U.S. Department of Justice

Environment and Natural Resources Division

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MEMORANDUM

To: U.S. Coral Reef Task Force Members

From: John C. Cruden
Assistant Attorney General

Re: Recent Coral-related Litigation

I am pleased to provide the following summary of recent litigation by the Environment and Natural Resources Division that (1) relates to the listing of coral species as threatened or endangered under the Endangered Species Act (ESA), (2) involves damage to coral or sea grass, or (3) relates to activities that may have impacts on coral or sea grass.

I. Litigation Related to the Listing of Coral Species under the Endangered Species Act

A. *Center for Biological Diversity v. NMFS* (M.D. Fla.) (elkhorn and staghorn coral recovery plan): This complaint, filed in 2013, challenged NMFS's alleged failure to comply with its duties under Section 4(f) of the ESA, 16 U.S.C. § 1533(f)(1), to develop and implement recovery plans for threatened elkhorn coral (*Acropora palmata*) and staghorn coral (*Acropora cervicornis*). Under a settlement entered in September 2013, NMFS agreed to publish a recovery plan by March 7, 2015, and plaintiff dismissed its complaint with prejudice.

B. *Center for Biological Diversity v. NMFS* (D.P.R.) (Caribbean Reef Fish): In January 2012, plaintiff sought review of an October 2011 biological opinion issued by NMFS concerning implementation of the Reef Fish Fishery Management Plan of Puerto Rico and the U.S. Virgin Islands. Plaintiff alleged the biological opinion failed to ensure that the fishery will not (1) jeopardize the continued existence of threatened elkhorn and staghorn coral; and (2) destroy or adversely modify the corals' designated critical habitat.

In October 2013, the court granted our cross-motion for summary judgment, in part, finding that the biological opinion correctly concluded the fishery would not jeopardize the continued existence of the corals or adversely modify their critical habitat based on the best available scientific information and appropriate consideration of the fishery's cumulative adverse impacts. The court also concluded, however, that NMFS did not incorporate in its biological opinion and "incidental take statement" a meaningful trigger for reinitiating

consultation under Section 7 of the ESA in the event that adverse impacts exceed anticipated levels. Thus, the court found that NMFS's reliance on the flawed biological opinion violated its duties under Section 7 of the ESA.

Although NMFS timely completed a revised incidental take statement, plaintiffs challenged its substance by filing a motion to enforce the court's 2013 order. We opposed the motion in late 2014, and await a ruling by the court.

C. *Biscayne Bay Waterkeeper v. United States Army Corps of Engineers*, (S.D. Fla.) (Miami Harbor): Plaintiffs seek preliminary and permanent injunctive relief under the ESA in connection with a Corps project to deepen and widen the Miami Harbor channel. They allege that dredging operations will result in the unauthorized incidental take of threatened staghorn coral and the destruction and adverse modification of designated Johnson's seagrass critical habitat. Plaintiffs also allege that the Corps violated terms and conditions of related permits issued by the State of Florida.

In October 2014, plaintiffs filed a motion for preliminary injunction seeking to enjoin completion of the project. On October 27, 2014, following an evidentiary hearing, plaintiffs withdrew their motion for preliminary injunction in response to our representation that the Corps and NMFS had undertaken an emergency effort to relocate the staghorn coral and that the Corps would continue to implement adaptive management measures during project construction to minimize turbidity generation and sedimentation in accordance with the existing state water quality permit and existing contract with the dredging contractor.

We later filed a motion to dismiss based on Plaintiffs' waiver and release of claims in a prior settlement agreement; the court has yet to rule on our motion.

II. Litigation Directly Involving Damage to Coral or Sea Grass

A. *United States v. Matson Terminals, Inc.* (D. Hawaii): On January 29, 2015, Matson Terminals, Inc., was sentenced to pay a $400,000 fine, plus $600,000 in restitution after previously pleading guilty to violations stemming from the discharge of molasses into Honolulu Harbor. In September 2013, Matson Terminals was loading molasses from storage tanks into ships in Honolulu Harbor. The company discharged approximately 233,000 gallons of molasses into the Harbor over a two-day period. Matson had been aware in July 2012 of a State of Hawaii Department of Transportation report stating that the pipeline from which the discharge occurred was leaking molasses. The discharge caused or contributed to the death of approximately 25,000 fish in the harbor. The restitution will be divided equally between the Waikiki Aquarium to support Coral Programs and Invasive Algae Clean-ups and Sustainable Coastlines Hawaii to inspire local communities to care for coastlines through beach clean-ups.

