

1 DANIKA DESAI (CA Bar #326575)
ANDREA A. TREECE (CA Bar #237639)
2 Earthjustice
50 California Street, Suite 500
3 San Francisco, CA 94111
4 T: (415) 217-2000 / F: (415) 217-2040
5 Email: ddesai@earthjustice.org
Email: atreece@earthjustice.org

6 *Counsel for Plaintiff*

7
8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

10 OCEANA, INC.,

11 *Plaintiff,*

12 v.

13 GINA RAIMONDO, in her official capacity
14 as Secretary of Commerce; NATIONAL
15 OCEANIC AND ATMOSPHERIC
16 ADMINISTRATION; and NATIONAL
MARINE FISHERIES SERVICE,

17 *Defendants.*

Case No. 5:21-cv-05407

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

Administrative Procedure Act Case

INTRODUCTION

1
2 1. Plaintiff Oceana challenges a final agency action, NMFS's approval of
3 Amendment 18 to the Coastal Pelagic Species Fisheries Management Plan, that fails to rebuild
4 the Pacific sardine population to healthy levels, in violation of the Magnuson-Stevens Fishery
5 Conservation and Management Act ("MSA"). The health of the Pacific sardine population is
6 crucial to the West Coast marine ecosystem and to fisheries that depend on sardine as direct
7 catch, bait, or food for other target species like salmon. Yet in approving Amendment 18, the
8 National Marine Fisheries Service ("NMFS") chose a suite of already disproven, status quo
9 management measures that will keep this population at levels too low to support either the
10 ecosystem or the primary fishery that relies on sardine for half a century or more.

11 2. Amendment 18 is the latest episode in the Pacific sardine's saga as a cautionary
12 tale for poor environmental stewardship. Pacific sardine were famously the foundation and the
13 demise of Monterey's Cannery Row during the 1930s to 1950s, when sardines supported the
14 largest fishery in the western hemisphere. But overfishing in the face of changing ocean
15 conditions caused the fishery to collapse in the 1950s. Fishery managers, reluctant to limit
16 fishing even as the population fell precipitously, failed to close the major directed commercial
17 fishery until 1967. Even then, managers continued to allow fishermen to catch sardines for live
18 bait and as incidental catch. Unsurprisingly, the population continued its downward trajectory
19 until managers implemented a complete fishing moratorium in 1974. This failure to act swiftly
20 at the first signs of declining abundance caused the sardine collapse to last longer and decline to
21 lower levels, and, when sardines did start to rebound, prevented the population from reaching its
22 previous abundance levels. Despite these hard lessons, NMFS repeats these management
23 failures in Amendment 18.

24 3. The MSA requires NMFS to implement conservation and management measures
25 to help overfished fish populations swiftly return to healthy levels that can support a sustainable
26 fishery in the long-term. These measures, known as a "rebuilding plan," must be based on the
27 best scientific information available. Instead of implementing measures to rebuild the Pacific
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1 sardine, however, NMFS merely relabeled existing management measures as a rebuilding plan,
2 maintaining the status quo. What NMFS calls a “rebuilding plan” in Amendment 18 is in fact
3 merely a continuation of the same status quo management measures that resulted in an
4 overfished population and under which the population continues to decline. Unsurprisingly,
5 NMFS’s own modeling predicts Amendment 18 will not rebuild the Pacific sardine population.

6 4. In contorting status quo management into a so-called rebuilding plan, NMFS
7 failed to use the best available science.

8 5. Instead of developing a plan that would achieve the abundance (measured as
9 biomass) that its own scientists identified as constituting a healthy population, NMFS selected a
10 rebuilding target biomass that is as much as ten times lower. Indeed, the selected rebuilding
11 target is so low that when the population falls to this biomass level, fishing in the primary
12 sardine fishery is prohibited under current management measures.

13 6. Then, when NMFS’s *own* analysis showed the rebuilding plan failed to rebuild
14 the population even to that artificially low level within the legal timeframe, NMFS simply
15 ignored these results and adopted Amendment 18 anyway.

16 7. To justify this unscientific rebuilding plan, NMFS analyzed the environmental
17 impacts and rebuilding potential—not based on the amount of sardine Amendment 18 will
18 allow fishermen to catch every year—but based on the assumption that fishermen will
19 voluntarily and consistently catch much lower levels equal to sardine landings in recent years.

20 8. The overfished state of the sardine population stems in part from NMFS’s failure
21 over the past decade to use the best available science—including peer-reviewed studies from its
22 own scientists—to set annual catch limits. Amendment 18 perpetuates rather than fixes these
23 problems.

