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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

OCEANA, Inc.,

Plaintiff,

v.

WYNN COGGINS, in her official capacity as
Acting Secretary of Commerce; NATIONAL
OCEANIC AND ATMOSPHERIC
ADMINISTRATION; and NATIONAL MARINE
FISHERIES SERVICE,

Defendants.

Case No. 5:21-cv-00736

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Administrative Procedure Act Case

INTRODUCTION

1. For the third time in four years, the National Marine Fisheries Service (“NMFS”) has promulgated a blatantly illegal regulation setting catch limits for the central subpopulation of northern anchovy (hereinafter, “anchovy”). NMFS’s near-fanatical determination to ignore science and maintain a fishery management approach this Court has explicitly held unlawful displays a troubling disregard for the rule of law and harms a species that is vital to West Coast coastal communities and marine ecosystems.

2. Above all else, the Magnuson-Stevens Fishery Conservation and Management Act requires NMFS to manage federal fisheries based on the best scientific information available to prevent overfishing and protect the marine ecosystem. This suit challenges NMFS’s continued failure to comply with these bedrock requirements in its December 31, 2020 Catch Rule¹ and the Coastal Pelagic Species Fishery Management Plan (“CPS FMP”) provisions that rule applies. The agency’s insistence on setting unchanging catch limits that do not reflect the status of the anchovy population and are not subject to any regular review or adjustment, fails to account for the well-known “boom and bust” cycle of the anchovy population and its importance to the West Coast marine ecosystem.

3. Twice in the past two years, this Court has instructed NMFS to correct fundamental errors in its approach to anchovy management. In 2018, the Court ordered NMFS, et al.,² to apply the best available science and issue a new rule that prevents overfishing of anchovy. *Oceana, Inc. v. Ross*, No. 16-CV-06784-LHK, 2018 WL 1989575 (N.D. Cal. Jan. 18, 2018) (“*Oceana v. Ross I*”). The Court determined that the agency’s 2016 annual catch limit (“ACL”), acceptable biological catch (“ABC”), and overfishing limit (“OFL”) (collectively, “catch limits”) were unlawfully based on decades-old data about the size of the anchovy

¹ Fisheries off West Coast States; Coastal Pelagic Species Fisheries; Harvest Specifications for the Central Subpopulation of Northern Anchovy, 85 Fed. Reg. 86855 (Dec. 31, 2020) (“2020 Catch Rule”).

² Federal Defendants include Wynn Coggins in her official capacity as Acting Secretary of Commerce, the National Oceanic and Atmospheric Administration, and the National Marine Fisheries Service. They will be referred to collectively in this Complaint as “NMFS” or “the agency.”

1 population, did not bear any relationship to the actual size of that population, and thus could not
2 prevent overfishing of this population. The decision explicitly recognized that in order to
3 prevent overfishing, catch limits must be based on the size of the anchovy population. Anchovy
4 populations naturally experience rapid changes in abundance, meaning management must be
5 responsive to the fluctuating population and cannot rely on unchanging catch limits to prevent
6 overfishing. Nonetheless, in its 2019 Catch Rule, NMFS doubled down on its previous unlawful
7 approach and attempted to lock in catch limits for an indefinite period that fail to account for the
8 fact that the anchovy population undergoes frequent and rapid declines.

9 4. On September 2, 2020, the Court vacated the 2019 Catch Rule, holding that
10 NMFS had ignored the best available science on anchovy abundance and population fluctuations.
11 *Oceana, Inc. v. Ross*, No. 19-CV-03809-LHK, 2020 WL 5232566 (N.D. Cal. Sept. 2, 2020)
12 (*“Oceana v. Ross II”*). The Court further held that NMFS failed to prevent overfishing by setting
13 unchanging catch limits that did not reflect the anchovy’s potential to drop quickly to very low
14 levels, and leaving those limits in place for an indefinite time period. The Court ordered NMFS
15 to develop a new rule that complied with the Magnuson-Stevens Act and Administrative
16 Procedure Act (“APA”). NMFS responded by promulgating the 2020 Catch Rule, which repeats
17 the errors the Court identified and rationales the Court rejected, while attempting to refute the
18 Court’s carefully considered holdings.

19 5. Like the 2019 Catch Rule the Court vacated, the 2020 Catch Rule establishes
20 values for three interrelated limits: the overfishing limit, the acceptable biological catch, and the
21 annual catch limit. Together, these three catch limits are supposed to prevent overfishing and
22 ensure that enough anchovy are left in the water to feed other fish and wildlife.

