

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

KING’S SEAFOOD INC. and SEA FARMERS OF AMERICA INC.,)	
)	
Plaintiffs,)	
)	
v.)	No. 1:12-cv-00592-CKK
)	
REBECCA BLANK, in her official capacity as Acting Secretary of the United States Department of Commerce,)	
)	
Defendant.)	

**JOINT STATUS REPORT AND
FOURTH JOINT MOTION FOR STAY OF PROCEEDINGS**

Pursuant to the Court’s order, dated December 17, 2012, Plaintiffs King’s Seafood Inc. and Sea Farmers of America Inc. (collectively, “Plaintiffs”) and Defendant Rebecca Blank, in her official capacity as Acting Secretary of the United States Department of Commerce, have conferred and respectfully submit the following report advising the Court as to the status of the above-captioned matter. In addition, the parties jointly move the Court for an order staying further proceedings in this case until April 30, 2013, so that the parties may continue their discussions regarding the continued exploration of previously-submitted stock assessment methods for wreckfish, and attempt to reach agreement as to a proposed schedule for further proceedings. Accordingly, the parties submit as follows:

1. On April 16, 2012, Plaintiffs filed their Complaint for Injunctive and Declaratory Relief and Petition for Review of Rulemaking (“Complaint”), alleging violations of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. §§ 1801-

1883; the Administrative Procedure Act, 5 U.S.C. §§ 701-06; and the Regulatory Flexibility Act, 5 U.S.C. §§ 601-612. Docket (“Dkt.”) 1.

2. On May 30, 2012, the parties jointly moved for an extension of time, until July 12, 2012, for Defendant to lodge an administrative record and to answer or otherwise respond to Plaintiffs’ Complaint. Dkt. 9. By its order dated May 31, 2012, the Court granted the parties’ request.

3. On July 12, 2012, Defendant filed an Answer to the Complaint and lodged an administrative record. Dkt. 10 and 11.

4. On July 25, 2012, the parties submitted a status report and jointly moved for a stay of further proceedings for the parties to continue their discussions regarding possible alternative methods for resolving some or all of Plaintiffs’ claims. Dkt. 13. By its order dated July 26, 2012, the Court entered a stay pending further order of the Court, and also instructed the parties to file a joint status report no later than September 24, 2012.

5. On September 24, 2012, the parties submitted a status report and jointly moved for a second stay of further proceedings until December 7, 2012, pending the conclusion of the South Atlantic Fishery Management Council’s (“Council”) meeting on December 3-7, 2012. Dkt. 14 and 15. By its order dated October 8, 2012, the Court entered a stay pending further order of the Court, and also instructed the parties to file a joint status report no later than December 14, 2012.

6. During a meeting of the Council’s Scientific and Statistical Committee (“SSC”) on October 22-25, 2012, the SSC undertook an exploration of stock assessment methods for wreckfish, including information submitted by Plaintiffs.

7. Following its meeting, the SSC issued a report in which it “suggested a follow-up workshop be pursued to explore these [stock assessment methods for wreckfish] further and potentially re-evaluate the SSC catch recommendation for wreckfish.” Dkt. 17-1 at 14. However, the SSC also stated that it was “not prepared to make a revision of the current ABC based on the current information at this point.” *Id.* Instead, the SSC recommended that these stock assessment methods be further considered as part of a “[Southeast Data, Assessment, and Review (“SEDAR”)¹]-like framework,” which would “either fold the submissions into a SEDAR review or send it out for a [Center for Independent Experts] desk review,” and also requested “that the Council, working cooperatively with the SEDAR Steering Committee, provide the SSC with further guidance on how to proceed addressing this issue.” *Id.*

8. In response to the SSC’s request for guidance, the Council decided during its meeting on December 3-7, 2012, that further consideration of these stock assessment methods for wreckfish by the SSC should be postponed until the SSC has completed its ongoing efforts to formulate a policy and process for the review of such third party assessments.

9. Following the Council’s meeting, the parties have discussed possible alternate approaches for the continued exploration of these stock assessment methods for wreckfish. The parties have made significant progress in framing a tentative plan for such continued exploration, whereby the parties would continue to work cooperatively over the next three months to determine whether and how these previously-submitted stock assessment methods may be revised, refined, or otherwise clarified for further evaluation by the National Marine Fisheries Service.

¹ SEDAR is a cooperative program through which the stock assessments of Council-managed fisheries resources in the Southeastern United States are developed and reviewed.

10. In light of these recent developments, the parties believe that a stay of further proceedings until April 30, 2013, would allow the parties to continue their discussions and assist their efforts to reach agreement as to a proposed schedule for further proceedings. Upon the conclusion of the parties' discussions, the parties agree to file a joint status report and, if necessary, a proposed schedule for further proceedings.

11. The parties have previously sought three prior stays of proceedings.

12. No other previously-set deadlines would be impacted by the parties' requested stay.

NOW, THEREFORE, the parties respectfully request that the Court enter an order as follows:

1. Further proceedings in this case are stayed until April 30, 2013.
2. The parties shall file a joint status report and, if necessary, a proposed schedule for further proceedings no later than April 30, 2013.

Dated: January 31, 2013

Respectfully submitted,

/s/ Shaun M. Gehan

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CERTIFICATE OF SERVICE

I hereby certify that on January 31, 2013, I electronically filed the foregoing Joint Status Report and Fourth Joint Motion for Stay of Proceedings and [Proposed] Order with the Clerk of the Court using the CM/ECF system, which will send notification of this filing to the attorneys of record.

/s/ H. Hubert Yang

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