24 9. In addition to requiring NMFS to rebuild overfished populations, the MSA also
25 requires NMFS to prevent overfishing. To do so, NMFS sets an overfishing limit that is
26 supposed to ensure that catch levels do not result in overfishing. But for years, NMFS has set
27 the overfishing limit and associated annual catch limits too high. NMFS’s own scientists have
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1 explained that the key assumptions used to calculate the overfishing limit and annual catch
2 limits, including how productive the sardine population is and what proportion of the sardine
3 population U.S. fishing vessels can sustainably catch, are overestimated, and have suggested
4 superior methods for determining these values. But despite numerous comments from Oceana
5 and others highlighting these flaws over the last decade, NMFS refused to correct course, even
6 as the population declined. Now that the population is overfished, NMFS still refuses to change
7 its management approach, implementing a rebuilding plan that uses the exact same method and
8 analysis.

9 10. In approving and implementing Amendment 18, NMFS also failed to fully
10 analyze the significant environmental impacts of failing to rebuild the sardine population for at
11 least half a century. Sardines are a key food source for multiple marine predators, including
12 species listed under the Endangered Species Act (“ESA”) like the humpback whale and marbled
13 murrelet. In fact, sardines were recently designated as part of the humpback whale’s critical
14 habitat. Sardines are also food for many commercially important fish species and are included
15 as important prey species in the essential fish habitat designations for salmon and highly
16 migratory species like striped marlin. Sardines’ high nutrient and energy content make them one
17 of a handful of uniquely important prey species for West Coast marine predators. Continuing to
18 implement management measures that keep Pacific sardine at very low abundance levels for
19 decades—as Amendment 18 will do—is likely to have serious repercussions on the entire West
20 Coast marine ecosystem.

21 11. Amendment 18 violated multiple legal obligations. First, NMFS violated the
22 MSA and Administrative Procedure Act (“APA”) by failing to identify a lawful, scientifically
23 valid rebuilding target for the sardine population. Second, NMFS failed to demonstrate based on
24 the best available science that Amendment 18 will rebuild the sardine population even to
25 NMFS’s irrationally low rebuilding target, in violation of the MSA and APA. Third, NMFS
26 failed to demonstrate based on the best available science that Amendment 18 will prevent
27 overfishing, in violation of the MSA and APA. Fourth, NMFS arbitrarily analyzed the
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1 environmental effects of expected fishing behavior rather than the agency action at issue—the
2 authorized catch limits—in violation of NEPA and the APA. Fifth, NMFS failed to analyze the
3 significant environmental impacts of failing to rebuild the sardine population for at least 48
4 years and failed to prepare an environmental impact statement, in violation of NEPA. Finally,
5 NMFS failed to analyze and minimize impacts to essential fish habitat for salmon and other
6 commercially important fish species, in violation of the MSA and APA.

7 12. By committing each of these actions and omissions, NMFS failed to comply with
8 the statutory requirements of the MSA and NEPA and acted in a manner that is arbitrary,
9 capricious, an abuse of discretion, or otherwise not in accordance with the law, in violation of
10 the APA. NMFS's actions and failures to act harm Oceana's members' interest in rebuilding
11 and maintaining a healthy and sustainable population of Pacific sardine and a healthy ocean
12 ecosystem. This harm will continue in the absence of action by the Court.

13 JURISDICTION AND VENUE

14 13. This action arises under the MSA, 16 U.S.C. §§ 1801–1884, and the APA, 5
15 U.S.C. §§ 701–706.

16 14. This Court has jurisdiction over this action pursuant to the MSA, which provides
17 that “[t]he district courts of the United States shall have exclusive jurisdiction over any case or
18 controversy arising under” the MSA. 16 U.S.C. § 1861(d). The MSA also provides that actions
19 taken by the Secretary of Commerce shall be subject to judicial review “if a petition for such
20 review is filed within 30 days after the date on which the regulations are promulgated or the
21 action is published in the Federal Register, as applicable.” 16 U.S.C. § 1855(f). NMFS approved
22 Amendment 18 on June 14, 2021, and published notice of the approval in the Federal Register
23 on June 24, 2021. Oceana is filing this Complaint within 30 days of NMFS's approval and
24 publication of Amendment 18.

25 15. This Court, further, has jurisdiction over this action pursuant to the APA, which
26 provides that final agency action is subject to judicial review. 5 U.S.C. §§ 701–706. NMFS's
27 approval of Amendment 18 is a “final agency action” subject to judicial review under the APA.
28

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