

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

| | | |
|----------------------------------|--|---------------------------------|
| <hr/> | |) |
| THE CITY OF NEW BEDFORD, et al., | |) |
| | |) |
| Plaintiffs, | |) |
| | |) |
| v. | |) |
| | |) |
| GARY LOCKE, et al., | |) |
| | |) |
| Defendants. | |) |
| <hr/> | |) CIVIL ACTION NO. 10-10789-RWZ |
| | |) |
| LOVGREN, et al., | |) |
| | |) |
| Plaintiffs, | |) |
| | |) |
| v. | |) |
| | |) |
| GARY LOCKE, et al., | |) |
| | |) |
| Defendants. | |) |
| <hr/> | |) |

**DEFENDANT-INTERVENOR CONSERVATION LAW FOUNDATION’S
MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO
PLAINTIFFS’ MOTIONS FOR SUMMARY JUDGMENT**

Defendant-Intervenor Conservation Law Foundation, Inc. (“CLF”) hereby moves for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 56, and opposes the Motions for Summary Judgment filed by the City of New Bedford *et al.*, (Docket No. 56), James Lovgren *et al.*, (Docket No. 55-1), and prospective plaintiff-intervenor, Food & Water Watch, Inc. (Docket No. 63).

The grounds for this motion and opposition are summarized here and are set forth in more detail in CLF’s accompanying memorandum:

1. This is the judicial review of an administrative agency action taken by the defendants, Gary F. Locke, Secretary of the Department of Commerce, Dr. Jane Lubchenco, Administrator of the National Oceanic and Atmospheric Administration, and others, approving Amendment 16 to the Northeast Multispecies (Groundfish) Fishery Management Plan (“Groundfish FMP”) and promulgating regulations to implement the plan pursuant to Section 304 of the Magnuson-Stevens Fishery Conservation and Management Act (“Magnuson-Stevens Act”), 16 U.S.C. § 1854. Judicial review of these regulations pursuant to Chapter 7 of the federal Administrative Procedures Act, 5 U.S.C. §§ 701-704 & 706,¹ is provided by Section 305(f) of the Magnuson-Stevens Act, 16 U.S.C. §1855(f).

2. The New England Fishery Management Council (“New England Council”) is the entity created by the Magnuson-Stevens Act with jurisdiction over fisheries seaward of the New England states. 16 U.S.C. § 1852(a)(1)(A). Amendment 16 was developed by the New England Council, its professional staff, and its designated committees with jurisdiction over groundfish.² The Commonwealth of Massachusetts has a dedicated seat and voting membership on the New England Council, 16 U.S.C. §§ 1852(a)(1)(A) & 1852(b)(1)(A), and also has ability to control the candidates that the Secretary of Commerce has the power to appoint to the other voting seats on the council. *See* 16 U.S.C. § 1852(b)(1)(C). Of the 17 voting

¹ Preliminary relief under 5 U.S.C. §705 is specifically prohibited by the Magnuson-Stevens Act. 16 U.S.C. § 1855(f)(1)(A).

² The term “groundfish” refers to a number of marine fish species that tend to live their adult lives on the bottom of the ocean; fish like Atlantic cod, haddock, yellowtail flounder, white hake, redfish and others. The groundfish complex that is managed under the Groundfish FMP comprises 13 species of fish that are managed as 20 stocks of fish based on geographical distinctions. So, for example, Atlantic cod is managed as two stocks even though they are both the same species: Gulf of Maine cod and Georges Bank cod.

members on the New England Council, five come from Massachusetts: the Director of the Division of Marine Fisheries *ex officio*, Rodney Avila from New Bedford; Rip Cunningham from Dover; James J. Fair, Jr. from East Sandwich, and John Pappalardo from Chatham.

3. The administrative record associated with Amendment 16 and the federal defendants' action approving Amendment 16 is extremely robust and extensive. The record was developed over the course of many years, an extensive public process, a full analysis and debate of the reasonable alternatives associated with the plan's objectives, and a full debate in a public setting. The final Council vote on Amendment 16 was 14-1-1, with the Regional Director of the National Marine Fisheries Service abstaining. All the Massachusetts-based members of the New England Council voted for Amendment 16.

4. For the reasons more fully set forth in CLF's memorandum, which are incorporated herein by reference, the management actions set forth in Amendment 16 are fully based on the administrative record; they are consistent with applicable law, policies and guidelines governing the contents and protocols for developing such plans; they meet the national standards established by section 301 of the Magnuson-Stevens Act with respect to fishery management plans and the management planning process, 16 U.S.C. § 1851(a)(1)-(10); and the federal defendants are within their sound discretion to have partially approved the fishery management plan and promulgated regulations implementing it on May 1, 2010.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served January 28, 2011 via the Court's CM/ECF system on all counsel of record.

/s/ Peter Shelley

PETER SHELLEY