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Coastal Conservation Association v. United States Department of Commerce

Taylor R. Thompson

Alexander Blewett III School of Law at the University of Montana, taythomps@gmail.com

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***Coastal Conservation Association v. United States Department of
Commerce, No. 15-1300, 2016 U.S. Dist. LEXIS 727, 2016 WL 54911
(E.D. La. Jan. 4, 2016).***

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The Eastern Louisiana District Court upheld Amendment 40 to the Gulf of Mexico Fishery Management Council's Reef Management Plan. The court held that the Gulf Council and the National Marine Fisheries Service's proposed rule establishing fishing quotas for the red snapper met all of the statutory guidelines imposed under the Magnusson-Stevens Act.

I. INTRODUCTION

At issue in *Coastal Conservation Association v. United States Department of Commerce* was whether Amendment 40 to the Gulf of Mexico Fishery Management Council's ("Gulf Council") Reef Management Plan ("Plan") should be invalidated pursuant to the Administrative Procedure Act ("APA").¹ The plaintiffs, Coastal Conservation Association ("CCA") and three named members (collectively "Plaintiffs") objected to the rule that would change the management of recreational red snapper fishing.² The defendants included the United States Department of Commerce ("USDOC"), the National Oceanic and Atmospheric Administration ("NOAA"), and the National Marine Fisheries Service ("NMFS") (collectively "Federal Defendants").³ After a thorough review of the regulatory process, the United States District Court for the Eastern District of Louisiana ultimately granted summary judgment to Federal Defendants.⁴

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Statutory Background

The dispute involved red snapper fishery management in the Gulf of Mexico, which is regulated by the Gulf Council.⁵ Fisheries

1. Coastal Conservation Ass'n v. U.S. Dep't of Commerce, No. 15-1300, 2016 U.S. Dist. LEXIS 727, at *2 (E.D. La. Jan. 4, 2016).

2. *Id.* at *6.

3. *Id.*

4. *Id.* at *23.

5. *Id.* at *3.

nationwide are regulated pursuant to the Magnuson-Stevens Act (“MSA”) for the purpose of conserving and managing fishery resources.⁶ The MSA created eight Regional Fishery Management Councils that are responsible for preparing Fishery Management Plans (“FMP”) to address conservation and management of fisheries within their region.⁷ Every FMP “must be consistent with ten National Standards” as enumerated per the MSA,⁸ however, only three are at issue in the case.⁹ Management of Gulf of Mexico red snapper is also addressed individually in the MSA and requires that any FMP adopted by the Gulf Council must “establish separate quotas for recreational . . . and commercial fishing that, when reached, result in a prohibition on the retention of fish caught . . . for the remainder of the year.”¹⁰

A FMP has regulatory effect once it goes through the notice-and-comment rulemaking process.¹¹ The process begins when the Gulf Council submits the proposed FMP to the Secretary of Commerce through the NMFS.¹² Then, the NMFS reviews the plan and publishes the final regulation in the Federal Register.¹³ Once published in the Federal Register, the FMP has the full force of law.¹⁴

B. Standard of Review

The MSA is subject to judicial review under the Administrative Procedure Act (“APA”), which allows a decision to be overturned only if the agency action is “arbitrary, capricious, an abuse of discretion.”¹⁵ The court also follows the two-step judicial review of agency action outlined in *Chevron, U.S.A., Inc. v. Natural Resources Defense Fund* when an agency’s interpretation of the law is challenged.¹⁶ Under *Chevron*, the first question the court must ask is whether Congress has directly spoken to the precise issue; if Congress has spoken to the issue, the inquiry stops.¹⁷ However, if the statute is silent or ambiguous, the court then asks

6. 16 U.S.C. § 1801 (2007).

7. *Coastal*, 2016 U.S. Dist. LEXIS 727, at *3 (citing 16 U.S.C. § 1852(h)(1) (2007)).

8. *Id.* at *4 (quoting 16 U.S.C. § 1851(a) (2007)).

9. *Id.* at *3.

10. *Id.* at *6 (citing 16 U.S.C. § 1883 (2007)).

11. *Id.* at *4.

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.* at *7.

