

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CONSERVATION LAW FOUNDATION
62 Summer Street
Boston, Massachusetts 02110

Plaintiff,

v.

WILBUR ROSS, in his official capacity
as Secretary of Commerce,
United States Department of Commerce
1401 Constitution Avenue NW
Washington, DC 20230

NATIONAL OCEANIC AND ATMOSPHERIC
ADMINISTRATION
United States Department of Commerce
Room 5128
1401 Constitution Avenue NW
Washington, DC 20230

CHRIS OLIVER, in his official capacity
as Assistant Administrator for Fisheries,
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910

NATIONAL MARINE FISHERIES SERVICE
United States Department of Commerce
Room 14555
1315 East-West Highway
Silver Spring, MD 20910

Defendants.

Civil Action No. _____

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

1. Plaintiff Conservation Law Foundation (“CLF”) on behalf of its adversely affected members hereby challenges the unlawful decision of the National Marine Fisheries Service (“NMFS”) to approve and implement Framework 59 to the Northeast Multispecies Fishery Management Plan, because, among other things, it failed to establish measures necessary to rebuild Atlantic cod stocks to healthy levels as mandated by the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. §§ 1801-1884 (“Magnuson-Stevens Act” or “the Act”), and violated the Administrative Procedure Act, 5 U.S.C. §§ 701-706 (“APA”). CLF requests this Court to remand Framework 59 and require NMFS to establish new management measures that conform to the Magnuson-Stevens Act as expeditiously as possible and by a date certain.

INTRODUCTION

2. Massive shoals of Atlantic cod once inhabited the coastal waters off the northeastern United States and Canada. Their abundance was legendary; historical accounts describe being able to catch cod simply by dipping a basket in the water.

3. For centuries, cod was a major driver of the regional economy in New England and Eastern Canada, and the stocks seemed limitless. Even as fishing pressure increased through the 1800s, Thomas Huxley, a prominent fisheries scientist famously declared the cod population to be “inexhaustible.”

4. Ecologically, Atlantic cod (*Gadus morhua*) is a high level predatory fish native to cold-water marine ecosystems in the North Atlantic. Atlantic cod was a foundational species in North Atlantic coastal ecosystems for millennia, constituting a substantial portion of the total biomass and playing a primary role in transferring energy up the food chain.

5. Today, the Gulf of Maine and Georges Bank cod stocks—the two stocks of Atlantic cod under U.S. jurisdiction and management—are severely depleted and persist at only a fraction of their former sizes, due primarily to unsustainable fishing pressure.

6. Under the Magnuson-Stevens Act, NMFS has a mandatory duty to rebuild fisheries in a time period that is “as short as possible” taking into account various factors and “not [to] exceed 10 years,” except where the biology of the stock, environmental conditions or an international agreement dictate otherwise. 16 U.S.C. § 1854(e)(4)(A).

7. Federal scientists for decades have found that both Atlantic cod stocks are subject to overfishing (meaning the rate of removals is too high) and are overfished (meaning the population abundance is at an excessively low level). Yet NMFS has continued to approve actions that end up failing to stop overfishing and failing to rebuild cod stocks as required by law. These failures have resulted in continued harm to the species.

8. Framework 59 to the Northeast Multispecies Fishery Management Plan is the most recent action by NMFS to set conservation and management

measures for Atlantic cod and implement the stocks' rebuilding plans. *See* 85 Fed. Reg. 45,794 (July 30, 2020) (final rule); New England Fishery Management Council, Northeast Multispecies Fishery Management Plan Framework Adjustment 59 (Apr. 10, 2020) ("Framework 59").

9. Framework 59 provides an extraordinarily clear example of how NMFS has implemented the rebuilding requirement in the Northeast region so as to read it entirely out of the Act. Atlantic cod stocks have been under formal rebuilding plans for decades, yet in Framework 59 NMFS authorized conservation and management measures that undisputedly cannot rebuild Gulf of Maine cod by the deadline of 2024. And for Georges Bank cod, there is nothing in the record and no rational basis to support the conclusion that this stock will rebuild by its 2026 deadline if managed under the Framework 59 conservation and management measures.

10. Framework 59, moreover, rests on arbitrary and capricious decision-making that fails to comply with other requirements of the Magnuson-Stevens Act and the relevant regulatory framework.

11. These violations of the Magnuson-Stevens Act and the APA harm CLF and its members' interests in healthy Atlantic cod populations and in protecting and restoring the species' role in the marine ecosystem. This harm will continue in the absence of action by this Court.

12. Plaintiffs request that this matter be advanced for hearing at the earliest opportunity, pursuant to 16 U.S.C. § 1855(f)(4).

JURISDICTION AND VENUE

13. The Court has jurisdiction over this case pursuant to the Magnuson-Stevens Act, which provides that the “district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under” the Act, 16 U.S.C. § 1861(d), and explicitly anticipates judicial review of regulations and fishery management actions, *id.* § 1855(f).

14. The Court also has jurisdiction over this case pursuant to the APA, which allows courts to “hold unlawful and set aside agency action . . . found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law,” 5 U.S.C. § 706(2)(A), and to “compel agency action unlawfully withheld,” *id.* § 706(1).

15. The Court further has jurisdiction over this action pursuant to 28 U.S.C. § 1331, which grants the district courts “original jurisdiction of all civil actions arising under the . . . laws . . . of the United States.”

16. The Court has authority to grant the requested relief pursuant to the Magnuson-Stevens Act, 16 U.S.C. §§ 1855(f), 1861(d), and the APA, 5 U.S.C. § 706(1)-(2), as well as the provisions of 28 U.S.C. §§ 2201-2202 (providing for declaratory and injunctive relief).

17. The Court has authority to award costs and attorneys’ fees under 28 U.S.C. § 2412.

18. Venue is proper in this court pursuant to 28 U.S.C. § 1391(e)(1)(A)-(B), and 5 U.S.C. § 703, because Defendants reside in this judicial district, and because

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