

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

CIVIL ACTION NO. 10-10789-RWZ

The City of New Bedford, et al.

and

Lovgren, et al.

Plaintiffs,

v.

The Honorable Gary W. Locke,
Secretary of Commerce, and
Jane Lubchenco, Administrator of the
National Oceanographic and Atmospheric
Administration

Defendants

**PLAINTIFFS' MOTION FOR DISCOVERY AND COMPLETION OR
SUPPLEMENTATION OF THE ADMINISTRATIVE RECORD**

The Plaintiffs respectfully file this Motion for Discovery and Completion or
Supplementation of the record and respectfully move this court to allow the depositions of the
following individuals:

- (1) Jane Lubchenco, National Oceanic and Atmospheric Administration ("NOAA")
Administrator,
- (2) Monica Medina, Special Advisor to the NOAA Administrator,
- (3) Patricia Kurkul, Regional Administrator for the Northeast Regional Office of the
NOAA Fisheries Office ("NMFS"),
- (4) John Pappalardo, Chair of the New England Fisheries Management Council
("NEFMC"), and
- (5) Sally McGee, member of the NEFMC.

In addition, Plaintiffs seek to supplement or complete the Administrative Record by
including the following documents:

- (1) September 2010 Office of the Inspector General (“OIG”) Report, referencing NOAA’s use of a “flawed database,”
- (2) Amendment 13, including landings and economic projections,
- (3) December 2009 John Pappalardo letter regarding limitations on NEFMC process,
- (4) September 28, 2010 Management Review Announcements,
- (5) Agency documents regarding changes in Pollack allocation, including Federal Register listings and ACE Modifications,
- (6) Common Pool Adjustments, including Federal Register listings and underlying Agency documents,
- (7) All Amendment 16 post-implementation Agency documents regarding sector matters, including by-catch, observer, and dockside monitoring issues,
- (8) February 2009 Presentation by Pomeroy and Pollnack to NEFMC regarding review of catch share policy,
- (9) August 5, 2009 NOAA Report by Julie Olsen regarding literature review of fleet consolidation issues, incorporated into Amendment 15,
- (10) September 20, 2010 Presentation by Jane Lubchenco at CIEM 2010 conference in Nantes, France, comparing catch shares to ITQ’s, including Power Point slides, notes and transcripts,
- (11) NOAA Draft Catch Share Policy and public comments,
- (12) July 23, 2009 Briefing by Monica Medina to NGO,
- (13) All documents listed in Administrative Record withheld due to purported attorney client privilege,
- (14) Any and all social economic analyses of the Amendment 16 plan and/or statements and opinions that said analyses were not required or necessary,
- (15) Internal emails regarding drafting, review and implementation of Amendment 16,
- (16) Internal draft decisional documents regarding Amendment 16 not already produced in the Administrative Record,
- (17) NOAA Fisheries Guidance document pertaining to the compilation of administrative records, and
- (18) Any and all documents regarding assessment of the NMFS dealer and VTR database and the database’s adequacy or inadequacy for determining individual vessel allocations.

Requested by the City of New Bedford:

- I. Zinser, Todd, "Review of NOAA Fisheries Enforcement Programs and Operations," January 21, 2010,
- II. Transcript of Jane Lubchenco's opening remarks made at the April 8, 2009 meeting of the NEFMC,
- III. NOAA Press Release dated June 22, 2009, "NOAA Announces Catch Share Task Force Members,"
- IV. Cape Cod Commercial Hook Fishermen's Association Press Release, "National Marine Fisheries Service Announces Changes to Commercial Harvesting Levels for Atlantic Pollock," dated June 16, 2010, and
- V. All files containing audio and/or video recordings of (a) NEFMC meetings and related workshops, presentations and conferences regarding catch shares, sectors, and Amendment 16, and (b) all presentations, workshops, and conferences regarding catch shares, sectors and Amendment 16 held, sponsored, or participated in by NOAA/NMFS staff, including but not limited to any such materials cited or linked by internet reference in the Administrative Record filed September 1, 2010.

The above requests are necessary to complete the Administrative Record and show the Agency's defective and improper process in imposing and implementing Amendment 16. Plaintiffs also propose completing the depositions by December 15, 2010 so as to not create a material delay in this matter. In support of this motion, Plaintiffs rely upon the attached Memorandum, the City of New Bedford's First Motion for Discovery and Completion or Supplementation of the Record, and Plaintiff Lovgren's Motion for Discovery and Completion or Supplementation of the Record and Depositions.

REQUEST FOR ORAL ARGUMENT

Plaintiffs request the opportunity to be heard on oral argument in support of this motion.

Respectfully submitted,

Plaintiffs by their Attorneys,

/s/ Stephen M. Ouellette
Stephen M. Ouellette
Ouellette & Smith
127 Eastern Ave, Suite 1
Gloucester, MA 01930
Stephen.ouellette@fishlaw.com
978-281-7788 Tel./ 978-281-4411 Fax.

/s/ Pamela F. Lafreniere
Pamela F. Lafreniere
13R Hamilton Street
New Bedford, MA 02740
pamelalafreniere@verizon.net
508-979-5911 Tel.
508-993-3117 Fax

New Bedford Fish Lumpers Pension Plan
and New Bedford Fish Lumpers Union,
Local 1749, ILA,AFL-CIO,

City of New Bedford,

By their Attorney,

By their attorney,

/s/ Gigi D. Tierney
Gigi D. Tierney, Esq. BBO#655128
Lang, Xifaras & Bullard
115 Orchard Street
New Bedford, MA 02740
(508) 992-1270
gdtierney@lxblaw.com

/s/ Julie K. Peterson
Julie K. Peterson, Esquire
BBO No. 564874
26 Little River Road
South Dartmouth, MA 02748
Tel.: 508-996-6071
Fax: 508-996-6071
e-mail: juliepetersonlaw@hotmail.com

Dated: October 13, 2010

LOCAL RULE 7.1(a)(2) CERTIFICATION

Plaintiffs' Counsel certify that between September 30, 2010 and October 12, 2010, they did confer with defense counsel in good faith to resolve or narrow the issues. Defense Counsel on October 7, 2010 accepted some requests but denied the others as set forth in this motion.

/s/ Pamela F. LaFreniere

CERTIFICATE OF SERVICE

I hereby certify that this (these) document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on October 12, 2010.

/s/ Stephen M. Ouellette