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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO HERRING
ASSOCIATION,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
THE INTERIOR, et al.,

Defendants.

Case No. 13-cv-01750-JST

**NOTICE TO CALIFORNIA ATTORNEY
GENERAL KAMALA HARRIS;
INVITING VIEWS OF THE STATE OF
CALIFORNIA ON ISSUES PRESENTED
IN THIS CASE**

**TO KAMALA HARRIS, ATTORNEY GENERAL OF THE STATE OF
CALIFORNIA:**

By this Order, the Court hereby invites the State of California to provide its views on certain issues presented in the above-captioned case, as set forth below.

Plaintiff San Francisco Herring Association (“Plaintiff”) has brought this action against Defendants the United States Department of the Interior, Interior Secretary Sally Jewell, the United States National Park Service (“N.P.S.”), N.P.S. Director Jonathan Jarvis, and Golden Gate National Recreation Area General Superintendent Frank Dean (collectively, “Defendants”). First Amended Complaint, ECF No. 17. The parties have filed cross-motions for summary judgment on the issue of whether the Department of the Interior has jurisdiction to prohibit commercial fishing within the navigable waters of San Francisco Bay that are within the boundaries of the Golden Gate National Recreation Area. Defendants’ Motion for Summary Judgment on the Issue of Jurisdiction (“Defendants’ Motion”), ECF No 31; Plaintiff’s Opposition to Defendants’ Motion for Summary Judgment and Cross-Motion for Summary Judgment (“Plaintiff’s Opp./Cross-Motion”), ECF No. 31.

On December 12, 2013, the Court will hold a hearing on the cross-motions, at which it will

1 consider only issues which go to the Court’s subject-matter jurisdiction. If the Court determines
2 that it has subject-matter jurisdiction over this action, it is likely to decide some or all of the
3 following issues:

- 4 1. Whether the State of California holds title to some or all of the navigable waters of
5 San Francisco Bay within the boundaries of the Golden Gate National Recreation
6 Area, and whether the United States has acquired any property interest in those
7 waters. See Plaintiff’s Opp./Cross-Motion 12:1-13:9; Plaintiff’s Reply in
8 Opposition to Defendants’ Motion for Summary Judgment (“Plaintiff’s Reply”)
9 9:20-10:8, ECF No. 56.
- 10 2. If the State of California does hold title to such waters, whether the United States
11 Department of the Interior has the statutory authority to prohibit commercial
12 fishing in the waters in which the State of California holds title. See Defendants’
13 Motion 11:11-15:10; Plaintiff’s Opp./Cross-Motion 23:15-34:19; Defendants’
14 Reply/Opp. 5:11-11:25, 13:1-27:15.
- 15 3. Whether the State of California holds title to some or all of the submerged land
16 beneath the navigable waters of San Francisco Bay that are within the boundaries
17 of the Golden Gate National Recreation Area, and whether the United States has
18 acquired any property interest in such submerged lands. See Defendants’ Motion
19 6:17-26, 17:6-19:9, Plaintiff’s Opp./Cross Motion 13:10-20:3; Defendants’
20 Reply/Opp. 12:1-27, 28:8-35:4; Plaintiff’s Reply 10:9-11:28.
- 21 4. If the State of California holds title to those submerged lands, whether the United
22 States Department of the Interior has the statutory authority to prohibit commercial
23 fishing in such waters above such submerged land in which the State of California
24 holds title. See Defendants’ Motion 15:11-17:7; Plaintiff’s Reply 12:1-13:15.

25 The Court invites the State of California to provide its views on these questions. If the

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State of California intends to provide its views, it shall notify the Court and the parties by December 13, 2013, and shall file a brief of no longer than 30 pages not later than January 10, 2014.

IT IS SO ORDERED.

Dated: December 5, 2013



JON S. TIGAR
United States District Judge