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6 UNITED STATES OF AMERICA
7 Department of Commerce
8 National Oceanic and Atmospheric Administration

9 *In re:* Proposed Waiver and Regulations
10 Governing the Taking of Eastern North
11 Pacific Gray Whales by the Makah Indian
12 Tribe

Hon. George J. Jordan
Hearing Docket No. 19-NMFS-0001

13 **REPLY IN SUPPORT OF EXPEDITED MOTION FOR EXTENSION OF TIME TO**
14 **SUBMIT INITIAL DIRECT TESTIMONY AND FOR CONTINUANCE OF HEARING**

15 On May 10, 2019, Sea Shepherd Legal (SSL) and Sea Shepherd Conservation Society
16 (SSCS) (collectively “Sea Shepherd”) moved for an extension of the deadline to submit initial direct
17 testimony and continuance of the hearing and associated pre-hearing proceedings, requesting a delay
18 of such proceedings by a minimum of 90 days. On May 15, 2019, the National Marine Fisheries
19 Service (NMFS) and the Makah Tribe (collectively “Respondents”) submitted responses opposing
20 Sea Shepherd’s motion. Given the similarities in Respondents’ materials, and in the interests of
21 efficiency, Sea Shepherd replies to the arguments separately raised by Respondents in this single
22 submission to the Administrative Law Judge (ALJ). In particular, Respondents’ primary contentions
23 are (1) the ALJ does not have the authority to grant the requested extension and (2) Sea Shepherd
24 has not acted diligently in seeking an extension. As demonstrated below, there is not any factual or
25 legal support for either claim.

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1 **ARGUMENT**

2 **1. The ALJ Has the Full Authority and Discretion to Grant the Requested Extension**

3 NMFS makes the surprising claim that the presiding officer in this matter, ALJ George J.
4 Jordan (Judge Jordan), lacks the legal authority to extend certain deadlines associated with the
5 hearing because “[t]he [g]overning [r]egulations [d]o [n]ot [p]rovide for [e]xtension of the [d]eadline
6 for [i]nitial [d]irect [t]estimony.” NMFS’s Combined Response to Motion to Extend Waiver
7 Proceeding Schedule (NMFS’s Response), at 13. This argument fails on its own terms — the
8 regulations *do* authorize the presiding officer to grant the relief requested. More fundamentally,
9 NMFS’s argument overlooks the fact that the Administrative Procedure Act (APA) and governing
10 case-law clearly recognize an ALJ’s power to alter deadlines to ensure a fair proceeding.

11 NMFS acknowledges that the regulations governing a waiver hearing, a species of formal
12 rulemaking, explicitly authorize the presiding ALJ to “[c]hange the time and place of the hearing.”
13 50 C.F.R. § 228.6(b)(1); NMFS’s Response, at 13. As explained below, this provision, when read in
14 light of general administrative law principles and the APA, should be enough to conclude the
15 obvious: Judge Jordan has the power to change the date of the hearing *and* associated pre-hearing
16 deadlines.

17 However, NMFS goes beyond ignoring this obvious conclusion by offering a tortured
18 interpretation of 50 C.F.R. § 228.7 – the rule governing the submission of initial direct testimony –
19 which contains the following language:

20 *Unless otherwise specified*, all direct testimony, including accompanying exhibits, must
21 be submitted to the presiding officer in writing no later than the dates specified in the
22 notice of the hearing (§ 228.4), the final hearing agenda (§ 228.12), or within 15 days
after the conclusion of the prehearing conference (§ 228.14) as the case may be.

23 50 C.F.R. § 228.7(a) (emphasis added).

24 While NMFS emphasizes three phrases (“all direct testimony,” “must be submitted,” and “no
25 later than the dates specified in the notice of the hearing”), it conveniently ignores the language that

1 introduces — and qualifies — those phrases. *See* NMFS’s Response, at 14. Correctly interpreted,
2 section 228.7(a) means what it says: The deadline for initial direct testimony is the date set in the
3 notice of hearing “[u]nless otherwise specified.” 50 C.F.R. § 228.7(a) (emphasis added).

