

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
OCEANA, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 08-1881 (PLF)
)	
REBECCA M. BLANK,)	
Acting Secretary, United States Department)	
of Commerce, ¹ <u>et al.</u> ,)	
)	
Defendants,)	
_____)	
)	
FISHERIES SURVIVAL FUND,)	
)	
Defendant-Intervenor.)	
_____)	

MEMORANDUM OPINION AND ORDER

Plaintiff Oceana, Inc. (“Oceana”) initiated this lawsuit on October 31, 2008 to challenge the legality of a March 2008 biological opinion issued by the Defendant National Marine Fisheries Service (“NMFS”) relating to the impact of the Atlantic sea scallop fishery management plan on the loggerhead sea turtle population. After the NMFS reinitiated consultation under Section 7 of the Endangered Species Act to develop an updated biological decision, this Court granted NMFS’s March 8, 2012 motion to stay the proceedings pending revision of the biological decision at issue in this case. See Memorandum Opinion and Order, March 22, 2012, Docket No. 73.

¹ The Court has substituted acting Secretary of Commerce Rebecca M. Blank as a defendant in place of former Secretary John Bryson pursuant to Rule 25(d) of the Federal Rules of Civil Procedure.

Oceana, NMFS, and Defendant-Intervenor Fisheries Survival Fund filed a joint status report on July 26, 2012, Docket No. 75, advising the Court that counsel for NMFS had distributed to all parties the revised biological opinion for the Atlantic sea scallop fishery management plan. All parties appear to agree that it is appropriate for the action to proceed, and that Oceana should be permitted to amend its complaint to include claims related to the 2012 Biological Opinion. Oceana and NMFS propose similar briefing schedules, although Oceana and NMFS disagree as to the proper timing of the filing of the Supplemental Administrative Record. The Court finds that it is appropriate for the Federal Defendants to postpone production of the Supplemental Administrative Record until after the parties have had an opportunity to engage in settlement discussions following submission of the amended complaint and answers.

Accordingly, it is hereby

ORDERED that the parties show cause why the court's stay order should not be lifted; and it is

FURTHER ORDERED that the parties show cause why the following briefing schedule should not be set as follows:

1. Plaintiff file its First Amended Complaint on or before November 5, 2012.
2. Federal Defendants and Defendant-Intervenor file Answers to Plaintiff's First Amended Complaint on or before November 19, 2012.
3. Federal Defendants file the Supplemental Administrative Record for the 2012 Biological Opinion on or before December 19, 2012.
4. Plaintiff file its Amended Motion for Summary Judgment on or before January 28, 2013.

5. Federal Defendants and Defendant-Intervenor each file their Combined Opposition to Plaintiff's Amended Motion for Summary Judgment and Amended Cross-Motions for Summary Judgment (each party files its own Opposition and Cross-Motion not to exceed 45 pages) on or before February 27, 2013.

6. Plaintiff file its combined reply in support of its Amended Motion for Summary Judgment and Opposition to Federal Defendants' and Defendant-Intervenor's Amended Motions for Summary Judgment (not to exceed 30 pages) on or before March 19, 2013.

7. Federal Defendants and Defendant-Intervenor file Replies in support of their Amended Cross-Motions for Summary Judgment (each party files its own Reply not to exceed 15 pages) on or before April 3, 2013.

8. Plaintiff file the parties' Joint Appendix of Record Documents on or before April 23, 2013.

SO ORDERED.

DATE: October 12, 2012

/s/ _____
PAUL L. FRIEDMAN
United States District Judge