

HONORABLE GEORGE J. JORDAN
ADMINISTRATIVE LAW JUDGE

UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

In re:)
) Docket No. 19-NMFS-0001
Proposed Waiver and Regulations Governing)
the Taking of Eastern North Pacific Gray) RIN: 0648-BI58 and
Whales by the Makah Indian Tribe) RIN: 0648-XG584
)

**THE NATIONAL MARINE FISHERIES SERVICE'S POSITION STATEMENT
REGARDING THE HEARING DATE**

I. INTRODUCTION

The National Marine Fisheries Service (NMFS), proponent of the proposed waiver and regulations that are the subject of this proceeding, prefers that the hearing proceed on August 12, 2019, as currently scheduled. NMFS, however, would do its best to accommodate a modest extension if necessary. To assist the Court in finalizing the hearing date, NMFS provides the following information regarding NMFS's availability, venue availability, the feasibility of a bifurcated hearing, and NMFS's efforts to extend the interagency agreement securing Coast Guard ALJ services. NMFS respectfully requests an expedited ruling on the hearing date by July 3, 2019, to afford sufficient lead time to coordinate hearing logistics.

II. HEARING AVAILABILITY AND LOGISTICS

A. NMFS's Availability

With respect to August 12, 2019, all of NMFS's witnesses and counsel are available. As to September 16, 2019, which NMFS understands to be the only week in September that Judge Jordan is available, one of NMFS's lead counsel is unavailable September 16 to

18. Additionally, one of NMFS's witnesses currently has a conflict the week of September 16, but can become available if absolutely necessary. During the new fiscal year beginning October 1, NMFS is available the week of October 14.

B. Venue Availability

The hearing is currently scheduled to be held in the Henry M. Jackson Federal Building, 915 Second Avenue, 4th Floor Auditorium, Seattle, Washington 98174. NMFS has inquired about the availability of the auditorium in the event that the hearing date is postponed. The General Services Administration (GSA) has informed NMFS that the 4th Floor Auditorium, South Room, in the Jackson Federal Building is not available the week of September 16. We have attempted to determine whether the auditorium might be available for any portion of the week of September 16, but have not been provided an answer from GSA. NMFS believes that the Jackson Federal Building is the strongly preferred location for this hearing due to the security it can provide that is not readily available at other facilities. NMFS also believes that this site is large enough to accommodate the attendance of members of the public and the media. GSA has informed us that the auditorium may be available in October, but we do not have confirmation of this or for which particular dates it would be available.

C. Bifurcated Hearing

NMFS does not favor a bifurcated hearing in August and September due to the additional expenses and inefficiencies it may incur in coordinating the AV contractor, witness travel and lodging, and other hearing logistics. Given the complexity of this proceeding, NMFS is also concerned that a bifurcated approach would lead to cumulative testimony from witnesses, repetitive questioning by counsel, and ultimately extend the hearing beyond a week's time. In the event that the Court decides to hold a bifurcated hearing, NMFS's preference is for August 12 to 14, and September 19 to 20.

D. Status of the Interagency Agreement

NMFS has begun the process to extend the interagency agreement so that the ALJ's services and currently allocated funds will be available past September 30, 2019. NMFS has received approval from the Office of Personnel Management to extend the performance period of the agreement into FY 2020. Now, NMFS is seeking review and concurrence from the Coast Guard ALJ's Office, as well as the Department of Commerce Office of General Counsel, and signatures from both parties to the agreement. NMFS anticipates that this process can be completed by the end of July.

E. Request for an Expedited Ruling

NMFS respectfully requests an expedited ruling on the hearing date by July 3, 2019, to afford sufficient lead time for NMFS to coordinate the logistics for the hearing, including hiring the AV contractor, arranging hotel room blocks, and finding an alternative hearing location and security if the Jackson Federal Building auditorium is unavailable on the given date. To hire the AV contractor, the federal contracting process generally requires 60 days. NMFS is already working on this process, but the lack of a firm hearing date creates significant complications in

describing the scope of work and is likely to result in potentially significantly higher costs. The NMFS principal point of contact for a conference call about the hearing date is counsel Chris McNulty, who can be reached at (206) 526-6077.

III. CONCLUSION

For the reasons explained above, NMFS favors an August 12, 2019 hearing date, but will try to accommodate a modest extension as discussed above if necessary.

Respectfully submitted this 24th day of June, 2019.

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