4 The only remaining question is whether the presiding officer has the power to change that
5 deadline and other associated pre-hearing deadlines. Clearly, someone must, otherwise the opening
6 phrase is meaningless. NMFS certainly appeared to agree that the ALJ possessed such authority
7 when, in declining Sea Shepherd’s request for NMFS’s consent to an extension, the agency stated
8 that “any requests to delay the hearing schedule should be directed to Judge Jordan[.]” *See* Exhibit
9 A to Declaration of Catherine Pruett (May 9, 2019 Letter from Barry Thom to DJ Schubert and Brett
10 Sommermeyer, at 1. In addition to the fact that NMFS’s should now be estopped from taking a
11 contrary position, its contrived reading of the regulations clashes with basic APA and administrative
12 law principles.

13 Section 556 of the APA invests the presiding officer with broad authority to “regulate the
14 course of the hearing” and to “dispose of procedural requests or similar matters[.]” 5 U.S.C. §
15 556(c)(2), (9). While NMFS is correct to observe that these powers are “[s]ubject to published rules
16 of the agency,” nothing in the cited regulations, discussed above, purports to strip the presiding
17 officer of the standard, unremarkable power to manage dates and the general course of the
18 proceeding. In fact, the idea that an ALJ may adjust pre-hearing and hearing dates at his or her
19 discretion is black-letter law. *See, e.g., Professional Air Traffic Controllers Organization v. Federal*
20 *Labor Relations Authority*, 685 F.2d 547, 588 (D.C. Cir. 1982) (“It is well established that the grant
21 or denial of a continuance is within the discretion of the ALJ and will not be overturned absent a
22 clear showing of abuse.”) (quoting *NLRB v. Pan Scape Corp.*, 607 F.2d 198, 201 (7th Cir. 1979)).

23 When one reads 50 C.F.R. § 228.7(a) in conjunction with the well-established principles
24 provided by the APA and governing case-law, it is clear that the regulation contemplates ALJ-
25 ordered modifications to deadlines when it refers to those deadlines as being fixed “[u]nless

1 otherwise specified[.]” 50 C.F.R. § 228.7(a). In addition to being faithful to the regulatory text, this
2 reading has the benefit of harmonizing the regulation with the APA.

3 In sum, there is no question that the presiding officer in this matter has the legal authority to
4 grant all of the relief requested by Sea Shepherd.

5 **2. Sea Shepherd Has Acted Diligently in Seeking an Extension**

6 Respondents devote the majority of their briefing to an attack on Sea Shepherd’s alleged lack
7 of diligence in seeking an extension. In doing so, Respondents rely exclusively upon the “good
8 cause” requirement found in Rule 16 of the Federal Rules of Civil Procedure (FRCP) governing
9 scheduling orders. While Sea Shepherd suggests that this standard may apply here, it should also be
10 recognized that the rules applicable to this proceeding (50 C.F.R. § 228 *et seq.*) do not supply a
11 standard governing requested scheduling modification. For this reason, Sea Shepherd also
12 references the standards informing ALJ scheduling decisions as set forth in *PATCO v. Fed. Labor*
13 *Relations Authority*, 685 F.2d 547, 588 (D.C. Cir. 1982).

14 Assuming a “good cause” standard can be applied to this proceeding by analogy, NMFS
15 supports its contention that Sea Shepherd failed to satisfy the “diligence” requirement of this
16 standard on the basis of case law involving very distinguishable (and egregious) facts. The
17 following is a summary of some of NMFS’s primary case citations with a brief description of the
18 relevant facts (which clearly are not even remotely analogous here):

