

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 05-5176

September Term, 2005

FILED ON: MAY 22, 2006 [969487]

OCEANA, INC.,

APPELLANT

v.

CARLOS GUTIERREZ, SECRETARY OF THE
UNITED STATES DEPARTMENT OF COMMERCE, ET AL.,

APPELLEES

Appeal from the United States District Court
for the District of Columbia
(No. 04cv00811)

Before: GINSBURG, *Chief Judge*, and TATEL and GARLAND, *Circuit Judges*.

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs and arguments of the parties. It is

ORDERED AND ADJUDGED that the appeal be dismissed for lack of jurisdiction.

The district court's order remanding to the agency the bycatch monitoring provisions of Amendment 13 to the Northeast Multispecies Fishery Management Plan is not a "final decision" within the meaning of 28 U.S.C. § 1291. *See Lake Pilots Ass'n v. U.S. Coast Guard*, 359 F.3d 624, 625 (D.C. Cir. 2004) ("A remand order usually is not a final decision" (citation omitted)). Contrary to Oceana, this appeal does not present one of those "limited circumstances" in which a remand order is appealable under the collateral order doctrine because Oceana will have a later opportunity to appeal the two habitat-related claims "on which it got no satisfaction" in the district court. *See Lake Pilots*, 359 F.3d at 625; *Occidental Petroleum Corp. v. SEC*, 873 F.2d 325, 330 (D.C. Cir. 1989) (noting exception to general rule that remand orders are not appealable final decisions "where the agency to

which the case is remanded seeks to appeal and it would have no opportunity to appeal after the proceedings on remand”). Once the remanded proceedings are complete, Oceana may move for entry of a final judgment in this case, to be set forth on a separate document as required by Federal Rule of Civil Procedure 58(a)(1), *see* Fed. R. Civ. P. 58(d), and appeal from that judgment. The Government represents it will not oppose such a motion. Tr. of Oral Argument at 15:30.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or rehearing en banc. *See* Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

FOR THE COURT:

Mark J. Langer, Clerk

BY:

Michael C. McGrail

Deputy Clerk