B. *United States v. Charles Veach, et al.* (S.D. Fla.): On January 26, 2015, fishermen Charles Tyson and Ryan Veach pleaded guilty to Lacey Act charges stemming from the illegal harvest of spiny lobsters in the Florida Keys. Super Grouper, Inc. (SGI), also pleaded guilty for its involvement in the illegal activity.

During several fishing trips in August 2009, the defendants are alleged to have harvested and sold illegal quantities of spiny lobster from the Florida Keys National Marine Sanctuary. Over a period of several days that month, the defendants were tracked and videotaped via surveillance aircraft, which documented their placement of illegal artificial habitats (known as casitas) within the waters of the Sanctuary. They were photographed taking spiny lobster into their vessel; the lobster later was sold to a wholesale dealer in Key West.

Commercial fish wholesale buyer and fish dealer Dennis Dallmeyer previously pleaded guilty to a conspiracy violation for his role in buying the illegally harvested lobster and helping the brothers to cover up their activities. Sentencing is scheduled for early May.

C. *United States v. Robert Kelton, et al.*, (S.D. Fla.): On January 23, 2015, Robert V. Kelton and Bruce Brande pleaded guilty to Lacey Act, conspiracy, and smuggling violations stemming from the illegal sale and purchase of live rock and *Ricordea florida*, a species of coral. Sentencing is scheduled for late March.

Beginning in February 2008 through July 2011, the defendants conspired with other marine life collectors located in the Florida Keys to purchase quantities of live rock with marine life attached to it, such as *Ricordea florida,* which was illegally harvested and transported from the Florida Keys National Marine Sanctuary (FKNMS). Records seized in the case reflect more than $37,000 in wholesale sales of live rock with *Ricordea* and other marine life by the defendants through the business known as D. R. Imports, Inc. (DRI). To conceal the transactions, the defendants produced numerous false invoices, reflecting sales of live rock with marine life attached, purportedly imported from Haiti, to the marine life collectors in the Keys.

Between January 2009 and December 2012, Kelton and Brande also submitted falsified documents to federal officials for shipments of marine wildlife imported from the Dominican Republic and Haiti for commercial re-sale. Comparison of the entry documents with records seized from DRI proved that the value of the declared wildlife had been intentionally understated by $352,594.

D. *United States v. Elite Estate Buyers, Inc. d/b/a Elite Decorative Arts, et al.* (S. D. Fla.): On January 8, 2015, Elite Estate Buyers Inc., doing business as Elite Decorative Arts, an auction house located in Boynton Beach, Florida, and the company's president and owner, Christopher Hayes, pleaded guilty to an illegal wildlife trafficking and smuggling conspiracy in which the auction house sold wildlife objects, including objects made from coral, that were smuggled from the United States to China. As part of the plea agreement, Elite and Hayes have admitted to being part of a far-reaching felony conspiracy in which the company helped smugglers traffic in endangered and protected species, including coral, in interstate and foreign commerce, and falsified records and shipping documents related to the wildlife purchases in order to avoid the scrutiny of the FWS and U.S. Customs and Border Protection.

Elite aided foreign buyers by directing them to third-party shipping stores that were willing to send the wildlife out of the country with false paperwork. Elite and Hayes also admitted to selling items made from endangered and protected wildlife, including coral, to an antiques dealer in Canada, whom they then directed to a local shipper that agreed to mail the items in Canada without required permits. Elite and Hayes will be sentenced on a date yet to be

determined. The maximum penalty for Hayes is five years in prison, with a maximum fine of $500,000 for Elite and $250,000 for Hayes, or up to twice the gross gain. As part of the plea agreement, Elite has agreed to pay a $1.5 million fine and to no longer engage in the receipt, consignment or sale of endangered or protected wildlife, or items containing endangered or protected wildlife.