23 6. Despite sound, peer-reviewed science showing the anchovy population can drop
24 by more than 90 percent in just two years, and the Court’s holding that NMFS must consider that
25 science, the 2020 Catch Rule allows commercial fishing vessels to catch 25,000 metric tons of
26 anchovy every year, regardless of the size of the anchovy population. In other words, the new
27 rule would allow 25,000 metric tons of catch regardless of whether the population rapidly
28 declines to very small levels, is at its historic average size, or is in a boom period. This

1 unchanging catch limit ignores the agency’s legal duties—and the Court’s direction—to apply
2 the best available science to anchovy management, and to adjust the catch limits based on best
3 available science to prevent overfishing in down years.

4 7. The Magnuson-Stevens Act requires that the annual catch limit also account for
5 the needs of marine predators that depend on anchovy. The best available science demonstrates
6 the intertwined fates of these predators and their prey: when anchovy populations decline,
7 predators like brown pelicans and California sea lions suffer starvation, breeding failures, and
8 death.

9 8. Despite the Court’s holdings that setting unchanging catch limits for an indefinite
10 time period and relying on a 75 percent buffer between the overfishing limit and annual catch
11 limit do not reflect the best available science and fail to prevent overfishing, NMFS based the
12 2020 Catch Rule on this unlawful approach. That approach is inherent in the CPS FMP’s
13 framework for managing anchovy and other so-called “monitored” fish populations. But the
14 agency’s application of that approach serves only to highlight (again) that the CPS FMP itself
15 violates the Magnuson-Stevens Act.

16 9. The CPS FMP’s “monitored stock” provisions purport to allow the agency to set
17 all three catch limits once, when the rule is issued, without requiring the agency to periodically
18 check them against new data as the stock fluctuates over time. While the CPS FMP indicates
19 that the agency has discretion to revise the catch limits in light of new data—and the agency
20 itself routinely collects data on anchovy abundance—the CPS FMP does not require the agency
21 to do so. Accordingly, the CPS FMP, like the 2020 Catch Rule that applies it, violates NMFS’s
22 Magnuson-Stevens Act duties to use the abundance information the agency collects every year to
23 update its understanding of the population status and adjust the catch limits to ensure that they
24 reflect the size of the population, prevent overfishing of that population, and account for the
25 needs of marine predators. Oceana challenges NMFS’s 2020 Catch Rule, and the provisions of
26 the CPS FMP it applies, because they fail to use the best available science, will not prevent
27 overfishing, and fail to protect this vital population of anchovy at the base of the West Coast
28 marine ecosystem’s food web on an ongoing basis.

10. The 2020 Catch Rule and the CPS FMP provisions it implements fail to comply with multiple legal requirements. First, NMFS violated the Magnuson-Stevens Act and the APA by setting unchanging catch limits that will remain in effect indefinitely without regard for the dramatic fluctuations in the size of the anchovy population and without explaining how they would prevent overfishing when the anchovy population declines to low levels. Second, NMFS violated the Magnuson-Stevens Act and the APA by failing to demonstrate how its unchanging annual catch limit accounts for the needs of marine predators when the anchovy population declines. Third, NMFS violated the Magnuson-Stevens Act and the APA by applying the CPS FMP's "monitored stock" approach to set unchanging, indefinite limits unresponsive to a population known to rapidly and drastically fluctuate.

11. Further exacerbating these errors, NMFS irrationally cherry-picked four recent years of data showing high abundance and used that to set unchanging catch limits that will remain in place indefinitely and, contrary to the Court’s holdings, again disregarded other available and reliable information from low abundance years.

12. By committing each of these actions and omissions, NMFS failed to comply with the statutory requirements of the Magnuson-Stevens Act and acted in a manner that was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law, in violation of the APA. NMFS's actions and failure to act have harmed Oceana's members' interest in maintaining a healthy and sustainable population of anchovy and a healthy ocean ecosystem. This harm will continue in the absence of action by the Court.

JURISDICTION AND VENUE

13. This action arises under the Magnuson-Stevens Act, 16 U.S.C. §§ 1801–1884, and the APA, 5 U.S.C. §§ 701–706.

14. This Court has jurisdiction over this action pursuant to the Magnuson-Stevens Act, which provides that “[t]he district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under” the Magnuson-Stevens Act. 16 U.S.C. § 1861(d). The Magnuson-Stevens Act also provides that actions taken by the Secretary of Commerce under regulations implementing a fishery management plan shall be subject to



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