

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

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.*

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

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

4 1. Upon entry of the Court’s order, the instant litigation shall be stayed until June 20,  
5 2023, based on the fact that NMFS expects to complete consultation on or before June 20, 2023.

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

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

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

12 IT IS SO STIPULATED

13 Dated: April 20, 2023

Respectfully submitted,

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

18 */s/ Christian Carrara*  
19 CHRISTIAN H. CARRARA, Trial Attorney  
20 NJ Bar No. 317732020  
21 Wildlife & Marine Resources Section  
22 Ben Franklin Station, P.O. Box 7611  
23 Washington, DC 20044-7611  
24 (202) 305-0217 (t.) | (202) 305-0275 (f.)  
25 Christian.Carrara@usdoj.gov

26 *Attorneys for Defendants*

27 */s/ Catherine Kilduff*  
28 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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28