

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

THE CITY OF NEW BEDFORD, et al.,

Plaintiffs,

V.

GARY LOCKE, et al.,

Defendants.

1:10-cv-10789-RWZ

Federal Defendants' Motion for Leave to Exceed Page Limit

LOVGREN, et al.,

Plaintiffs,

V.

GARY LOCKE, et al.,

Defendants.

The Federal Defendants respectfully request leave to file a single consolidated brief on summary judgment of 84 pages, instead of five separate memoranda totaling up to 150 pages.

Based on the Court's order, it is not clear that such a motion is even necessary, but the Federal Defendants submit it in a surfeit of caution and out of courtesy to the Court and the parties.

In support of this motion, the Federal Defendants state as follows:

1. In its December 1, 2010 order, the Court allowed opening briefs of 30 pages in this matter. The Plaintiffs and *amici* were therefore allowed to file up to 120 pages in support of their motions for summary judgment. They actually filed a total of 96 pages.

2. Under the terms of the Court's order, the Federal Defendants could file up to five briefs on summary judgment, each 30 pages long, four in opposition to the Plaintiffs and *amici* and a fifth brief in support of our own cross-motion for summary judgment. This would be a total of 150 pages. For ease of reference, and for the convenience of the parties and the Court,

the Federal Defendants prefer instead to submit a single, consolidated brief that addresses all of the issues presented here on summary judgment. This single, consolidated brief is 84 pages long, significantly less than the total number of pages that the Federal Defendants could submit in separate briefs under the Court's order. It is also less than length of the briefs that the Plaintiffs and *amici* themselves submitted.

3. As all of the parties have acknowledged, this case involves complex issues and concerns the fate of the groundfish fishery and communities affected by that fishery. The Federal Defendants and others involved in this litigation were part of a multi-year, public process that produced Amendment 16, the agency action challenged here. The intricacy of the issues presented and the length of the record reflect the effort of that undertaking. The Federal Defendants respectfully submit that, given this history, we cannot adequately brief these issues in less than 84 pages.

4. New Bedford opposes this motion on the grounds that opening memoranda are limited to 30 pages. As noted above, the Federal Defendants could submit substantially more briefing if we were to break this brief apart into separate 30-page responses. That would only increase the overall length of the briefing, however, because we would be forced to repeat several aspects of our argument. To the extent that New Bedford is suggesting that the Federal Defendants should be limited to 30 pages when the Plaintiffs and *amici* were collectively allowed to file up to 120 pages of brief (and actually filed 96), the Federal Defendants submit that New Bedford's argument should be rejected on grounds of basic fairness.

For these reasons, the Federal Defendants respectfully request that the Court grant this motion for leave to file a memorandum of law 84 pages long.

Respectfully submitted this 28th day of January, 2011,

IGNACIA S. MORENO, Assistant Attorney General
United States Department of Justice
Environment & Natural Resources Division
SETH M. BARSKY, Section Chief

/s/ James A. Maysonett

JAMES A. MAYSONETT, D.C. Bar 463856
ANDREA E. GELATT
Wildlife & Marine Resources Section
Environment & Natural Resources Division
U.S. Department of Justice
P.O. Box 7369
Washington, D.C. 20044-7369
Tel: (202) 305-0216 | Fax: (202) 305-0275
Email: james.a.maysonett@usdoj.gov

THOMAS CLARK
Acting Section Chief
BRIAN A. MCLACHLAN
D.C. Bar No. 472413
Trial Attorney
Natural Resources Section
Environment & Natural Resources Division
United States Department of Justice
c/o NOAA/DARC, NW
7600 Sand Point Way, N.E.
Seattle, WA 98115
Tel: (206) 526-6881
Fax: (206) 526-6665
brian.mclachlan@usdoj.gov

Counsel for Federal Defendants

CERTIFICATE OF LOCAL RULE 7.1(a)(2) COMPLIANCE

I hereby certify that I have conferred with Plaintiffs and Intervenor Defendant in this case. Plaintiff Lovgren and Intervenor Defendant Conservation Law Foundation, Inc. have

assented to the Motion. The New Bedford Plaintiffs oppose. Proposed Plaintiff-Intervenor Food and Water Watch, Inc. indicated that it would not oppose this motion, but on conditions that the Federal Defendants do not accept. The *amici* and proposed *amici* Commonwealth of Massachusetts had not responded to this motion by the time it was filed.

/s/ James A. Maysonett

JAMES A. MAYSONETT

CERTIFICATE OF SERVICE

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

/s/ James A. Maysonett

JAMES A. MAYSONETT