

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

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

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**ORDER HOLDING NMFS’S MOTION REQUESTING REVISIONS TO PROPOSED  
REGULATIONS IN ABEYANCE AND SETTING DEADLINE FOR RESPONSE**

On October 28, 2019, the National Marine Fisheries Service filed a motion requesting the Administrative Law Judge to adopt in the Recommended Decision certain amendments to the proposed regulations. NMFS believes these revisions clarify several ambiguities and better express NMFS’s actual intentions.

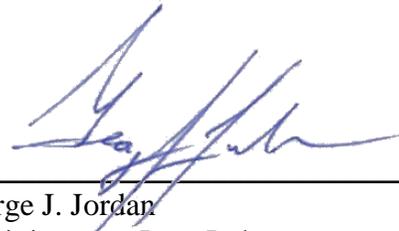
Although the procedural regulations do not specifically set a deadline for responses to motions, in this proceeding we have generally permitted ten days, as is common in many other administrative proceedings. However, given the nature and timing of NMFS’s motion, I find it unnecessary to require responses at this time. NMFS has requested that I consider its proposed revisions and incorporate them in the Recommended Decision. Thus, I am considering the motion to be argument as to why the current version of the proposed regulations, which NMFS published in the Federal Register on April 5, 2019, are flawed or inadequate in some way. See 84 Fed. Reg. 13604 (Apr. 5, 2019).

The procedural regulations give the presiding official the power to rule on motions and requests. 50 C.F.R. § 228.6(b)(3). However, the regulations are silent on the presiding official’s ability to modify the proposed regulations in any manner other than the Recommended Decision. Moreover, the hearing in this matter will commence shortly, hampering the ability of either

NMFS or myself to publish revisions in the Federal Register prior to the hearing, even assuming for the sake of argument I have the authority to do so. I am therefore holding NMFS's motion in abeyance until post-hearing filings are due.

Based on the evidence currently in the record or that adduced at the hearing, all parties may argue, either in stand-alone motions, pre-hearing briefs, or post-hearing submissions, that the proposed regulations should be adopted, modified, deleted, or otherwise changed. I will consider any such arguments when making my recommendations to the Assistant Administrator. Thus, I will permit responsive arguments to NMFS's motion at any point until the date the post-hearing briefs are due, which will be set once the transcript of the proceedings is made available to the parties.

**IT IS SO ORDERED.**



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George J. Jordan  
Administrative Law Judge

Done and dated this 5th day of November, 2019, at  
Seattle, Washington.