16. 467 U.S. 837 (1984).

17. *Coastal*, 2016 U.S. Dist. LEXIS 727, at *10.

whether the agency interpretation is “based on a permissible construction of the statute.”¹⁸

C. Factual Background

For the past fifteen years the Gulf Council has attempted to rebuild the red snapper fishery by using various management methods.¹⁹ One method has been to limit the recreational sector’s ability to fish by shortening the fishing season.²⁰ However, rebuilding plans were complicated by conflicting state management of the recreational red snapper season, which has longer seasons and higher bag limits than the federal rebuilding plan.²¹ Despite all the management steps taken, the total red snapper catch has exceeded the federal recreational quota each year except 2010.²²

Amendment 40 provides for more flexible management of the recreational sector by dividing it into two components: first, a federal-for-hire component made up of charter fisherman with federal permits; and second, a private angling component with private anglers and state-licensed charter fisherman.²³ Amendment 40 allocates the recreational red snapper quota differently and provides separate season closures between the two components.²⁴ The recreational fishing quota allocates 42.3 percent to component one, the charter fisherman with federal permits, and 57.7 percent to component two, the private angling component.²⁵ CAA alleged that Amendment 40 would harm its members because it would “reduce the maximum quantity of red snapper that individual recreational fisherman can catch.”²⁶

III. ANALYSIS

A. Regulating Charter/Headboat Separately Okay

Plaintiffs contended that specific language in the MSA precludes further separation of the red snapper sectors, which “impermissibly

18. *Id.*
19. *Id.* at *7-8.
20. *Id.* at *7.
21. *Id.*
22. *Id.* at *7-8.
23. *Id.* at *8.
24. *Id.*
25. *Id.*
26. *Id.*

creates three sectors.”²⁷ To support this, Plaintiffs relied on two principles of statutory construction, which the court refused to analyze, instead using the *Chevron* standard to resolve the dispute.²⁸ The first *Chevron* standard mandates the court decide whether Congress has “directly spoken to the issue at hand.”²⁹ Applying this standard, the court held that Section 407 of the MSA did not “impose a facial prohibition on further subdivision of the recreational sector” by imposing sub-quotas.³⁰ Instead, Section 407 directs the Gulf Council to enact measures that it deems “necessary and proper” to manage the fishery.³¹ The court found this language to be a broad delegation of authority to the agency.³²

The court then moved to the second *Chevron* prong, which requires the court to “consider whether the action taken by the agency is based on a permissible construction of the statute.”³³ Finding the first prong satisfied, the court could only overturn the agency’s action if it was “arbitrary, capricious or manifestly contrary to the statute.”³⁴ The court found that Amendment 40 was not arbitrary and capricious because FMPs routinely set different sub-quotas based on various factors that have been upheld by other courts.³⁵ The court went on to hold that Federal Defendant’s had “clearly identified a rational basis” in their decision to improve management of the recreational sector, because the division would “aid in efficient management” of the recreational sector.³⁶

B. National Standard 8 and 16 U.S.C. § 1853(a)(9)

Plaintiffs next asserted Amendment 40 did not comply with National Standard 8 and 16 U.S.C. § 1853(a)(9).³⁷ National Standard 8 demands that the NMFS must take into account “the importance of fishery resources to fishing communities by utilizing economic and social data,” and that “conservation and management measures” must be based on the best available scientific data.³⁸ In analyzing National Standards, courts have noted that these studies could go on forever, so

27. *Id.* at *12
 28. *Id.* at *14.
 29. *Id.* (emphasis in original).
 30. *Id.*
 31. *Id.*
 32. *Id.*
 33. *Id.* at *15
 34. *Id.* (quoting *Chevron*, 467 U.S. at 844).
 35. *Id.* at *16.
 36. *Id.*
 37. *Id.* at *17.
 38. *Id.*

the analysis should focus on whether the Secretary of Commerce has considered the impacts and alternatives to the plan he adopts.³⁹ If there is superior or contrary data available that the agency ignored, then an agency's collection and reliance on scientific information will be questioned.⁴⁰