E. *United States v. Xiao Ju Guan a/k/a Tony Guan*, (S.D.N.Y): On November 25, 2014, Xiao Ju Guan (Tony Guan) pleaded guilty to a smuggling violation for smuggling endangered black rhinoceros horns from the United States to Canada. Guan was arrested in New York City earlier this year after attempting to purchase two endangered black rhinoceros horns from undercover U.S. Fish and Wildlife Service agents for $45,000. The defendant is a Canadian citizen and the owner of Bao Antiques, a company based in Canada and Hong Kong. Sentencing is scheduled for early March.

   Guan and co-conspirators smuggled more than $500,000 worth of rhino horns and sculptures made from elephant ivory and coral from various U.S. auction houses to Canada by driving them across the border or by having packages mailed directly to Canada with false paperwork and without the required declaration or permits. One part of the criminal scheme was to falsely describe the wildlife in order to conceal Guan's smuggling. For example, in September 2013, Guan's business paid $19,680 for a carved coral sculpture through an internet auction, and later paid $107,690 for two coral sculptures won in an internet auction.

F. *United States v. Oscar Cordova-Cobian*, No. 1:14-CR-20481 (S.D. Fla.): In July 2014, Oscar Cordova-Cobian pleaded guilty to illegally exporting marine wildlife, specifically live corals, live rock, clams, and other marine invertebrates, in violation of the Lacey Act. Cobian was sentenced to serve a two-year term of probation and is subject to deportation procedures.

   The defendant is a resident of Caracas, Venezuela, and operates a website through which he engages in the commercial sale of marine life, including ornamental fish and corals. In May 2014, Cobian attempted to export 136 specimens in checked baggage on his way from Miami to Venezuela. He did not possess the required permits and did not submit the necessary paperwork to wildlife officials at the airport.

G. *United States v. John B. Travers*, No. 1:13-CR-00893 (D. Hawaii): In June 2014, John B. Travers was sentenced to pay a $10,000 fine and complete a two-year term of probation. Travers previously pleaded guilty to an ESA violation for illegally importing CITES-listed giant clam shells and corals from the Marshall Islands in 2012.

H. *United States v. Jonathan M. Hale* (S.D. Fla.): In June 2014, Jonathan M. Hale was sentenced after pleading guilty to a Lacey Act violation stemming from the illegal sale of marine wildlife. He will pay a $10,000 fine and complete a two-year term of probation. Hale was the chairman and CEO of Country Critters of Long Island, Inc., which was engaged in the sale of various species of wildlife, including mammals, reptiles, and fish.

   In September 2012, the defendant met with a marine life supplier in Florida and discussed pricing of various marine life species, including tarpon, sharks, and live rock bearing specimens of coral known as *Ricordea florida*. Hale then placed an order for 100 *Ricordea* on rock. In a subsequent phone call, the supplier advised Hale that he had acquired the

requested marine life near Key West, and told the defendant that he must not reveal the source of the coral, because it was illegal to harvest them from that area. Thereafter, a shipment including six live rocks bearing approximately 111 specimens of *Ricordea florida* was shipped from Florida to New York for wholesale in the amount of $444. The retail value of the *Ricordea* exceeded $2,200.

I. *United States v. Richard Perrin, et al.*, No. 4:13-CR-10027 (S.D. Fla.): In April 2104, Joseph Franko was sentenced to serve five months' incarceration and five months' home confinement, followed by two years' supervised release. Franko and co-defendant Richard Perrin pleaded guilty to conspiracy and Lacey Act charges for the illegal transport, sale, and purchase of fish and marine wildlife. Perrin was recently sentenced to pay a $15,000 fine, complete a three-year term of probation, and forfeit a vehicle.

From approximately December 2008 through December 2011, Perrin and Franko engaged in a conspiracy to purchase, harvest, and transport marine life and reptiles from Florida to Michigan for sale through a business known as Tropicorium, Inc. Perrin was the hands-on owner and Franko was an employee. The company was engaged in the purchase and retail sale of marine life and reptiles, including sharks, marine invertebrates, Sea Fans, ornamental tropical fish, and alligators.