- 19 ■ *Husky Ventures, Inc. v. B55 Invs., Ltd.*, 911 F.3d 1000, 1020-1021 (10th Cir. 2018) (“The
20 record—which indicates that B55, through Mr. McArthur, knew of the allegedly ‘new’
21 information months before the motion to amend [filed on the eve of trial] —fatally undercuts
22 their ability to demonstrate good cause.”)
- 23 ■ *Enzymotec Ltd. v. NBTY, Inc.*, 754 F. Supp. 2d 527, 536 (E.D.N.Y. 2010), quoting *Sokol*
24 *Holdings, Inc. v. BMB Munai, Inc.*, 2009 U.S. Dist. LEXIS 72659 (S.D.N.Y. Aug. 17, 2009)
25 (“As an initial matter, the Court notes that what is at issue here is not Plaintiffs' initial

1 pleading, nor their first amended pleading, nor even their second amendment. Rather, this is
2 Plaintiffs' attempt at a fourth 'bite at the apple,' to articulate viable legal theories based on
3 facts that were known to them before this action was ever commenced, in 2005.”)

- 4 ■ *Alioto v. Town of Lisbon*, 651 F.3d 715, 720 (7th Cir. 2011) (“Moreover, Alioto acted with
5 insufficient diligence not merely because he waited to seek leave to amend for more than
6 eight months beyond the district court's deadline. He waited until the last day—under a
7 generous briefing schedule—for filing a response to the defendants' motion to dismiss.
8 Indeed, he had defendants' motions to dismiss in his possession for more than two months
9 before seeking leave to amend the complaint.”)

10 The facts at issue in these cases cited by NMFS not only demonstrate the vastly different
11 circumstances (vis-à-vis an administrative rulemaking proceeding) considered by federal courts in
12 applying the “good cause” standard, but also the extreme lack of diligence upon which such courts
13 find an absence of “good cause”. In contrast, no remotely comparable facts are involved in Sea
14 Shepherd’s efforts to seek a reasonable extension here. Rather, Sea Shepherd (or, more precisely,
15 SSL on behalf of itself and SSCS), has been as actively engaged as possible since the inception of
16 this rulemaking proceeding. For the convenience of the ALJ, Sea Shepherd provides the following
17 summary of the pertinent procedural (and related) facts supporting Sea Shepherd’s diligence:

- 18 ■ On April 6, 2019, when NMFS first published its notice of waiver and proposed regulations,
19 SSL was in the midst of a number of time-sensitive and time-intensive projects that could not
20 be pushed aside or otherwise delayed to immediately accommodate this unexpected
21 development – after nearly 4 years of relative silence by NMFS since SSL submitted its
22 comments on the 2015 Draft Environmental Impact Statement (DEIS). Nevertheless, SSL
23 promptly reached out to other organizations that were also involved in commenting on the
24 2015 DEIS to attempt to coordinate efforts. *See* Declaration of Brett Sommermeyer
25 (Sommermeyer Decl.), at ¶ 3.

- 1 ▪ SSL was faced with a seldomly used administrative process governed by a dearth of
2 procedural rules in comparison with *e.g.*, federal court proceedings. After an opportunity to
3 obtain a rough inventory of the enormity of the materials filed by NMFS in support of the
4 waiver and proposed regulations, SSL began exploring options for how to seek a reasonable
5 extension of the hearing and associated deadlines.¹ Given the absence of procedural rules, it
6 was unclear whether NMFS, as the action agency that commenced the waiver proceedings
7 and, apparently, selected the relevant dates driving those proceedings, had the discretion to
8 extend the deadlines or whether that decision rested exclusively with the assigned ALJ. SSL
9 ultimately decided to seek NMFS’s consent to an extension while also joining as a “party”
10 and, if NMFS declined, file a motion with the ALJ. *See Sommermeyer Decl.*, at ¶ 4.
- 11 ▪ After SSL filed its request for “party” status, NMFS notified SSL that its request had been
12 received but did not inform SSL that it was now a “party”. On May 9th, SSL was able to
13 contact NMFS and obtain at least partial confirmation that it was likely a “party” to the
14 proceeding. Notably, NMFS declined to fully confirm SSL’s status. That same day, SSL
15 received a letter from NMFS declining to consent to an extension and attaching a “Service
16 List” listing a number of individuals and entities but not expressly identifying them as
17 “parties”. *See Sommermeyer Decl.*, at ¶ 5.
- 18 ▪ Although not completely confident that it was now a “party”, SSL promptly filed its motion
19 on behalf of itself and SSCS with the ALJ requesting an extension. On May 13th, counsel for

