

TODD KIM, Assistant Attorney General
Environment & Natural Resources Division
S. JAY GOVINDAN, Chief
MEREDITH L. FLAX, Assistant Chief
CHRISTIAN H. CARRARA,
Trial Attorney (NJ Bar No. 317732020)
Wildlife & Marine Resources Section
United States Department of Justice
Ben Franklin Station
P.O. Box 7611
Washington, DC 20044-7611
Tel: (202) 598-9736
Fax: (202) 305-0275
Email: christian.carrara@usdoj.gov

Attorneys for Federal Defendants

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

CENTER FOR BIOLOGICAL DIVERSITY,

Plaintiff,

v.

GINA RAIMONDO, in her official capacity
as Secretary of the U.S. Department of
Commerce, and NATIONAL MARINE
FISHERIES SERVICE,

Defendants.

Case No. 3:22-cv-06566-CRB

**JOINT STIPULATION FOR STAY
OF PROCEEDINGS**

(Honorable Charles R. Breyer)

Pursuant to Local Rule 7-12 of the Local Rules of Practice in Civil Proceedings before the United States District Court for the Northern District of California, Plaintiff Center for Biological Diversity, by its undersigned counsel, and Defendants Gina Raimondo, in her official capacity as Secretary of the U.S. Department of Commerce, and the National Marine Fisheries Service (“NMFS”), by their undersigned counsel (collectively, the “Parties”), hereby jointly

CASE NO. 3:22-CV-06566-CRB – JOINT STIPULATION FOR STAY OF PROCEEDINGS

1 stipulate to a stay of proceedings until June 20, 2023, and request the Court’s approval of the
2 stipulation.

3 WHEREAS, on October 27, 2022, Plaintiff filed a complaint challenging the biological
4 opinion issued by NMFS under ESA Section 7, which analyzed the effects of the continued
5 management of the U.S. West Coast drift gillnet fishery (“Gillnet Fishery”) on threatened and
6 endangered species, including humpback whales. ECF No. 1.

7 WHEREAS, Plaintiff’s request for relief primarily sought an order requiring NMFS to
8 “complete consultation and publish a final biological opinion within 90 days” concerning the
9 effects of the Gillnet Fishery. *See id.* at 18 (Request for Relief).

10 WHEREAS, Defendants have reinitiated ESA consultation to analyze the effects of the
11 continued management of the Gillnet Fishery on threatened and endangered species, including
12 humpback whales, and their critical habitat, and expect to complete consultation and publish a
13 new biological opinion on June 20, 2023.

14 WHEREAS, under the Court’s Order entered March 23, 2023, Defendants must file, by
15 April 21, 2023, an answer or other response to Plaintiff’s complaint, ECF No. 1, as well as
16 lodge an administrative record with the Court. *See* ECF No. 23. Briefing on the merits is set to
17 begin on May 25, 2023.

18 WHEREAS, in light of these developments, the Parties wish to avoid having the Court or
19 Parties expend further time and resources—including for the deadline for Defendants to file an
20 answer or otherwise respond to Plaintiff’s complaint and to lodge an administrative record by
21 this Friday, April 21, 2023—as to claims and arguments that may become moot in the coming
22 weeks.

23 WHEREAS, there will be no damage caused by the issuance of this stay nor will either
24 party be prejudiced by it.

25 WHEREAS, it is well-established that “the power to stay proceedings is incidental to the
26 power inherent in every court to control the disposition of the causes on its docket with
27 economy of time and effort for itself, for counsel, and for litigants.” *Landis v. North Am. Co.*,
28 299 U.S. 248, 254 (1936); *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962); *Leyva v.*

Certified Grocers of California, 593 F.2d 857, 863-64 (9th Cir. 1979).

NOW, THEREFORE, IT IS STIPULATED BY AND BETWEEN THE PARTIES, AND
THE COURT ORDERS, AS FOLLOWS:

1. Upon entry of the Court's order, the instant litigation shall be stayed until June 20, 2023, based on the fact that NMFS expects to complete consultation on or before June 20, 2023.

2. Defendants shall provide Plaintiff with an informal update, including a telephone call from counsel, on the status of consultation no later than May 20, 2023, and state whether NMFS still expects to issue the biological opinion by June 20, 2023.

3. If NMFS completes consultation on or before June 20, 2023, Plaintiff shall dismiss its merits claims against Defendants without prejudice.

4. The Parties shall submit a status report to the Court no later than June 21, 2023.

IT IS SO STIPULATED

Dated: April 20, 2023

Respectfully submitted,

TODD KIM, Assistant Attorney General
U.S. Department of Justice
Environment & Natural Resources Division
S. JAY GOVINDAN, Section Chief
MEREDITH L. FLAX, Assistant Section Chief

/s/ Christian Carrara
CHRISTIAN H. CARRARA, Trial Attorney
NJ Bar No. 317732020
Wildlife & Marine Resources Section
Ben Franklin Station, P.O. Box 7611
Washington, DC 20044-7611
(202) 305-0217 (t.) | (202) 305-0275 (f.)
Christian.Carrara@usdoj.gov

Attorneys for Defendants

/s/ Catherine Kilduff
CATHERINE KILDUFF (CA Bar #256331)
KRISTEN MONSELL (CA Bar #304793)
Center for Biological Diversity
1212 Broadway, Suite #800
Oakland, CA 94612

(510) 844-7100 (t.) | (510) 844-7150 (f.)

Attorneys for Plaintiff

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Charles R. Breyer
United States District Judge

ECF ATTESTATION

In accordance with Civil Local Rule 5(i)(3), I, Christian Carrara, attest that I have obtained concurrence in the filing of this document from all other signatories listed here.

/s/ Christian Carrara
CHRISTIAN H. CARRARA