The defendants did not have the required licenses to legally harvest marine life from the Keys. Additionally, the Sea Fans they took and sold in Michigan cannot be legally harvested from state waters. They also poached juvenile alligators from the Big Cypress National Preserve, one of which they sold to an undercover agent.

J. *United States v. Ammon Covino, et al.*, Nos. 4:12-CR-10020, 4:13-CR-10010 (S.D. Fla.): In April 2014, the Idaho Aquarium, Inc. (IAI) was sentenced after pleading guilty to charges stemming from the illegal harvest, transport, and sale of marine wildlife. The company will pay a $10,000 fine and complete a three-year term of probation. It will submit an environmental compliance plan with an independent auditor to conduct annual audits of its records. The Aquarium also will make a $50,000 community service payment to the National Fish & Wildlife Foundation, to be used to promote research, education, conservation, and restoration of marine life and corals throughout the waters of the Florida Keys National Marine Sanctuary and the Florida Keys.

Co-defendants Ammon Covino and Christopher Conk were sentenced in December 2013. Covino was sentenced to serve one year and one day of incarceration, followed by two years' supervised release. He is barred from employment related to wildlife during the supervised release period. As a result of his cooperation, Conk received a reduced sentence of four months' incarceration, followed by two years' supervised release. He also will be required to spend six months in home confinement and is subject to employment restrictions, as well as forfeiture of a motor vehicle used in perpetrating the crime.

Covino, Conk, and the Aquarium previously pleaded guilty to conspiracy and Lacey Act violations for purchasing spotted eagle rays and lemon sharks in the Florida Keys without permits over an eight-month period in 2012, and then transporting the wildlife to the aquarium in Boise. Conk was already serving a two-year term of probation imposed in Idaho for illegally shipping protected live corals to buyers around the world. As officers of the

Aquarium, Conk and Covino directed their Florida-based suppliers to ignore the law and make the illegal shipments. Unknown to them, one of the Florida business owners was cooperating with federal authorities and the phone conversations and text messages were recorded.

In a related case, Peter C. Covino, IV, was convicted by a jury of an obstruction violation that was connected to the case against his uncle, Ammon Covino. Evidence at trial established that Peter Covino made two phone calls in February 2013 to a business in the Florida Keys involved in the wholesale marine life trade. He told one of the business owners "to erase all the text messages, and emails, or any other evidence" linking the Florida business to his uncle. As a result of that individual's cooperation with federal authorities, those phone calls were recorded.

K. *United States v. Jerrold Tieder, et al.* (S.D. Fla.): In January 2014, Jerrold Tieder and Tropical Fish Transhippers, Inc. (TFT) were sentenced after pleading guilty to Lacey Act violations for transporting and selling wildlife in interstate commerce. Tieder will pay a $1,000 fine, complete a two-year term of probation, and make a $4,000 community service payment to the National Fish and Wildlife Foundation. These funds will be distributed to the Mote Marine Laboratory, Summerland Key Branch, to promote research, education, conservation, and restoration of marine life and corals throughout the waters of the Florida Keys National Marine Sanctuary and the Florida Keys. The company will pay a $1,000 fine, complete a three-year term of probation, and make a $1,500 community service payment to the Foundation.

   In October 2012, the defendants purchased four juvenile nurse sharks from a supplier located in Monroe County, Florida. The supplier did not hold the required state license or permit to harvest or sell sharks. In early November 2012, the company decided to sell eight juvenile sharks to a buyer outside of Florida. A number of these sharks had been outfitted with an electronic tag that airport officials in Ft. Lauderdale were able to scan and track in November 2012.

L. *United States v. Denak Ship Management, et al.* (D. HI): On November 20, 2014, the United States filed a complaint and lodged a consent decree relating to the February 5, 2010, grounding of the *M/V Vogetrader* on coral reef habitat outside the entrance channel to Barbers Point Harbor, Oahu, Hawaii. The vessel is owned by Denak Ship Management and operated by Vogetrader Shipping Inc. (jointly the "Responsible Parties"). The consent decree requires the Responsible Parties to pay $840,000 to resolve their natural resource damage claims and to reimburse NOAA for assessment costs. The complaint includes co-plaintiff State of Hawaii and asserts claims pursuant to the Oil Pollution Act and the Hawaii Environmental Response law. We received no public comments on the consent decree and the court entered it on February 17, 2015.