20
21 ¹ In its Response, NMFS mischaracterizes the extent of materials that it submitted as direct
22 testimony by describing it as only including 62 “new” documents, of which only 38 were published
23 after the 2015 DEIS. NMFS’s Response, at 8. A large portion of these materials consist of
24 relatively obscure IWC submissions that are, technically, publicly available. *See*, Second
25 Declaration of Chris Yates, NMFS Exhibit 1-18. However, NMFS offers no material basis for why
 Sea Shepherd should have had constructive notice of such documents. Additionally, focusing purely
 on document numbers is not meaningful. The attachments to NMFS’s declarations (lengthy in
 themselves) included such documents as the 2019 Biological Report – an 89-page report containing
 detailed scientific information. *See* Declaration of Chris Yates, NMFS Exhibit 1-7.

1 NMFS entered an appearance and filed an intent to respond to the extension motion filed by
2 AWI. On May 14th, SSL contacted counsel for NMFS and discovered that, despite service
3 on NMFS, counsel had not received a copy of Sea Shepherd's motion. Counsel for NMFS
4 expressed frustration with the process and the fact that there were few procedural rules
5 governing this MMPA proceeding. *See Sommermeyer Decl.*, at ¶ 6.

- 6 ■ On May 17th, Sea Shepherd contacted Judge Jordan's office to provide notice that Sea
7 Shepherd intended to file a Reply to the Respondents briefing later that day. From that call,
8 Sea Shepherd learned that there was some potential confusion as to what had been submitted
9 by the parties concerning the requested extension. In particular, Judge Jordan's office was
10 apparently under the impression that all documents needed to be initially submitted through
11 NMFS, which would then forward them to Judge Jordan. This understanding conflicts with
12 NMFS's instruction to Sea Shepherd to submit its extension motion directly to Judge Jordan
13 and also with the Announcement of Hearing Regarding Proposed Waiver and Regulations
14 Governing the Taking of Marine Mammals (Docket No. 1) ("All documents pertaining to the
15 hearing, including initial direct testimony, shall be filed with the ALJ."). Sea Shepherd
16 further learned that Judge Jordan would be occupied with another hearing starting on May
17 20th. *See Sommermeyer Decl.*, at ¶ 7.

18 Accordingly, the above-summarized facts illustrate Sea Shepherd's diligent efforts to
19 accommodate this sudden, significant addition to its work-load while also navigating a sparsely-
20 populated procedural landscape that has generated (and continues to generate) considerable
21 uncertainty. Of note, Sea Shepherd's interactions with NMFS (and its attorneys) and Judge Jordan's
22 office has demonstrated a more than sufficient level of uncertainty with this seldom-used rulemaking
23 process to warrant, on its own, Sea Shepherd's requested relief.

24 Sea Shepherd's burden was not only exacerbated by procedural uncertainty, but also by
25 NMFS's selection of a new action alternative governing the Makah hunt. Disagreeing that the

