

United States District Court
Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

OCEANA, INC.,
Plaintiff,
v.
WILBUR ROSS, et al.,
Defendants.

Case No. 16-CV-06784-LHK

**ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO
ALTER OR AMEND JUDGMENT**

Re: Dkt. No. 63

Before the Court is a motion to alter or amend judgment filed by Defendant Wilbur Ross, in his official capacity, Defendant National Oceanic and Atmospheric Administration (“NOAA”), and Defendant National Marine Fisheries Service (“the Service”) (collectively, “Defendants”). ECF No. 63 (“Mot.”). Having considered the parties’ submissions, the relevant law, and the record in this case, the Court GRANTS in part and DENIES in part Defendants’ motion to alter or amend judgment.

Defendants’ motion arises under Rule 59(e) of the Federal Rules of Civil Procedure. Rule 59(e) motions “should not be granted . . . absent highly unusual circumstances.” *McDowell v. Calderon*, 197 F.3d 1253, 1255 (9th Cir. 1999) (internal quotation marks and citation omitted) (en banc). “In general, there are four basic grounds upon which a Rule 59(e) motion may be granted: (1) if such motion is necessary to correct manifest errors of law or fact upon which the judgment rests; (2) if such motion is necessary to present newly discovered or previously unavailable evidence; (3) if such motion is necessary to prevent manifest injustice; or (4) if the amendment is

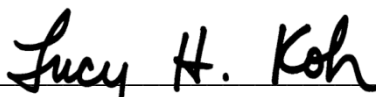
1 justified by an intervening change in controlling law.” *Allstate Ins. Co. v. Herron*, 634 F.3d 1101,
2 1111 (9th Cir. 2011). Rule 59(e) “may not be used to relitigate old matters, or to raise arguments
3 or present evidence that could have been raised prior to the entry of judgment.” *Exxon Shipping*
4 *Co. v. Baker*, 554 U.S. 471, 485 n.5 (2008) (internal quotation marks and citation omitted).

5 Defendants’ motion seeks clarification on two points. First, Defendants request that the
6 Court clarify that its vacatur only applied to the central population of the northern anchovy, and
7 did not apply to the reference points that the challenged rule (“Catch Rule”) set for other stocks
8 such as the jack mackerel. 81 Fed. Reg. 74309 (Oct. 26, 2016) (the final Catch Rule). The parties
9 have only ever litigated the reference points set for the central population of the northern anchovy,
10 the Court’s 33-page summary judgment order nowhere discusses the other stocks, and Plaintiff
11 Oceana, Inc. (“Plaintiff”) agrees that the Court’s judgment did not apply to the other stocks. The
12 Court therefore clarifies, if doing so was necessary, that its judgment did not vacate the reference
13 points the Catch Rule set for stocks other than the central population of the northern anchovy.

14 Second, Defendants request that the Court clarify that it vacated only the the Annual Catch
15 Limit (“ACL”) set in the Catch Rule, and did not vacate the overfishing limit (“OFL”) and the
16 acceptable biological catch (“ABC”) on which the ACL is based. The Court denies this request.
17 Defendants’ reply explains why. Specifically, Defendants admit that “the Court found that the
18 OFL and ABC were challengeable and unlawful based on the current record and agency
19 explanation.” ECF No. 66 at 2. Defendants are correct that this finding did not compel the Court to
20 vacate the OFL and ABC; district courts have discretion in that regard. *See Nat’l Wildlife Fed’n v.*
21 *Espy*, 45 F.3d 1337, 1343 (9th Cir. 1995) (citation omitted) (“Although the district court has
22 power to do so, it is not required to set aside every unlawful agency action.”). However, the Court
23 did vacate the OFL and ABC in this case for the central population of the northern anchovy.

24 **IT IS SO ORDERED.**

25 Dated: June 13, 2018

26 
27 _____
LUCY H. KOH
United States District Judge