

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

SUSTAINABLE FISHERIES COALITION, )

Plaintiff, )

v. )

GINA M. RAIMONDO, in her official )  
capacity as Secretary of the U.S. Department )  
of Commerce, )

Defendant. )

No. 21-cv-10204

**ORDER**

Before the Court is the parties' joint motion to approve settlement of Plaintiff's claim for attorney's fees and costs. ECF No. 56.

IT IS ORDERED that the Stipulated Agreement is APPROVED and the terms of the agreement are binding on the parties.

SO ORDERED.

/s/ Leo T. Sorokin

\_\_\_\_\_  
Leo T. Sorokin  
United States District Judge

**IN THE UNITED STATES DISTRICT COURT  
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SUSTAINABLE FISHERIES COALITION, )

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GINA M. RAIMONDO, in her official )  
capacity as Secretary of the U.S. Department )  
of Commerce, )

Defendant. )

No. 21-cv-10204

**JOINT MOTION TO APPROVE SETTLEMENT OF  
PLAINTIFF'S CLAIM TO ATTORNEY'S FEES AND COSTS**

Plaintiff, Sustainable Fisheries Coalition, and Defendant, Gina M. Raimondo, in her official capacity as Secretary of the U.S. Department of Commerce, jointly notify the Court that the parties have reached an agreement to settle Plaintiff's claim to attorney's fees and cost in this case, and therefore move for an order approving the attached stipulated settlement agreement.

The parties agree that it is in the public interest for the Court to approve the attached stipulated agreement and thereby avoid unnecessary litigation. The Court's approval of the stipulated settlement agreement is necessary to ensure the agreement can be enforced by the Court in the unlikely event it were to become necessary. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994) (holding that a settlement between parties is not enforceable by a federal court unless the court retains jurisdiction or makes the settlement an order of the court). The agreement becomes effective upon entry of an order by the Court approving the agreement.

Thus, the parties respectfully request an order granting this motion, and approving the attached stipulated settlement agreement.

Dated: July 28, 2022

/s/ Shaun M. Gehan

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D.C. Bar No. 483720  
Maine Bar No. 9380  
Mass. Bar No. 654268 (inactive))  
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TODD KIM  
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/s/ Robert M. Norway

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*Counsel for Defendant Gina M. Raimondo, in her official capacity  
as Secretary of the U.S. Department of Commerce*

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GINA M. RAIMONDO, in her official )  
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Defendant. )

No. 21-cv-10204

**STIPULATED AGREEMENT AS TO ATTORNEY’S FEES AND COSTS**

This stipulated agreement (“Stipulation”) is entered into by and between Plaintiff, Sustainable Fisheries Coalition, and Defendant, Gina M. Raimondo, in her official capacity as Secretary of the U.S. Department of Commerce. Plaintiff and Defendant are referred to collectively herein as “Parties.”

WHEREAS, Plaintiff filed a lawsuit against Defendant on February 5, 2021, in the United States District Court for the District of Massachusetts, styled *Sustainable Fisheries Coalition v. Wynn Coggins*, in her official capacity as the acting Secretary of Commerce, Case No. 21-cv-10204 (this “Case”), alleging that the National Marine Fisheries Service’s (“NMFS”) final rule implementing the inshore midwater trawl restricted area measure in Amendment 8 to the Fishery Management Plan (“FMP”) for Atlantic Herring (“Amendment 8”), 86 Fed. Reg. 1810, 1890 (Jan. 11, 2021), violated the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701-706, and the Magnuson-Stevens Fishery Conservation and Management Act (“MSA”), 16 U.S.C. § 1801 et seq. (ECF No. 1);

WHEREAS, the Parties filed cross motions for summary judgment in June and July 2021 (ECF Nos. 30, 33);

WHEREAS, on March 4, 2022, the Court granted in part and denied in part to both Parties (ECF No. 47);

WHEREAS, on March 29, 2022, the Court entered judgment (1) in favor of Plaintiff and against Defendant on Counts I and III as to the inshore Midwater Trawl restricted area measure and (2) in favor of Defendant and against Plaintiff on Count II as well as all other aspects of Counts I and III, and therefore vacated and remanded the inshore Midwater Trawl restricted area measure to Defendant for further consideration in accordance with the Court's Order (ECF No. 50);

WHEREAS, on May 27, 2022, Defendant filed a timely notice of appeal (ECF No. 51);

WHEREAS, on June 30, 2022, the Court of Appeals for the First Circuit dismissed Defendant's appeal pursuant to Federal Rule of Appellate Procedure 42(b) (ECF No. 54), and issued the mandate of its order that same day (ECF No. 55);

WHEREAS, the Parties believe it is in the interests of judicial economy and the parties' interest to avoid litigation of the issue of fees and costs; and

WHEREAS, the Parties, without any admission or final adjudication of the issues of fact or law with respect to Plaintiff's claims, have reached a settlement that they consider to be a lawful resolution of Plaintiff's claim for attorneys' fees, costs, and expenses.