1 proposed alternative is “new”, NMFS counters with the simplistic statement that “the proposed
2 waiver and regulations consist of a combination of elements from different alternatives in the 2015
3 DEIS, all of the environmental effects of which were fully evaluated.” NMFS’s Response, at 9.
4 While it is true that the new alternative borrows numerous elements from the 2015 alternatives, there
5 are considerable differences. For example, NMFS asserts that “Alternatives 2, 3, and 6 from the
6 2015 DEIS examine a winter/spring hunt, similar to the even-year hunt proposed in the waiver and
7 regulations, Alternative 4 examines a summer/fall hunt similar to the proposed odd-year hunt.” *Id.*
8 This assertion misses a fundamental fact: none of the 2015 alternatives include **both** the “even” and
9 “odd” year seasonal hunts in the same scheme. Furthermore, none of the 2015 alternatives contain
10 the same combination of additional restrictions (*e.g.* strike limits, approach limits, landing limits or
11 other factors dictating when the hunt should be suspended) found in the new proposal – restrictions
12 that vary according to which phase the hunt falls into in the alternating (odd, even) year hunts. The
13 fact that the new alternative incorporates elements (often in different temporal, geographic and
14 quantitative combinations) from the 2015 alternatives certainly did not provide Sea Shepherd with
15 sufficient notice of this new alternative – and most definitely not the level of notice contemplated by
16 NMFS’s inapposite case citation concerning pleading amendments under the FRCP. *See id.* (citing
17 *Enzymotec*).

18 Respondents further attack Sea Shepherd’s diligence in seeking an extension by
19 inappropriately discounting the problem presented by the apparent coincidence that NMFS released
20 its waiver and regulation materials 35 days before the IWC Scientific Committee (SC) meeting. *Id.*
21 at 10; Makah Indian Tribe’s Response to Expedited Motions to Extend Waiver Proceeding Schedule
22 (Makah Response), at 5-6. Yet, as participants in the IWC SC (and related IWC) meetings,
23 Respondents must be aware of the fact that many (if not most) of the participants are occupied well
24 in advance of the conference writing and finalizing working papers for submission at the conference.
25 *See Sommermeyer Decl.*, at ¶ 8. Participants are, thus, understandably focused on preparing for the

1 meeting to the exclusion of other matters. They often also arrive early to engage in pre-meeting
2 discussions with their scientific colleagues. *Id.* It is, therefore, disingenuous to contend that the
3 IWC meeting did not present a tremendous impediment to Sea Shepherd’s ability to obtain
4 assistance and direct testimony from cetacean experts attending the meeting. Such assistance would,
5 of course, include expert input regarding additional topics outside the scope of NMFS’s current
6 record evidence – and thus, potentially, not within the scope of rebuttal testimony. Further, contrary
7 to the Makah Tribe’s suggestion concerning Dr. Sumich, Sea Shepherd has also been actively
8 involved in soliciting input from cetacean scientists who are not attending the IWC meeting. *Id.* at ¶
9 9. Again, NMFS’s reference to a highly distinguishable FRCP Rule 16 case (*Alioto*) does not
10 support a finding that Sea Shepherd failed to act diligently. *See* NMFS’s Response, at 10.

11 As additional claimed support for its “lack of diligence” argument, the Makah Tribe contends
12 that Sea Shepherd should have been aware of the proposed management plan because it was
13 discussed during the 2018 IWC SC meeting. *See* Makah Response, at 4. However, it is not
14 reasonable to assume knowledge of the details of the proposed Makah whaling regulations at issue in
15 this proceeding from the cursory summary provided in the documents submitted during the 2018
16 IWC SC meeting. *See* Declaration of Patrick DePoe to Makah Response, Exhibit 2, at 6. It is also
17 not reasonable to assume that Sea Shepherd would have known that the plan submitted for approval
18 by the IWC SC in 2018 would be the one selected by NMFS for its proposed regulations. In this
19 regard, it took nearly a year following the SC meeting for NMFS to present this plan in its proposed
20 regulations. Additionally, there is no basis for a claim that Sea Shepherd should have known that the
21 IWC SC’s approval of the Makah plan at the 2018 meeting signaled that this was the plan that would
22 ultimately be submitted by NMFS for approval in this proceeding. Notably, the IWC SC had also
23 approved a different Makah whaling management plan in 2012, but this plan was apparently
24 superseded by the current plan. *Id.* at 7 (“The Committee reviewed a US Management Plan for a
25 Makah hunt of gray whales off Washington State (the Committee had evaluated a previous plan in

1 2011 - IWC, 2011; 2012”), using the modelling framework developed for its rangewide review of
2 gray whales (SC/67b/Rep07).”).