16 U.S.C. § 1853(a)(9) requires that the Fishery Impact Statement include the likely economic and social effects of an amendment.⁴¹ Plaintiffs argued that a more powerful, affirmative duty existed to collect data on potential economic and social effects, but cited no law to support this contention.⁴² The court determined Federal Defendants used the best scientific information available and Plaintiffs did not point to any data supporting their argument.⁴³ Therefore, after careful analysis, the court found for Federal Defendants and concluded it could not substitute its own judgment for that of the agency.⁴⁴

C. Amendment 40 Does Not Violate National Standard 4

Plaintiffs further asserted Amendment 40 violated National Standard 4 when it divided the recreational sector into two components.⁴⁵ Plaintiffs believed that Federal Defendants "did not measure the impacts of the allocation on the affected groups."⁴⁶ Plaintiffs argued Amendment 40 violated National Standard 4 in three ways: first, it discriminated against recreational anglers; second, it discriminated against people from different states; and third, the decision to average catch numbers to decide quota allocations was arbitrary and capricious.⁴⁷

The record reflected that the detriment to the private anglers would be offset by their ability to fish in state waters.⁴⁸ The court disagreed with Plaintiffs, finding that the Gulf Council's decision was not arbitrary and capricious because the Council gave a "rational justification for its decision" to allocate fish differently between the private angling component and the federal-for-hire component.⁴⁹

39. *Id.* at *18.

40. *Id.* at *18-19.

41. *Id.* at *17.

42. *Id.*

43. *Id.* at *19.

44. *Id.* at *19-21.

45. *Id.*

46. *Id.* at *22.

47. *Id.* at *40.

48. *Id.* at *23-24.

49. *Id.* at *24.

The second argument asserted by Plaintiffs was that Amendment 40 was unlawful because it would discriminate against residents from other states.⁵⁰ They argued discriminatory effects and discriminatory intent against residents from other states were equally prohibited.⁵¹ However, the court found that this was not supported by case law.⁵² The court held that the discrimination between different states was “merely incidental to the purpose and execution” of Amendment 40.⁵³ Additionally, there was no state-based allocation within Amendment 40 and National Standard 4 was not implicated.⁵⁴

Finally, Plaintiffs argued that basing quota allocations on the average of the 2006 to 2013 catches and 1986 to 2013 numbers was arbitrary and capricious.⁵⁵ The court disagreed and found the Council provided a valid justification for its decision to include the older data in the allocation decisions.⁵⁶

D. Gulf Council Did Not Unlawfully Delegate Authority to NMFS

Plaintiffs further argued the Gulf Council was not allowed to delegate the final allocation percentages to the NMFS without the Gulf Council’s approval.⁵⁷ Plaintiffs believed the delegation violated the MSA because the NMFS did not have the power to change substantive actions that were approved by the Council.⁵⁸ Plaintiff relied on *Fishing Company of Alaska, Inc. v. Gutierrez*, in which the North Pacific Fisheries Council never adopted the substantive enforcement provisions put forward by the NMFS.⁵⁹ The court found Plaintiffs’ reliance on *Fishing Company of Alaska, Inc. v. Gutierrez* unpersuasive because the changes made between the two versions were not substantive.⁶⁰ The delegation was proper because the changes made between the Council’s approval of Amendment 40 and the final allocation set by the NMFS was well within the range approved by the Council.⁶¹ At the time Amendment 40 was submitted to NMFS there was an ongoing workshop to evaluate the

50. *Id.* at *25.

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.* at *26.

56. *Id.*

57. *Id.* at *27.

58. *Id.*

59. *Id.* at *28.

60. *Id.*

61. *Id.*

methods to appropriately calibrate the data and the Council approved the later incorporation of the data into the final rule.⁶² Therefore, the court found that there was no improper delegation of authority to NMFS in order to set the final allocation percentage.⁶³

IV. CONCLUSION

The court granted summary judgment to Federal Defendants, finding that Amendment 40 was decided in accordance with the APA and the *Chevron* two-prong test. The court consistently argued that the CCA had not met their burden of proof in arguing their side. This decision will allow Amendment 40 to remain in effect, which will hopefully snap the fishery back to life.

62. *Id.*

63. *Id.*