

1 George Kimbrell (*Pro Hac Vice*)
 Amy van Saun (*Pro Hac Vice*)
 2 Center for Food Safety
 917 SW Oak Street, Suite 300
 3 Portland, OR 97205
 T: (971) 271-7372 / F: (971) 271-7374
 4 Emails: gkimbrell@centerforfoodsafety.org
 avansaun@centerforfoodsafety.org

5 Stephen D. Mashuda (*Pro Hac Vice*)
 6 Earthjustice
 705 Second Avenue, Suite 203
 7 Seattle, WA 98104
 T: (206) 343-7340 / F: (206) 343-1526
 8 Email: smashuda@earthjustice.org

9 Brettny Hardy (*Pro Hac Vice*)
 Earthjustice
 10 50 California St, Suite 500
 San Francisco, CA 94111
 11 T: (415) 217-2142
 Email: bhardy@earthjustice.org

12 *Counsel for Plaintiffs*

13 **THE UNITED STATES DISTRICT COURT**
 14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

15	INSTITUTE FOR FISHERIES RESOURCES, <i>et al.</i> ,)	Case No. 3:16-cv-01574-VC
16)	
17	<i>Plaintiffs,</i>)	
18	v.)	STIPULATION TO ENLARGE
19	ALEX M. AZAR II, <i>et al.</i> ,)	TIME TO RESPOND TO
20)	DEFENDANTS' MOTION FOR
21	<i>Defendants,</i>)	JUDGMENT ON THE PLEADINGS
22)	AND PROPOSED SCHEDULING
23	and)	ORDER
24	AQUABOUNTY TECHNOLOGIES, INC.,)	
25)	
26	<i>Intervenor-Defendants.</i>)	
27)	
28)	

STIPULATION TO ENLARGE TIME

Pursuant to Civil L.R. 6-2, the Parties respectfully request the Court extend the deadline for Plaintiffs' response to Federal Defendants' motion for judgment on the pleadings, ECF No. 145, and to enter a briefing schedule for the parties' remaining responses, including Plaintiffs' response (including a cross-motion), Defendants' reply and opposition to a cross-motion, and Plaintiffs' final reply.

1. On August 27, 2018, Federal Defendants made their final production of documents pursuant to the Court's January 10 Order. In accordance with the Amended Protective Order, ECF No. 140, Federal Defendants provided most documents unredacted, holding any claims of deliberative process privilege to be determined once Plaintiffs identify which documents they intend to use in summary judgment briefing. However, Federal Defendants withheld under claims of deliberative process privilege thirty-two unique interagency documents, and are currently in the process of reaching out to those agencies to determine whether they will agree to the production of those documents in unredacted form pursuant to the Amended Protective Order. Plaintiffs have yet to receive those documents, but Federal Defendants estimate they will be produced by the end of this week, or October 5.

2. On August 30, 2018, Federal Defendants moved for judgment on the pleadings as to four of Plaintiffs' claims, ECF No. 145. On the same day, the parties moved jointly for an extension of time for Plaintiffs to respond, as had been negotiated by the parties prior to the filing of the motion. ECF No. 146. The parties requested, and the Court granted, an extension for Plaintiffs' response until October 5, with Defendants' reply due October 22. ECF No. 149.

3. On September 13, 2018, Magistrate Corley held a status conference regarding the administrative record, holding the deadline for the filing of the final administrative record in abeyance pending the resolution of the deliberative process privilege issues. ECF No. 152. On September 27, 2018 the parties again appeared before Magistrate Corley to discuss the remaining issues for completing the record. Federal Defendants are still working to resolve the interagency confidential document processes and produce documents to Plaintiffs, to complete their production of the administrative record.

1 4. Plaintiffs are currently working to review the documents produced at the end of
2 August, and are waiting to review the several withheld interagency documents once they are
3 produced. Pursuant to the Amended Protective Order, Plaintiffs must identify for Defendants
4 certain documents designated as Confidential Information they wish to rely upon in their
5 briefing, and provide fourteen days notice in advance of the intended use. ECF No. 140 at ¶ 14.
6 Accordingly, Plaintiffs seek to build in time to both finish reviewing the record documents and to
7 provide for the fourteen days notice to Defendants of any intended use of documents designated
8 as Confidential, pursuant to the Protective Order.

9 5. In conjunction with their opposition to Federal Defendants' motion for judgment
10 on the pleadings, Plaintiffs intend to file a cross-motion.