III. Litigation with Potential Impacts to Coral or Sea Grass

A. Prosecuting Illegal Discharges into Coastal Waters

1. *United States v. Matthaios Fafalios, et al.*, (E.D. La.): On February 3, 2015, Chief Engineer Matthaios Fafalios was sentenced after being convicted by a jury in 2014 on all three counts charged: Act to Prevent Pollution from Ships (APPS), obstruction of justice, and witness tampering. Fafalios will serve eight months' community confinement as a condition of a one-year term of probation. A fine was not assessed.

   During the last week of December 2013, Fafalios ordered a *Trident Navigator* crew member to construct an illegal bypass to allow for the illegal overboard discharge of oily bilge waste. Several metric tons of waste were discharged, circumventing the ship's oil water separator and oil content monitor, two mandatory pollution prevention devices. The discharges were not recorded in the oil record book as required. Fafalios also confiscated a crew member's cell phone that contained a photograph of the bypass and subsequently deleted the picture.

   In January 2014, U.S. Coast Guard personnel boarded the *Trident Navigator* while it was anchored in the Mississippi River near New Orleans. A tip from a crewmember resulted in their discovery of the bypass. Fafalios was uncooperative and further obstructed the Coast Guard investigation by instructing crewmembers to falsely deny knowledge of the bypass.

   Marine Managers Ltd., the ship's operator, previously pleaded guilty to APPS and obstruction violations and agreed to pay an $800,000 fine, make a $100,000 community service payment, complete a three-year term of probation, and implement an environmental compliance plan.

2. *United States v. The Hachiuma Steamship Co., LTD, et al.* (D. Md.): On January 30, 2015, The Hachiuma Steamship Co., LTD (Hachiuma) was sentenced after pleading guilty to an APPS oil record book violation. Hachiuma will pay $1.8 million in fines and community service, complete a three-year term of probation, and implement an environmental compliance program.

   Between August 2013, and the end of January 2014, the company operated the *M/V Selene Leader*, a vehicle transport vessel. Noly Torato Vidad was the chief engineer and Ireneo Tomo Tuale was the first engineer.

   In January 2014, under the company's supervision, engine room crew members transferred oily wastes between oil tanks on board the ship using rubber hoses, bypassing pollution control equipment, before discharging the wastes directly overboard. These discharges were not recorded in the vessel's oil record book. Vidad and Tuale have pleaded guilty and remain scheduled for sentencing.

3. *United States v. Carbofin S.P.A., et al.*, (M.D. Fla.): On January 21, 2015, Second Engineer Alessandro Enrico Messore was sentenced to pay a $1,500 fine, complete a five-year term of probation, and is required to obtain permission from the government

before returning to the U.S. during the period of probation. Messore previously pleaded guilty to an APPS violation.

Carbofin S.P.A., the owner of the Italian tanker ship *MT Marigola,* pleaded guilty to three APPS violations for maintaining a false oil record book that failed to record illegal overboard discharges of oily wastes in 2013 and 2014.

While conducting a routine inspection of the ship in April 2014, crew members tipped off U.S. Coast Guard inspectors. The crew members provided cell phone video of a black hose being used to discharge oily bilge waste directly overboard. After examining valves and finding oily residue on the hose, the inspectors confirmed that the hose was used to bypass pollution-prevention equipment and to discharge wastes overboard. None of these discharges were recorded in the ship's oil record book. Chief Engineer Carmelo Giano previously pleaded guilty to an APPS violation and is scheduled to be sentenced on February 9, 2015. The company's sentencing is set for March 4, 2015.

