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Subject: speaking to the discretion issue
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From EPA's website

In light of the Supreme Court 2009 decision and its recognition that EPA has broad discretion in its 316(b) regulations, EPA initiated consultation with the Fish and Wildlife Service and the National Marine Fisheries Service under Section 7 of the Endangered Species Act. EPA and the Services began informal consultation in 2012, but concluded in 2013 that formal consultation was necessary. In order to accommodate the regulatory 135-day time frame for formal consultation, plaintiffs agreed to a modification to the settlement agreement, extending final rule deadline to November 4, 2013.

Drew