

The Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WILD FISH CONSERVANCY,

Plaintiff,

vs.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, et al.,

Defendants,

and

COOKE AQUACULTURE PACIFIC, LLC,

Intervenor-Defendant.

No. 2:15-cv-01731

STIPULATED MOTION TO STAY
SUMMARY JUDGMENT BRIEFING
SCHEDULE, PLAINTIFF'S
WITHDRAWAL OF ITS MOTION TO
SUPPLEMENT PLEADINGS (ECF NO. 48),
AND ~~PROPOSED~~ ORDER

NOTE ON MOTION CALENDAR:
SEPTEMBER 25, 2017

I. MOTION.

Plaintiff Wild Fish Conservancy (the "Conservancy"), Federal Defendants the United States Environmental Protection Agency ("EPA") and its Administrator and the National Marine Fisheries Service ("NMFS") and its Assistant Administrator for Fisheries (collectively, "Federal Defendants"), and Intervenor-Defendant Cooke Aquaculture Pacific, LLC ("Cooke"), hereby respectfully move the Court under Rules 6(b) and 16(b)(4) for an order staying the current

1 summary judgment briefing schedule. In accordance with the Court's Standing Order for Civil
2 Cases, the Parties have conferred on this motion and jointly request the relief sought herein. *See*
3 ECF No. 43 at 2.

4 In light of this stipulated motion, the Conservancy hereby withdraws its pending motion
5 to supplement pleadings (ECF No. 48).

6 **II. BACKGROUND AND ARGUMENT.**

7 The Parties request a stay of the summary judgment briefing schedule established by this
8 Court's June 20, 2017 Order (ECF No. 47). On September 6, 2017, the Conservancy notified
9 Federal Defendants that it intended to sue Federal Defendants for alleged violations of the
10 Endangered Species Act ("ESA") related to an August 2017 incident at Cooke's Cypress Island
11 facility. *See* ECF No. 48-1. On September 14, 2017, the Conservancy filed a motion to
12 supplement its pleadings seeking leave of the Court to add, after the statutorily mandated 60-day
13 notice period has run, allegations related to the August incident if Federal Defendants have not at
14 that point addressed the issues raised in the Conservancy's notice. *See* ECF No. 48. The
15 Conservancy asserts that the claims, issues, and defenses in this lawsuit and those implicated by
16 its new notice of intent to sue letter overlap extensively such that it would be more efficient to
17 address them in this single lawsuit than in two separate cases. *See id.* Federal Defendants and
18 Cooke have reserved their right to oppose the Conservancy's motion to supplement its pleadings.

19 The Parties have conferred and now agree that the current briefing schedule should be
20 stayed to allow the 60-day notice period to run, after which the Conservancy may renew its
21 request for leave to supplement its pleadings if it chooses to. If that motion or stipulation is filed,
22 and the Court grants it, one or any combination of the Parties might then seek to reopen the
23 discovery and expert disclosure period to allow additional discovery and disclosures limited to

1 whatever new allegations, if any, are permitted by the Court.¹ Proceeding in this manner would
2 allow the Federal Defendants their full statutorily mandated 60-day notice period to continue
3 their consideration of the issues presented in Plaintiff's notice letter, while maintaining the
4 Conservancy's right to seek to supplement its allegations after that notice period has run. The
5 Conservancy has indicated it will seek to reopen discovery and expert disclosures procedures if
6 its pleadings are supplemented. Thus staying the summary judgment briefing schedule, which
7 currently requires the Conservancy to file its motion for summary judgment on December 22,
8 2017, is necessary to allow the Parties to proceed in this manner. The Parties agree that while
9 this presents a delay in the proceedings, it would allow for the most efficient presentation of the
10 issues before the Court.

11 **III. CONCLUSION.**

12 For the foregoing reasons, the Conservancy hereby withdraws its pending motion to
13 supplement its pleadings (ECF No. 48), and the Parties respectfully move the Court for an order
14 setting the following schedule for this case:
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22 ¹ The Conservancy maintains that additional discovery and expert disclosures would be needed to address any new
23 allegations related to the August 2017 event. Federal Defendants and Cooke reserve the right to oppose the scope of
any additional discovery and expert disclosures related to any new allegations.

1	BENCH TRIAL DATE	Stayed
2	Conservancy's motion for summary judgment on liability issues, not to exceed 45 pages, due by	STAYED
3	Federal Defendants' combined response to the Conservancy's motion for summary judgment on liability and cross-motion for summary judgment on liability, not to exceed 40 pages, due by	STAYED
4		
5	Cooke's combined response to the Conservancy's motion for summary judgment on liability and cross-motion for summary judgment on liability, not to exceed 25 pages, due by	STAYED
6		
7	The Conservancy's combined reply in support of its motion for summary judgment on liability and response to Federal Defendants' cross-motion for summary judgment on liability, not to exceed 30 pages, due by	STAYED
8		
9	The Conservancy's combined reply in support of its motion for summary judgment on liability and response to Cooke's cross-motion for summary judgment on liability, not to exceed 25 pages, due by	STAYED
10		
11	Federal Defendants' reply in support of their cross-motion for summary judgment on liability, not to exceed 30 pages, due by	STAYED
12		
13	Cooke's reply in support of its cross-motion for summary judgment, not to exceed 12 pages, due by	STAYED
14		
15	The Conservancy shall file any motion or stipulation to supplement its pleadings on or before	December 7, 2017.
16		
17	The Parties shall file a status report that includes a proposed schedule for further proceedings	December 15, 2017, if the Conservancy does not renew its request to supplement its pleadings; otherwise within two weeks of the Court's disposition of the Conservancy's request to supplement its pleadings
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19		

DATED this 25th day of September, 2017.

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Stip. Mot. to Stay Briefing Schedule
2:15-cv-01731

United States Department of Justice
Environment & Natural Resources Division
PO Box 7611, Ben Franklin Station
Washington, DC 20044-7611
202-305-0339

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ORDER

IT IS SO ORDERED.

Dated this 26th day of September, 2017.



HONORABLE BARBARA J. ROTHSTEIN
UNITED STATES DISTRICT JUDGE

/s/ Trent S.W. Crable
Trent S.W. Crable