

# United States Court of Appeals for the Federal Circuit

2007-1444

SALMON SPAWNING & RECOVERY ALLIANCE,  
NATIVE FISH SOCIETY and CLARK-SKAMANIA FLYFISHERS,

Plaintiffs-Appellants,

v.

UNITED STATES CUSTOMS AND BORDER PROTECTION,  
DIRK KEMPTHORNE, Secretary of the Interior, UNITED STATES  
DEPARTMENT OF THE INTERIOR, UNITED STATES FISH AND WILDLIFE  
SERVICE, CARLOS GUTIERREZ, Secretary of Commerce, UNITED STATES  
DEPARTMENT OF COMMERCE, D. ROBERT LOHN, in his official capacity,  
DEBORAH J. SPERO, in her official capacity, H. DALE HALL, in his  
official capacity, W. RALPH BASHAM, in his official capacity, and  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION  
NATIONAL MARINE FISHERIES SERVICE,

Defendants-Appellees.

Stephen C. Tosini, Attorney, Commercial Litigation Branch, Civil Division, United States Department of Justice, of Washington, DC, filed a petition for panel rehearing for defendants-appellees. With him on the petition were Gregory G. Katsas, Assistant Attorney General, and Jeanne E. Davidson, Director.

Svend A. Brandt-Erichsen, Heller Ehrman LLP, of Seattle, Washington, filed a response to the petition for plaintiffs-appellants.

Appealed from: United States Court of International Trade

Judge Judith M. Barzilay

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DIRK KEMPTHORPE, Secretary of the Interior,  
UNITED STATES DEPARTMENT OF THE INTERIOR,  
UNITED STATES FISH AND WILDLIFE SERVICE,  
CARLOS GUTIERREZ, Secretary of Commerce,  
UNITED STATES DEPARTMENT OF COMMERCE,  
D. ROBERT LOHN, in his official capacity,  
DEBORAH J. SPERO, in her official capacity,  
H. DALE HALL, in his official capacity,  
W. RALPH BASHAM, in his official capacity,  
and NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION NATIONAL  
MARINE FISHERIES SERVICE,

Defendants-Appellees.

Appeal from the United States Court of International Trade in case no. 06-00191, Judge  
Judith M. Barzilay

## ON PETITION FOR REHEARING

Before MICHEL, Chief Judge, GAJARSA, Circuit Judge, and YOUNG, District Judge\*.

PER CURIAM.

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\* The Honorable William G. Young, District Judge, United States District  
Court for the District of Massachusetts, sitting by designation.

ORDER

Defendants-Appellees (collectively the “United States”) have sought rehearing of this court’s decision in Salmon Spawning & Recovery Alliance v. United States, 532 F.3d 1338 (Fed. Cir. 2008), for the limited purpose of reconsidering statements made in this court’s original opinion regarding whether the Court of International Trade may exercise “supplemental” jurisdiction pursuant to 28 U.S.C. § 1367(a). In response Plaintiffs-Appellants Salmon Spawning and Recovery Alliance, Native Fish Society, and Clark-Skamania Flyfishers (collectively “Salmon Spawning”) elected to take no position on the issue presented by the petition. All parties agree that the relief requested by the petition would not alter the outcome of the appeal.

IT IS ORDERED THAT:

The petition for rehearing is granted solely so that this court may issue a revised opinion; and the panel’s previous opinion at 532 F.3d 1338 is withdrawn.

FOR THE COURT

December 18, 2008  
Date

/s/ Jan Horbaly  
Jan Horbaly  
Clerk