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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

**GOLDEN GATE SALMON ASSOCIATION,
NATURAL RESOURCES DEFENSE
COUNCIL, INC., DEFENDERS OF
WILDLIFE, BAY.ORG d/b/a THE BAY
INSTITUTE,**

Plaintiffs,

vs.

**WILBUR ROSS, in his official capacity as
Secretary of Commerce, CHRIS OLIVER, in
his official capacity as Assistant Administrator
for Fisheries at the National Oceanic and
Atmospheric Administration; and
NATIONAL MARINE FISHERIES
SERVICE,**

Defendants.

Case No. 1:17-cv-01172 LJO-EPG

**ORDER RESOLVING REMAINING
ISSUE RE MOTION TO COMPLETE
THE ADMINISTRATIVE RECORD
(ECF NO. 42)**

Plaintiffs’ moved to include certain additional documents in the administrative record (“AR”). ECF No. 42. On June 22, 2019, the Court issued a 25-page ruling resolving all but one issue raised in Plaintiffs’ motion. ECF No. 53. The remaining issue concerns whether the National Marine Fisheries Service (“NMFS”) should be required to include in the AR “absolute” model runs from the Winter-Run Life Cycle Model. NMFS’s Central Valley Office Branch Chief insisted in opposition to the motion that no absolute model runs existed. ECF No. 45-2 at 4-5. Plaintiffs pointed to sections of the relevant decision document that called into question this assertion, and the Court ordered NMFS to file a

1 supplemental declaration clarifying how NMFS could reach the conclusions set forth in the decision
2 document without absolute model results. ECF No. 53 at 13.

3 In response, NMFS indicated:

4 Upon reviewing the documents in the record in order to comply with the
5 Court's June 22, 2018 Order and further discussing the issue with the
6 modeling team, Ms. Marcinkevage discovered that **absolute results were
7 produced**. Supplemental Marcinkevage Decl. ¶ 4. In light of the recent
8 discovery of absolute results, Federal Defendants' arguments regarding
9 absolute results are no longer accurate and Federal Defendants withdraw
10 those statements.

11 ECF No. 55. Given this statement, the Court ORDERS that the absolute model results be added to the
12 AR by the deadlines set forth in the June 22, 2018 Order.

13 The matter does not end there, however. This admission reveals a problem of serious concern to
14 the Court, which utilized substantial and scarce resources to evaluate carefully the parties' arguments
15 regarding the absolute model results. Understanding that these issues are technically complex and that
16 agency staff may too be overburdened, this Court simply does not have the time to step in to resolve
17 matters the parties should be able to work out on their own. If in the future (in this or any related case)
18 the Court believes the parties are not doing the hard work required to present only matters that are truly
19 in dispute, it will not hesitate to issue an order to show cause re Rule 11 sanctions. If thereafter such a
20 finding is made, the result will be expensive for the offending party and attorney.

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IT IS SO ORDERED.

Dated: July 13, 2018

/s/ Lawrence J. O'Neill
UNITED STATES CHIEF DISTRICT JUDGE