3 With respect to the IWC SC, NMFS further claims that Sea Shepherd has not identified “any
4 particular study, report, or line of research that is significantly different from the information already
5 contained in the record.” NMFS’s Response, at 12. This allegation is untrue. Sea Shepherd
6 specifically identified (by way of example) two relevant studies recently submitted to the IWC SC
7 concerning the biological status of gray whales that reach the lagoons in Mexico at the end of their
8 southward migration. *See*, Sea Shepherd’s Expedited Motion To Extend Time and for Continuance
9 of Hearing (Sea Shepherd’s Motion), at 8. The referenced studies, and their general conclusions, are
10 as follows:

- 11 ■ F. Ronzón-Contreras *et al.*, *Gray whales’ body condition in Laguna San Ignacio, BCS, México, during 2019 winter breeding season*, SC/68A/CMP/13, available at
12 <https://portal.iwc.int/e/sc68a#> (login required):

13 Recent fluctuations in ocean environment conditions associated with warmer-than normal
14 sea temperatures in the North Pacific/Gulf of Alaska may disrupt seasonal primary
15 production during the summer months in the high latitudes where the gray whales feed
16 (Belles 2016). This could impact and even reduce the availability of seasonal food that
17 gray whales depend on during the summer to obtain sufficient energy to survive the
18 winter and breed successfully. Recent observations of increasing "poor" condition gray
19 whales and low calf production in the breeding and calving lagoons suggest that finding
20 sufficient food is becoming a problem for the gray whales.

- 21 ■ S. Martínez-Aguilar, *et al.*, *Gray whale (*Eschrichtius robustus*) stranding records in Mexico during the winter breeding season in 2019*, SC/68A/CMP/14, available at
22 <https://portal.iwc.int/e/sc68a#> (login required):

23 The connection between the increment of fair and poor body condition in the migration
24 route and breeding areas (Ronzón-Contreras, et al. 2019), and the high numbers of
25 stranding events including a majority of sub-adults and adults whales, is similar to
observations during and following the 1999-2000 UME event, and seems to reflect gray
whales are encountering difficulty obtaining sufficient sources of food in their feeding
areas in their North Pacific and Arctic.

1 The above-summarized conclusions concerning observed gray whale conditions due to
2 possible climate change-related effects on their food sources are contrary to (and based on more
3 recent data than) the opinions expressed in the Declaration of Dr. David Weller submitted as direct
4 testimony by NMFS. For example, Dr. Weller states:

- 5 ■ Climate change is likely to affect the availability of habitat and prey species, but species such
6 as the gray whale (which feed on both benthic and pelagic prey) have been predicted in some
7 studies, see, e.g., NMFS Ex. 3-41, at 17 (Bluhm and Gradinger 2008), to adapt better than
8 trophic specialists. April 5, 2019 Declaration of Dr. David Weller (Docket No. 5), ¶ 24.
- 9 ■ Durban et al. (2017) noted that a recent 22 percent increase in ENP gray whale abundance
10 over 2010/2011 levels is consistent with high observed and estimated calf production
11 between 2012 and 2016. *Id.*, ¶ 25.
- 12 ■ Recent increases in abundance also support hypotheses that gray whales may experience
13 more favorable feeding conditions in arctic waters due to an increase in ice-free habitat that
14 might result in increased primary productivity in the region. NMFS. *Id.*

15 Accordingly, the opinions expressed in the two IWC SC documents referenced in Sea
16 Shepherd’s Motion are most certainly “significantly different from the information already contained
17 in the record.” NMFS’s Response, at 12. Seeking consideration of such new (and contradictory)
18 scientific evidence is also not akin to asking NMFS “to supplement an EIS every time new
19 information comes to light after the EIS is finalized.” *Id.* (quoting *Marsh v. Or. Nat. Res. Council*,
20 490 U.S. 360, 373 (1989)). In this instance, NMFS has not finalized its EIS and, therefore, has a
21 statutory duty to rely upon the best available scientific evidence before finalizing its EIS analysis in
22 this matter.

