



# Center For Sustainable Fisheries

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## PRESS RELEASE

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### **CSF FILES AMICUS BRIEF IN MA v. PRITZKER IN SUPPORT OF THE COMMONWEALTH OF MASSACHUSETTS AND THE STATE OF NEW HAMPSHIRE**

BOSTON — The Center for Sustainable Fisheries (“CSF”) has filed an Amicus Brief in support of the Commonwealth of Massachusetts and the State of New Hampshire in the case brought against the Secretary of Commerce, Secretary Penny Pritzker, and NOAA. CSF is a science based non-profit organization devoted to the conservation of our fisheries resources and the economic development of our fishing communities. CSF focuses on both regional and national scientific and legal issues that arise from the current fisheries management scheme. Several fishermen, ancillary business owners, fisheries scientists, attorneys, and economists are involved in the organization and are currently working to collaboratively develop solutions to fisheries management issues.

In the case before the U.S. District Court of Massachusetts, the Attorney General’s of Massachusetts, Martha Coakley, and New Hampshire, Joseph Foster, allege that NOAA violated National Standards 1, 2, and 8 in its promulgation of Frameworks 48 and 50 to the New England Multispecies Fishery Management Plan. National Standard 1 requires NOAA to prevent overfishing and achieve optimum yield in its promulgation of Fishery Management Plans (“FMP”), including Frameworks to the plans. Under National Standard 2, NOAA is required to base a FMP on the “best scientific information available.” Lastly, National Standard 8 requires that NOAA take into account the socio-economic impacts and sustainability of the fishing communities when setting regulatory measures in the FMP.

CSF, in its brief, provided insight to the court regarding the rigorous scientific and economic analysis that the MSA requires and NOAA failed to complete. CSF discusses how NOAA’s actions lacked collaboration, timeliness, and transparency, including not seriously considering science from outside sources. To demonstrate the importance of outside science CSF discusses past examples of when NOAA’s science was not the “best available.” Examples provided include the pollock, cod, and scallop fisheries. For instance, in 1998, an independent study by the University of Massachusetts, Dartmouth SMAST on scallop biomass was dismissed by NOAA. After much public debate and national attention, the SMAST study was proven to more accurate, reliable, and the “best scientific information available.”

CSF states: “It is time to hold [NOAA] to the high standard of rigorous scientific study that Congress intended and the dedicated fishermen and their communities deserve.”

CSF also discussed the practical effects of NOAA’s failure to analyze the socio-economic data on the fishing communities’ sustainability. CSF stated: “[NOAA] did not diligently research economic impacts. The majority of the information used by [NOAA] was not original economic statistics.”

A key issue in cases involving agency actions is the level of deference a court affords the agency. Due to the agency's expertise in matters, courts are reluctant to step in and state how an agency should interpret a statute and what regulation an agency should put in place. As a result, courts typically defer to the agency's action as long as the action was not arbitrary and capricious, an abuse of discretion, or otherwise in violation of the law.

CSF pointed to two recent decisions that express concern with the automatic level of deference an agency is given. First, the Supreme Court has, dating back to 2008, expressed concerns with the level of deference an agency is afforded when interpreting their own regulations. The Court has primarily concerned with too much deference leading to an "arrogation of power." CSF states: "[NOAA's] actions substantiate concerns about the 'arrogation of power' that results from affording essentially unlimited deference and allowing agencies to exert excessive power."

CSF also discussed the recently decided Guindon v. Pritzker case which involves the Gulf of Mexico Red Snapper. In the Guindon case, the D.C. Circuit Court did not defer to the agency's decision because it "disregarded accurate and reliable data" and did not "acknowledge that its strategy . . . was not working." CSF pointed out the similarities between the Multispecies FMP and NOAA's failure to consider all accurate and reliable data and acknowledge that its Multispecies management strategy is not working.

CSF asked the court to recognize and hold NOAA accountable to meaningfully apply the MSA to ensure rigorous, scientific analysis and a balance between the conservation of resources and the sustainability of fishing communities.

Oral arguments in the case were heard by the U.S. District Court for the District of Massachusetts on April 4, 2014.

In addition to filing an Amicus Brief, CSF has been co-hosting Public Workshops, with National Fisherman Magazine, throughout the United States about the MSA Reauthorization. The workshops are setup to be an educational forum for participants and an information gathering session for CSF. CSF's President and CEO, Dr. Brian J. Rothschild has proposed that the 10 National Standards be reorganized into 5 National Standards. The proposed 5 National Standards are compiled in a manner to reflect balancing among those standards that naturally overlap each other. For example, National Standards 1 (prevent overfishing), 8 (take into account socio-economic impacts), and 10 (ensure human safety at sea) are reorganized to become National Standard 1. CSF's proposal reflects balancing between conservation, human safety, and socio-economics and also increases flexibility and reliability through collaborative and cooperative scientific research and analysis.

CSF and National Fisherman have hosted successful and well attended workshops in Seattle, Washington and Boston, Massachusetts. CSF and National Fisherman will be co-hosting its next workshop with the Gulf Seafood Institute (GSI) following the Gulf Fishery Management Council Meeting on Tuesday, April 8<sup>th</sup>, 5:30 pm at the Embassy Suites, Baton Rouge, Louisiana. The tour will continue in May in Washington D.C. and finish up with a meeting at the U.S. Capital Building with members of Congress and Congressional staffers where CSF and National Fisherman will present their findings from around the country.

For further information, contact Kate Kramer at 508-992-1170; [kkramer@centerforsustainablefisheries.org](mailto:kkramer@centerforsustainablefisheries.org).

CSF has posted all documents filed with the court, including the claim and briefs, at: <http://centerforsustainablefisheries.org/publications/>