

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

**NATURAL RESOURCES DEFENSE COUNCIL INC.,
CENTER FOR BIOLOGICAL DIVERSITY, ANIMAL
WELFARE INSTITUTE,**
Plaintiffs-Appellees

v.

**WILBUR L. ROSS, in his official capacity of Secretary of Commerce, DEPARTMENT OF COMMERCE,
CHRIS OLIVER, in his official capacity as Assistant Administrator of the National Marine Fisheries Service, NATIONAL MARINE FISHERIES SERVICE, STEVEN MNUCHIN, in his official capacity as Secretary of the Treasury, DEPARTMENT OF THE TREASURY, KIRSTJEN NIELSEN, in her official capacity as Secretary of Homeland Security, DEPARTMENT OF HOMELAND SECURITY,**
Defendants-Appellants

2018-2325

Appeal from the United States Court of International Trade in No. 1:18-cv-00055-GSK, Judge Gary S. Katzmann.

ON MOTION

PER CURIAM.

ORDER

The defendants-appellants (the “government”) move to stay, pending this appeal, the trial court’s preliminary injunction requiring, among other things, the government to ban the importation from Mexico of all shrimp, curvina, sierra, and chano fish and their products from the Gulf of California, Mexico, unless affirmatively identified as having been caught with a gear type other than gillnets or affirmatively identified as caught outside the vaquita’s range. The appellees oppose the motion.

Rule 8(a)(2) of the Federal Rules of Appellate Procedure authorizes this court to grant a stay of an injunction pending appeal. Our determination is governed by four factors, the first two of which are the most critical: (1) whether the movant has made a strong showing of likelihood of success on the merits; (2) whether the movant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies. *See Nken v. Holder*, 556 U.S. 418, 434 (2009). Without prejudicing the ultimate disposition of this case, we conclude that the government has not established that a stay of the order pending appeal is warranted here.

Given the urgency expressed in the government’s motion and the fact that the government self-expedited the filing of its opening brief, the court notes that it will consider a motion by the government to expedite oral argument in this appeal.

Accordingly,

NATURAL RESOURCES DEFENSE v. ROSS

3

IT IS ORDERED THAT:

The motion to stay is denied.

FOR THE COURT

Nov. 28, 2018

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner

Clerk of Court

s31