11 6. The parties have met and conferred regarding a schedule for the remaining
12 briefing on the pending motion for judgment on the pleadings and accordingly propose the
13 following deadlines to complete briefing on the pending motion:

14	Oct. 26	Plaintiffs' Opp/Cross-Motion for Judgment on Pleadings
15	Dec. 17	Defendants' Reply/Opp to Pls. Cross-Motion for Judgment on the Pleadings
16	Jan. 14	Plaintiffs' Reply in Support of its Cross-Motion for Judgment on the Pleadings
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18		

19
20 7. Plaintiffs are still completing review of the administrative record at the same time
21 as the Motion for Judgment on the Pleadings briefing. Accordingly Plaintiffs will be filing a
22 cross-motion, but based on their review of the record, and the privileged document processes
23 described above, are unsure at this time whether that motion will be a cross-motion for judgment
24 on the pleadings or a cross-motion for summary judgment on the specific claims at issue. In the
25 event Plaintiffs file a cross-motion for summary judgment instead on those claims, the Parties
26 agree to re-consider the above schedule and submit a new scheduling proposal to the Court.

27
28 Respectfully submitted this 3rd day of October, 2018 in Portland, Oregon.

1 /s/ George Kimbrell

2 George Kimbrell (*Pro Hac Vice*)
3 Amy van Saun (*Pro Hac Vice*)
4 Center for Food Safety
5 917 SW Oak Street, Suite 300
6 Portland, OR 97205
7 T: (971) 271-7372 / F: (971) 271-7374
8 Emails: gkimbrell@centerforfoodsafety.org
9 avansaun@centerforfoodsafety.org

7 Stephen D. Mashuda (*Pro Hac Vice*)
8 Earthjustice
9 705 Second Avenue, Suite 203
10 Seattle, WA 98104
11 T: (206) 343-7340 / F: (206) 343-1526
12 Email: smashuda@earthjustice.org

11 Brettmy Hardy (*Pro Hac Vice*)
12 Earthjustice
13 50 California St, Suite 500
14 San Francisco, CA 94111
15 T: (415) 217-2142
16 Email: bhardy@earthjustice.org

15 *Counsel for Plaintiffs*

16 JOSEPH H. HUNT
17 Assistant Attorney General

18 /s/ Mary M. Englehart

19 MARY M. ENGLEHART
20 Trial Attorney, Maryland Bar
21 Consumer Protection Branch
22 United States Department of Justice
23 450 Fifth St., N.W., Suite 6400 South
24 Washington, D.C. 20530
25 T: (202) 307-0088 / F: (202) 514-8742
26 Email: Megan.Englehart@usdoj.gov

24 JEFFREY H. WOOD
25 Acting Assistant Attorney General

26 Marissa A. Piropato
27 Trial Attorney, Massachusetts Bar #651630
28 Frederick H. Turner
29 Trial Attorney
30 United States Department of Justice
31 Environment & Natural Resources Division

1 Benjamin Franklin Station, P.O. Box 7611
2 Washington, D.C. 20044-7611
3 T: (202) 305-0470 / F: (202) 305-0506 (Piropato)
4 T: (202) 305-0641 / F: (202) 305-0275 (Turner)
5 Email: Marissa.piropato@usdoj.gov
6 Email: Frederick.turner@usdoj.gov

7 *Attorneys for Federal Defendants*

8 /s/ Karen E. Carr

9 KAREN ELLIS CARR

10 ARENT FOX LLP

11 Stanley H. Abramson (DC Bar 217281) (*Pro Hac*
12 *Vice*)

13 Donald C. McLean (DC Bar 412268) (*Pro Hac*
14 *Vice*)

15 Karen Ellis Carr (DC Bar 975480) (*Pro Hac Vice*)

16 1717 K Street, NW

17 Washington, D.C. 20006-5344

18 T: (202) 857-6000 / F: (202) 857-6395

19 Email: stanley.abramson@arentfox.com

20 Email: donald.mclean@arentfox.com

21 Email: karen.carr@arentfox.com

22 *Attorneys for Intervenor-Defendant AquaBounty*
23 *Technologies, Inc.*

1 **ATTESTATION**

2 Pursuant to Local Rule 5-1(i)(3), I attest that I am the ECF user whose user ID and
3 password are being used in the electronic filing of this document.

4
5 /s/ George Kimbrell

6 George Kimbrell

7 **CERTIFICATE OF SERVICE**

8 I hereby certify that on this 3rd day of October, 2018, a true and correct copy of the
9 foregoing document was filed electronically with the Clerk of the Court using CM/ECF. I also
10 certify that the foregoing document is being served on all counsel of record via transmission of
11 Notices of Electronic Filing generated by CM/ECF.

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13 /s/ George Kimbrell

14 George Kimbrell

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~~PROPOSED~~ ORDER

In consideration of the foregoing stipulation, the schedule for completing briefing on Defendants' pending Motion for Judgment on the Pleadings (ECF No. 145) and any cross-motion by Plaintiffs is ordered as follows:

Oct. 26	Plaintiffs' Opp/Cross-Motion for Judgment on Pleadings
Dec. 17	Defendants' Reply/Opp to Pls. Cross-Motion for Judgment on the Pleadings
Jan. 14	Plaintiffs' Reply in Support of its Cross-Motion for Judgment on the Pleadings

IT IS SO ORDERED.

Dated: October 4, 2018


The Honorable Vince Chhabria
UNITED STATES DISTRICT JUDGE