

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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OCEANA, INC.,)
)
Plaintiff,)
)
v.)
)
PENNY PRITZKER,)
United States Secretary of Commerce, <u>et al.</u> , ¹	Civil Action No. 08-1881 (PLF))
)
Defendants,)
)
and)
)
FISHERIES SURVIVAL FUND)
)
Defendant-Intervenor.)
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MEMORANDUM OPINION AND ORDER

The government defendants filed a notice of supplemental authority on May 12, 2014 [Dkt. No. 105], in which they alerted the Court to the issuance of a proposed rule by the National Marine Fisheries Service and the U.S. Fish and Wildlife Service, published at 79 Fed. Reg. 27060 (May 12, 2014). Plaintiff Oceana has filed a motion to strike [Dkt. No. 106] this notice of supplemental authority, which the government defendants oppose [Dkt. No. 107].

The Court has considered the defendants’ notice, Oceana’s motion to strike, and the defendants’ opposition to the motion. The Court largely agrees with the arguments made in numbered paragraphs 1, 2, and 3 of Oceana’s motion to strike. On the other hand, the Court

¹ Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, the Court substitutes as defendant the current Secretary of Commerce, Penny Pritzker, for former Acting Secretary Rebecca M. Blank.

acknowledges the defendants' point that they simply have "brought the proposed rule to the attention of the Court because it is a publicly available document published after the close of briefing which is relevant to a disputed issue in this case." Dkt. No. 107, at 2. The Court of course agrees that it may take judicial notice of the fact that the Fisheries Service and Wildlife Service have issued this proposed rule, which appears publicly in the Federal Register. See, e.g., D.C. Professional Taxicab Drivers Ass'n v. Dist. of Columbia, 880 F. Supp. 2d 67, 72 (D.D.C. 2012). Nevertheless, in view of Oceana's arguments, and given the Court's skepticism that the proposed rule is "relevant to a disputed issue in this case," the Court will grant Oceana's motion to strike. Accordingly, it is hereby

ORDERED that plaintiff Oceana's motion to strike [Dkt. No. 106] the government defendants' notice of supplemental authority is GRANTED.

SO ORDERED.

/s/ _____
PAUL L. FRIEDMAN
United States District Judge

DATE: August 12, 2014