NOW THEREFORE, in the interests of the public, the Parties, and judicial economy, the Parties hereby agree and stipulate as follows:

1. Defendant agrees to pay Plaintiff the amount of \$82,553 in full and complete satisfaction of Plaintiff's claims for an award of litigation costs and attorney's fees incurred

through the date of this stipulation in this Case, pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

2. The Parties agree to the entry of the Proposed Order approving this Stipulation, which is incorporated below.

3. Defendant's payment described in Paragraph 1 above will be made by electronic funds transfer to Plaintiff's counsel, the Law Office of Shaun M. Gehan, Interest on Lawyer Trust Account for appropriate distribution.

4. Within (10) days following entry of the Proposed Order approving this Stipulation, incorporated below, Plaintiff shall provide Defendant with the information necessary for Defendant to process the payment described in Paragraph 1 above by electronic funds transfer, including the payee's name, the payee's address, the payee's bank account number, the account type, the name of the payee's bank, the bank routing transit number ("RTN"), and the payee's tax identification number. Upon the request of counsel for Defendant, counsel for Plaintiff shall provide additional information, if needed, to process the payment. Plaintiff and Plaintiff's counsel agree to hold Defendant harmless in any litigation, further suit, or claim arising from the authorized transfer of the agreed-upon settlement amount.

5. Defendant shall submit all paperwork necessary to complete the \$82,553 payment set forth in Paragraph 1 within fourteen (14) business days of receipt of the information described in Paragraph 4. Plaintiff, through its counsel, shall confirm receipt of the payment within seven (7) days of receipt of such payment in writing to counsel for Defendant.

6. Plaintiff agrees that receipt of the payment described in Paragraph 1 fully satisfies any and all claims for attorney's fees and costs of litigation incurred by Plaintiff in this Case. Plaintiff agrees that receipt of this payment from Defendant shall operate as a release of Plaintiff's claim for attorney's fees and costs in this Case.

7. Except for the obligations specifically required under this stipulation, Plaintiff agrees to hold harmless Defendant in any litigation, further suit, or claim arising from the payment of the agreed-upon \$82,553 settlement amount, including any claims that may arise as to any apportionment of the payment amount to Plaintiff and Plaintiff's counsel.

8. Plaintiff acknowledges that under 31 U.S.C. §§ 3711, 3716, 26 U.S.C. § 6402(d), 31 C.F.R. §§ 285.5, 901.3, and other authorities, the United States will offset against the attorney fee award Plaintiff's and Plaintiff's participants' delinquent debts to the United States, if any. *See Astrue v. Ratliff*, 560 U.S. 586 (2010).

9. No provision in this Stipulation shall be interpreted as or constitute a commitment or requirement that Defendant obligate or pay funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other law or regulation.

10. This Stipulation does not constitute an admission by any party to any fact, claim, assertion of violation of any statute or regulation, or defense in this lawsuit. Accordingly, the Parties agree that this stipulation has no precedential value as to attorney's fees and costs and shall not be used as evidence in any other attorney's fees litigation.

9. The undersigned representatives of Defendant and Plaintiff certify that they are fully authorized by the parties that they represent to enter into all the terms and conditions of this stipulation.

10. The provisions of this Stipulation shall apply to and be binding upon the Parties including, but not limited to, their officers, directors, servants, employees, successors, and assigns. The parties agree that this Stipulation was negotiated in good faith and that this Stipulation constitutes a resolution of claims that were denied and disputed by the parties.

11. This Stipulation constitutes the entire agreement of the Parties concerning the rights and obligations discussed herein. No other agreement shall govern the rights of the Parties with respect to the matters resolved by this stipulation, except in accordance with the terms.

12. This Stipulation is effective as of the date the Proposed Order is entered by the Court.

On Behalf of Plaintiff:

Dated: July 27, 2022

/s/ Shaun M. Gehan

Shaun M. Gehan

D.C. Bar No. 483720

Maine Bar No. 9380

Mass. Bar No. 654268 (inactive))

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*Counsel for Plaintiff Sustainable Fisheries Coalition*

On Behalf of Defendant:

TODD KIM

Assistant Attorney General

Dated: July 27, 2022

/s/ Robert M. Norway

ROBERT M. NORWAY

Florida Bar No. 711,421, Trial Attorney

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Leo T. Sorokin  
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