23 The two new IWC SC working papers referenced by Sea Shepherd (again, only by example) also
24 counter NMFS’s argument that “the number of gray whale deaths this year do not provide an
25 appropriate basis to delay the hearing.” *Id.* Specifically, these papers may help to explain the rash
of recent gray whale strandings (standing now at 57 dead whales, including 12 additional strandings
since Sea Shepherd filed its Motion on May 10th – just 7 days ago), which may signal the beginning
of a new Unusual Mortality Event. *See Sommermeyer Decl.*, at ¶ 10. On this point, NMFS

1 speculatively states: “While we have yet to determine the cause of the increased strandings in 2019,
2 with gray whales at record numbers in recent history it would not be unexpected to see increasing
3 whale densities translate into higher mortality / strandings and lower calf production and survival.”
4 NMFS’s Response, at 13. To the extent that NMFS is arguing that the strandings are due to gray
5 whales reaching carrying capacity, it should be noted that **a reduction in carrying capacity** due to
6 climate change may also be responsible. *See* F. Ronzón-Contreras *et al.*, *Gray whales’ body*
7 *condition in Laguna San Ignacio, BCS, México, during 2019 winter breeding season*,
8 SC/68A/CMP/13, available at <https://portal.iwc.int/e/sc68a#> (login required) (“Perhaps during the
9 past decade, the ENP gray whale population has reached the current ‘carrying capacity’ of its high-
10 latitude feeding areas, and/or that the capacity for the marine environment to produce gray whale
11 prey has changed.”). In any case, this new information is relevant to the criteria for granting an
12 MMPA waiver, as all cumulative impacts must be considered, and, thus, should be considered now,
13 not “during the final decision-making and preparation of an [*sic*] Final Environmental Impact
14 Statement for this matter.” NMFS’s Response, at 13.

15 CONCLUSION

16 For the foregoing reasons, Sea Shepherd respectfully requests that Judge Jordan grant its
17 reasonable request for an extension of at least 90 days. Sea Shepherd further renews its request for
18 an expedited ruling on its motion in order to secure a decision before the May 20th deadline.

19 Dated this 17th day of May 2019

20 s/ Brett W. Sommermeyer
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REPLY IN SUPPORT OF EXPEDITED
MOTION TO EXTEND TIME AND FOR
CONTINUANCE OF HEARING

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I have served the foregoing Reply in Support of Expedited Motion for Extension
3 of Time to Submit Initial Direct Testimony and for Continuance of Hearing upon the following
4 Parties to this proceeding at the addresses indicated below via electronic mail:

| | |
|--|--|
| 5 NMFS 6 Mr. Barry Thom 7 Regional Administrator 8 NMFS, West Coast Region 9 1201 NE Lloyd Boulevard, Suite 1100 10 Portland, OR 97232 11 Barry.thom@noaa.gov | NMFS Laurie K. Beale Attorney-Advisor, Northwest Section NOAA Office of General Counsel NW 7600 Sand Point Way NE Seattle, WA 98115 laurie.beale@noaa.gov |
| 11 Makah Indian Tribe 12 Brian C. Gruber 13 Ziontz Chestnut Attorneys at Law 14 2101 4th Avenue, Suite 1230 15 Seattle, WA 98121-2331 16 Tel. (206) 448-1230 17 Fax (206) 448-0962 18 bgruber@ziontzchestnut.com | Peninsula Citizens for the Protection of Whales Margaret Owens 612 Schmitt Road Port Angeles, WA 98363 Tel. (360) 928-3048 pcpwhales@gmail.com |
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22 On the same date, I served the foregoing document to the following party first class mail to:

23 **Inanna McCarthy**
24 P.O. Box 792
25 Neah Bay, WA 98357

1 Dated this 17th day of May 2019.

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s/ Brett W. Sommermeyer
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