4. *United States v. Pacific and Atlantic (Shipmanagers), Inc., et al.*, (D. Del.): In July 2014, vessel operator Pacific and Atlantic (Shipmanagers), Inc., was sentenced to pay a $500,000 fine and will complete a three-year term of probation. The company previously pleaded guilty to an APPS violation for the illegal overboard discharges of oily wastes from the *M/V Bulk Victory*. As part of the sentence, the ship will be banned from calling on U.S. ports. In addition, first assistant engineer Ismael Castano and chief engineer Sofronio Marquez pleaded guilty to an APPS violation and were immediately sentenced to serve one and two-year terms of probation, respectively. Fines were not assessed.

   Investigation revealed that, between January and September 2013, the vessel discharged approximately 34 metric tons of oily bilge water and waste sludge into the ocean. These discharges were not recorded in the oil record book.

5. *United States v. Arab Ship Management LTD*, (D. Del.): In May 2014, Arab Ship Management LTD. (ASM) pleaded guilty to an APPS violation stemming from illegal overboard discharges of sludge. The company was sentenced to pay $375,000 in restitution, make a $125,000 community service payment, and a complete a two-year term of probation during which all vessels owned and operated by the company will be banned from U.S. ports.

   ASM operated the *M/V Neameh*, a 6,398 gross ton ocean-going livestock carrier. In March 2013, the Coast Guard boarded the vessel in the Delaware Bay Big Stone Anchorage to conduct an inspection. The inspection and subsequent criminal investigation revealed heavy oil sludge inside the piping on the discharge side of the pollution prevention equipment leading directly overboard, where no oil sludge should be if the equipment was operating properly. Inspectors also discovered that the vessel's piping arrangement had been illegally modified to allow this sludge to be pumped directly overboard. The piping arrangement was removed prior to the vessel's arrival in Delaware. Also during the inspection, Coast Guard officers were presented with two oil record books that contained different and contradictory entries for the period between November 30, 2011 and January 2, 2012, as well as fake oily waste disposal receipts.

6. *United States v. Herm. Dauelsberg GMBH & Co. KG*, (C.D. Calif.): In April 2014, Germany-based Herm. Dauelsberg GmbH & Co. KG was sentenced to pay a $1 million fine and make a $250,000 community service payment after pleading guilty to charges stemming from the discharge of oil from a ship with a cracked hull. The company pleaded guilty to an APPS violation and failure to report a hazardous condition aboard the *M/V Bellavia* to the Coast Guard.

   This case was initiated after four of the cargo ship's crew members provided information to the Coast Guard, including pictures and videos, of overboard discharges from the vessel's fuel tank. The four crewmembers each received a portion of the $500,000 whistleblower award.

   In 2011, the vessel sustained cracks in the hull while going through the Panama Canal. The company was aware of the fractures, but only completed temporary repairs on them. Over the past three years, the cracks allowed seawater to enter one of the ship's fuel tanks, which likely resulted in the release of bunker fuel into the sea.

   In September 2013, the ship again hit the side of the Panama Canal causing another crack in the hull and into a fuel tank. Subsequently, the crew used one of the ship's pumps to discharge nearly 120,000 gallons of oil-contaminated seawater, which was not properly processed or reported in the oil record book, directly into the ocean.

   The community service payment will be paid to the Channel Islands Natural Resources Protection Fund, which is administered by the National Parks Foundation.

B. Requiring Upgrades to Sewer Systems that Impact Coastal Waters

1. *United States v. Municipality of Arecibo* (D.P.R.): In September 2013, the court entered a Consent Decree resolving the Municipality of Arecibo's violation of the Clean Water Act and of its Small Municipal Separate Storm System General Permit. Arecibo has released storm water, untreated sewage and sewage sludge and other pollutants into the Rio Grande de Arecibo in violation of its permit and the CWA. Under the terms of the consent decree, Arecibo agreed to pay a penalty of $305,643 and invest an estimated $56 million in repairs and upgrades to its existing infrastructure. The Municipality has missed deadlines in the Consent Decree and the United States is seeking enforcement of the Decree.

