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17 IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 18 OAKLAND DIVISION

19 CENTER FOR BIOLOGICAL DIVERSITY,)
 20 *et al.*,)
 21 Plaintiffs,)
 22 v.)

4:12-cv-6325 SBA

**JOINT ~~PROPOSED~~ SCHEDULE AND
 STIPULATION**

23 EXPORT-IMPORT BANK OF THE)
 UNITED STATES, *et al.*,)
 24)
 25 Defendants.)

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1 The Parties hereby update the Court on their discussions regarding the administrative record and
2 jointly propose and stipulate to the following schedule for further proceedings in this case:

3 **Current Procedural Posture**

4 Defendants filed their Motion to Dismiss the First Claim for Relief on November 12, 2013, and
5 the motion has been fully briefed since December 10, 2013.¹ See ECF No. 41. A hearing on the motion
6 was originally scheduled for January 21, 2014 but was removed from the calendar. On May 30, 2014,
7 the Parties jointly filed a notice pursuant to Civil L.R. 7-13, as Defendants' motion has been under
8 submission for more than 120 days.

9 While Defendants' motion to dismiss has been pending, the Parties have been conferring in an
10 attempt to resolve any disputes regarding the administrative record. On December 19, 2013, Defendants
11 filed and produced the administrative record and privilege log. Plaintiffs raised several questions and
12 concerns regarding the sufficiency of the record and log, and, in response, Defendants agreed to
13 supplement and revise the record, indices, and log. In their February 24, 2014 Case Management
14 Report, the Parties agreed that Defendants would provide a revised privilege log by February 28, 2014
15 and would supplement the record, as appropriate, by March 27, 2014. See ECF No. 50. However, the
16 Court continued the March 5, 2014 and May 7, 2014 Telephonic Case Management Conferences and did
17 not enter a scheduling order. Defendants provided Plaintiffs with revised administrative record indices
18 and a revised privilege log by February 28, 2014, and with supplemental and revised administrative
19 record documents over the past several months. Defendants filed a revised and amended administrative
20 record with the Court on May 29, 2014.

21 **Proposed Schedule for Further Proceedings**

22 The Parties believe this case can be resolved on cross-motions for summary judgment based
23 upon the administrative record.² While Plaintiffs do not concede that the scope of the record, including
24

25 ¹ Defendants' motion to dismiss only addresses Plaintiffs' Endangered Species Act ("ESA") claim;
26 Defendants have not moved to dismiss Plaintiffs' National Historic Preservation Act ("NHPA") or
27 Freedom of Information Act ("FOIA") claims.

28 ² If Defendants rely on redacted information or withheld documents to support their summary judgment
motion, Plaintiffs reserve the right to challenge Defendants' reliance on and/or privilege designations for
any such documents. Plaintiffs and Defendants further reserve the right to assert, as necessary and

1 all redactions and exclusions, is legally sufficient or would be appropriate in other circumstances, the
2 Parties have nevertheless agreed that summary judgment briefing can and should proceed as soon as the
3 Court resolves Defendants' pending motion to dismiss.

4 Additionally, the Parties recognize that the administrative record contains many very lengthy
5 documents. Defendants' revised and amended administrative record contains nearly 50,000 pages. At
6 the November 13, 2013 case management conference, the Court had requested a courtesy hard copy of
7 the administrative record. Given the on-going discussions regarding the adequacy of the record, and the
8 revisions and amendments thereto, Defendants have not yet provided that courtesy copy. Such a hard
9 copy, however, would fill nearly 50 four-inch binders. Rather than burden the Court with that much
10 paper, the Parties have agreed and propose that, at the close of summary judgment briefing, Defendants
11 will provide the Court with a hard-copy appendix containing those portions of the administrative record
12 to which the Parties cite in briefing.

13 Based upon the foregoing, the Parties hereby propose and stipulate to the following schedule:

- 14 (1) The Parties will propose a summary judgment briefing schedule within 10 days of the
15 Court's order granting or denying Defendants' motion to dismiss.
- 16 (2) Within the 21-days of the last brief allowed for in the summary judgment briefing schedule,
17 Defendants will submit to the Court an appendix containing the administrative record
18 documents (or relevant portions thereof) to which the Parties cited.

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20 Dated: May 30, 2014

Respectfully submitted,

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appropriate, any applicable exceptions to the rules governing review based upon an administrative
record and/or any defenses to any such assertions.

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4 *Attorneys for Defendants*

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6 **ATTORNEY ATTESTATION OF CONCURRENCE**

7 I hereby attest that I have obtained concurrence in this filing for the signature of Plaintiffs'
8 counsel indicated by a "conformed" signature ("/s/") within this e-filed document.

9
10 DATED: May 30, 2014

11
12 /s/ Kristofor R. Swanson
13 Kristofor R. Swanson

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18 PURSUANT TO STIPULATION, IT IS SO ORDERED:

19
20 6/2/2014
21 Date

22 
23 SAUNDRA BROWN ARMSTRONG
24 United States District Judge
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