of claims that were denied and disputed by the parties. By entering into this Stipulation, the parties do not waive any claim or defense.

10. This Stipulation constitutes the entire agreement of the undersigned parties concerning the rights and obligations discussed herein. No other agreement shall govern the rights of the undersigned parties with respect to the matters resolved by this Stipulation, except in accordance with the terms herein.

11. This Stipulation is effective as of the date it is entered by the Court.

12. The undersigned representatives of each party certify that they are fully authorized by the parties they represent to agree to the terms and conditions of this Stipulation and do hereby agree to the terms herein.

Dated: April 26, 2024

Respectfully submitted,

/s/ Ryan Steen (with permission)

Ryan Steen, D.C. Bar No. 1615260

Jason Morgan, D.C. Bar No. 1615129

STOEL RIVES LLP

600 University Street, Suite 3600

Seattle, WA 98101

Phone: (206) 624-0900

Fax: (206) 386-7500

Email: ryan.steen@stoel.com

jason.morgan@stoel.com

Jane C. Luxton, D.C. Bar No. 243964
LEWIS BRISBOIS BISGAARD & SMITH LLP
2112 Pennsylvania Ave., NW, Ste. 500
Washington, DC 20037
Phone: (202) 558-0659
Email: Jane.Luxton@lewisbrisbois.com

Mary Anne Mason, D.C. Bar No. 375825
MAINE LOBSTERMEN'S ASSOCIATION, INC.
2 Storer Street, Suite 203
Kennebunk, ME 04043
Phone: (202) 262-2424
Email: Maryanne@mainelobstermen.org

Attorneys for Maine Lobstermen's Association, Inc.

/s/ Taylor A. Mayhall
TAYLOR A. MAYHALL, Trial Attorney
J. BRETT GROSKO, Senior Trial Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Wildlife and Marine Resources Section
P.O. Box 7611
Washington, D.C. 20044-7611
Telephone: (202) 598-3796 (Mayhall)
Telephone: (202) 305-0342 (Grosko)
Email: taylor.mayhall@usdoj.gov
Email: brett.grosko@usdoj.gov

Counsel for Federal Defendants

IT IS SO ORDERED.



THE HONORABLE JAMES E. BOASBERG
UNITED STATES DISTRICT JUDGE

4/29/24