



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

JHK/vl:

*610 Federal Plaza
Central Islip, New York 11722*

July 25, 2019

Hon. Sandra J. Feuerstein
United States District Judge
United States District Court
1010 Federal Plaza
Central Islip, New York 11722

Re: New York v. Ross, Sec. U.S. Dept. of Commerce
Civil Action No. CV-19-259
(Feuerstein, J.) (Lindsay, M.J.)

Dear Judge Feuerstein:

The undersigned represents defendants Wilbur Ross, as Secretary of the United States Department of Commerce (the “Secretary”), the United States Department of Commerce, The National Oceanic and Atmospheric Administration, and the National Marine Fisheries Service, a/k/a NOAA Fisheries (collectively, the federal defendants). Pursuant to the court’s July 18, 2019 order (ECF no. 45), the federal defendants write to advise the court that, for the following reasons and based on the following administrative process, they anticipate that: (1) a proposed regulation revising the 1993 commercial summer flounder state by state quotas at issue here will be submitted for review by September 2019; and (2) if approved, will be finalized and promulgated as a regulation by March or April 2020.

The commercial summer flounder fishery is governed by the Atlantic Coastal Act, 16 U.S.C. § 5101 *et seq.*, which establishes a federal-state management scheme providing for the participation of the Atlantic Coastal states through the Atlantic States Marine Fisheries Commission (“Commission”), a state body, in cooperation with the Mid-Atlantic Fishery Management Council (“Council”), a federal body. The Council is responsible for recommending summer flounder management plans to the Secretary. 16 U.S.C. §§ 1854, 1855. At its March 2019 meeting, the Council voted to submit a proposed Summer Flounder Commercial Issues Amendment (which will, among other things, revise the commercial summer flounder state by state quotas) to NOAA Fisheries for review. At its May 2019 meeting, the Commission voted to approve the proposed amendment, pending NOAA Fisheries’ approval. Thereafter, the Council has been working on drafting a final amendment document.

The federal defendants anticipate that the Council will submit a draft final amendment document, which includes a Regulatory Impact Review, Regulatory Flexibility Act

Analysis, and drafted Final Environmental Impact Statement (“FEIS”), to NOAA Fisheries by September 2019 for review. Immediately following submission of the Council’s proposed final amendment document, NOAA Fisheries will review the document for consistency with applicable laws,¹ content and format requirements, and to identify any components of the document that require additional development, editing, or clarification to be deemed sufficient for NOAA Fisheries to satisfactorily address the pertinent applicable laws and conduct rulemaking under the Administrative Procedure Act. The coordination process with the Council during this review may take a few months before the amendment document is considered final, depending on the level of issues involved with the agency’s review.

Once the Council submits a final version that addresses any NOAA Fisheries comments, a 90-day clock of formal Secretarial review and approval decision required under the Magnuson-Stevens Fishery Conservation and Management Act will start. During that 90-day window, NOAA Fisheries will conduct rulemaking, including a public notice and comment period on both the amendment document and its associated FEIS. After this process is completed, and the rule approved, the amendment will be published in the Federal Register and promulgated as a federal regulation by March or April 2020. 16 U.S.C. § 1854. Because the amendment will adjust state quota percentages and such adjustments may lead to overages for some states if implemented mid-year, the effective date for implementing this rule will be January 1, 2021, the start of the next summer flounder fishing year after the rule becomes effective in March or April 2020.

The federal defendants thank the court for considering this letter.

Very truly yours,

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¹ NOAA Fisheries must comply with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act, the National Environmental Policy Act, the Regulatory Flexibility Act, the Administrative Procedure Act, the Paperwork Reduction Act, the Coastal Zone Management Act, the Endangered Species Act, the Marine Mammal Protection Act, the Data Quality Act, and Executive Orders 12630 (Property Rights), 12866 (Regulatory Planning), 13132 (Federalism), 12898 (Environmental Justice), 13158 (Marine Protected Areas), and 13771 (Reducing Regulation and Controlling Regulatory Costs).