

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 10-10789-RWZ

CITY OF NEW BEDFORD, *et al.*

v.

HONORABLE GARY LOCKE, *etc., et al.*

ORDER

February 4, 2011

ZOBEL, D.J.

The National Marine Fisheries Service ("NMFS"), on April 9, 2010, published regulations implementing Amendment 16 to the Northeast Multispecies Fishery Management Plan ("Amendment 16") in the Federal Register, 75 Fed. Reg. 18,262. Two groups of plaintiffs representing fishermen, businesses and local governmental entities filed suits in the federal district court in New Jersey and Massachusetts seeking review of Amendment 16. The cases have been consolidated in this district.

All named parties have moved for summary judgment and the court established a briefing and argument schedule. Now pending are motions by additional parties to participate as amici curiae and intervenors, motions for discovery and motions pertaining to the length and number of briefs.

Food & Water Watch, Inc. ("FWW"), a non-profit public interest consumer advocacy organization, moves to intervene as plaintiff (Docket # 37). It asserts that it has been involved in monitoring and commenting on the development of Amendment

16 and that the Amendment “implements a system that threatens to harm the health and livelihood of FWW’s members and its general interest in sustainability of the ocean’s resources.” (Mem. in Supp. at 6, Docket # 38.) The federal defendants oppose primarily on the ground that the motion is late. While the motion unquestionably was filed well after the 30-day statutory limitations period, it may still be viable because this action was timely and FWW sails on plaintiffs’ ship. I am not, however, persuaded that its interest will not be adequately protected by the named plaintiffs. See Fed. R. Civ. P. 24(a). Collectively they raise the issues FWW seeks to address. Moreover, the case will be determined on summary judgment; there will be no trial. To the extent FWW desires to advance its views in support of plaintiffs’ motions, it may do so as an amicus. FWW may file an amicus brief of no more than 20 pages by February 18, 2011. Its motion to file a reply brief (Docket # 50) is allowed.

The motion of Representatives Barney Frank and John Tierney for leave to participate as Amici Curiae (Docket # 59) is allowed without opposition.

Deval Patrick, as the Governor of the Commonwealth of Massachusetts and Paul Diodati, as the Director of the Division of Marine Fisheries for the Commonwealth, also seek to participate as amici (Docket # 68). Defendants do not oppose the motion but they object that the brief is too long and that the movants have improperly raised grounds for relief beyond the scope of plaintiffs’ motions for summary judgment and cited materials outside the administrative record. The objections are overruled, and the motion is allowed.

Two motions for discovery by plaintiffs (Docket ## 33 and 39) are denied.

Plaintiff Locke’s motion to file an excessive brief (Docket # 77) is allowed.

February 4, 2011

/s/Rya W. Zobel

DATE

RYA W. ZOBEL
UNITED STATES DISTRICT JUDGE