2. *United States v. Municipality of San Juan, Puerto Rico Dep't of Transportation, Puerto Rico Highway and Transp. Auth., Puerto Rico Dep't of Natural and Envt'l Res.* (D.P.R.): In November 2014, the United States amended its complaint alleging that the Municipality of San Juan, the Puerto Rico Department of Transportation, the Puerto Rico Highways and Transportation Authority, and the Puerto Rico Department of Natural and Environmental Resources have violated the CWA and (for all defendants except for DNER) their Small Municipal Separate Storm System General Permits. Defendants are also alleged to have created an imminent and substantial endangerment pursuant to section 504 of the CWA. Defendants have released storm water, untreated sewage, and other pollutants into the Martin Pena Channel, San Juan Bay, the Atlantic Ocean, and other waters in violation of the Clean Water Act.

C. Defending EPA's Actions to Address Impaired Waters

1. *Florida Wildlife Federation v. EPA* (N.D. Fla.): Following EPA's 2009 determination that numeric water quality criteria for nutrients must be established for Florida waters (s*ee* 33 U.S.C. 1313(c)(4)(B)), EPA entered into a consent decree that set a phased schedule for the proposal and promulgation of such criteria (unless the State submitted and EPA approved the relevant criteria first). Consistent with the consent decree, EPA promulgated numeric water quality criteria for certain waters in the State of Florida in December 2010.

   Plaintiffs challenged EPA's actions and, in February 2012, the court upheld EPA's determination and portions of the criteria, while remanding other, limited portions to EPA. EPA subsequently approved numeric nutrient criteria rules submitted by the State, then amended its previous CWA determination by narrowing the scope of waters for which it would require numeric nutrient criteria. Thus, in June 2013, we moved to modify the consent decree to conform EPA's obligations to the scope of its amended determination. Plaintiffs opposed and moved to enforce the consent decree, asserting an anticipatory breach of EPA's obligations. The court rejected plaintiffs' motion and granted EPA's motion and plaintiffs appealed to the Eleventh Circuit, which held argument on January 29, 2015. EPA has now satisfied all obligations under the consent decree, and has expect withdrawn the federally-promulgated criteria so that the State-adopted and EPA-approved criteria can go into effect.

2. *Florida Wildlife Federation v. EPA* (M.D. Fla.): In August 2013, plaintiffs filed a 23-count complaint asserting CWA citizen suit and APA claims for review of multiple agency actions related to the State of Florida's CWA section 303(d) lists of waters that do not meet their applicable water quality standards (and are thus "impaired"). After participating in court-ordered mediation, plaintiffs agreed to dismiss and/or settle all but two of those claims. The remaining claims seek review of EPA's 2008 decision regarding the State of Florida's amended methodology for determining which waters in the State should be placed on the Section 303(d) list, also known as the Impaired Waters Rule. EPA's review of the amendments to the Impaired Waters Rule consisted of: (1) a determination as to which portions of the amended rule constitute new or revised state water quality standards; and (2) a decision as to whether those new or revised standards should be approved. Plaintiffs contend that EPA's decision should have included review of those portions of the Impaired Waters Rule that EPA previously reviewed in 2005 and found not to be new or revised water quality standards. Plaintiffs also allege that EPA should have explained why the Administrator did not make a determination that new or revised antidegradation water quality standards are necessary in Florida, and how well the Impaired Waters Rule will allow for implementation of the State's antidegradation water quality standards in the CWA Section 303(d) context. We have fully briefed cross-motions for summary judgment but, on January 29, 2015, the court granted the Florida Department of Environmental Protection's motion to intervene and directed it to file summary judgment briefing by February 9, 2015.

3. *Florida Wildlife Federation v. EPA* (M.D. Fla.): In this APA action, Plaintiffs seek review of EPA's approval in part of the State of Florida's most recent update to its CWA

Section 303(d) list of waters that do not meet their applicable water quality standards (and thus are "impaired"). EPA approved the list of waters submitted by the State, and added seven additional waters to the list for failing to meet antidegradation requirements for maintaining existing uses. Plaintiffs also allege that EPA has unreasonably delayed responding to a 2012 petition for rulemaking to address what plaintiffs believe are deficiencies in the State's antidegradation requirements. We have moved to dismiss two of the five counts in the complaint for failure to allege a valid waiver of sovereign immunity.