

1 Catherine Kilduff (CA Bar No. 256331)
2 Kristen Monsell (CA Bar No. 304793)
3 Miyoko Sakashita (CA Bar No. 239639)
4 CENTER FOR BIOLOGICAL DIVERSITY
5 1212 Broadway, St. #800
6 Oakland, CA 94612
7 Phone: (510) 844-7100
8 Facsimile: (510) 844-7150
9 ckilduff@biologicaldiversity.org
10 kmonsell@biologicaldiversity.org
11 miyoko@biologicaldiversity.org

12 *Attorneys for Plaintiffs*
13 *Center for Biological Diversity and*
14 *Turtle Island Restoration Network*

15 **IN THE UNITED STATES DISTRICT COURT**
16 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
17 **OAKLAND DIVISION**

18 CENTER FOR BIOLOGICAL DIVERSITY,
19 and TURTLE ISLAND RESTORATION
20 NETWORK,

21 Plaintiffs,

22 v.

23 WILBUR ROSS, Secretary of Commerce, and
24 NATIONAL MARINE FISHERIES SERVICE,

25 Defendants.

Case No. 19-cv-03135-KAW

**DECLARATION OF MARK C.
STABB IN SUPPORT OF
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

Date: Thursday, December 5, 2019
Time: 1:30 pm
Place: 1301 Clay Street, Oakland, CA
Magistrate Judge: Honorable Kandis
Westmore

26 I, Mark Stabb, declare as follows:

27 1. The facts set forth in this declaration are based on my personal knowledge and if
28 called as a witness, I could and would competently testify thereto under oath.

2. I am a resident of Solana Beach, California, and am a member of Turtle Island
Restoration Network ("TIRN"). I became a member in 2009 because I was interested in TIRN's
Pacific Ocean research diving off of Cocos Island in Costa Rica. I now participate as a volunteer

1 researcher for the shark and sea turtle studies at least once a year, sometimes twice. Shark
2 species I have studied include scalloped hammerhead, Galapagos, silky, blacktip, and tiger.
3 Turtle species I have studied include hawksbill and green sea turtles. I have participated in over
4 300 dives supporting the research conducted by TIRN at Cocos Island. TIRN's on-line
5 newsletter informs me of other conservation and public education activities of TIRN. I rely on
6 TIRN to represent my interest in conserving endangered species and their habitats.

7 3. By profession I am an engineer. I have used my professional expertise to assist
8 the research team in Cocos Island in the areas of IT support, hardware maintenance, and gear
9 modification and creation. My background as a practicing mechanical engineer has been useful
10 in a supporting role for these marine conservation research projects.

11 4. I have been a certified diver since 2002. Since then, I have logged over 1400
12 dives in a variety of conditions ranging from cold water dives off the California coast to warm
13 water dives in Hawaii and elsewhere around the world, both for recreational purposes and for
14 marine research support. In California I have assisted in research for the Catalina Conservancy
15 Divers by collecting long-term data on populations of fish, marine invertebrates, and marine
16 plants at a number of sites around Catalina Island in the California Channel Islands.

17 5. I scuba dive up and down the California Coast, about once or twice a month. Most
18 of my experience in California is scuba diving from shore or boat in southern and central
19 California. Most often I dive off San Diego, near my residence, but I also travel further north to
20 the Channel Islands, and occasionally as far north as Monterey Bay. When diving I am looking
21 to find interesting wildlife to see, like marine mammals and large pelagics like sharks and sea
22 turtles. Additionally, I appreciate the overall ecosystems I am diving in, for example examining
23 the whole diversity of the kelp forest or coral reef where the dive is taking place.

24 6. With respect to marine mammals in California, I often see California sea lions,
25 harbor seals, and gray whales. I am always keeping an eye out for dolphins or whales, but have
26 never seen them underwater in California although I know people who have. I see dolphins and
27 gray whales commonly while motoring to dive sites.

1 7. I also look for sharks of various species. Specifically off San Diego I look for and
2 have seen sevengill sharks, leopard sharks, and horn sharks. I am hopeful that I will see
3 something big, like a manta ray, while diving. I believe that the bigger sharks that do not usually
4 come close to shore, like the sevengill shark, are at risk of being caught on pelagic longlines
5 fishing off California.

6 8. I am always looking for a sea turtle when I am on the ocean and in the water,
7 including leatherbacks and loggerheads. Four years ago I saw a small green sea turtle while
8 diving off San Diego. When I am diving off Cocos Island in Costa Rica, I am doing active work
9 diving from a boat to look for sharks and sea turtles.

10 9. I also look for marine wildlife from shore, whale watching boats or from the dive
11 boats that we take offshore to dive. Just a month ago, after one of our dive trips off the San
12 Diego coast we motored to deeper waters to look for whales and sea turtles about two to three
13 miles offshore, and were disappointed not to see any. While it is always a wonderful experience
14 to catch a glimpse of a big marine mammal, it is an unfortunately infrequent occurrence these
15 days.

16 10. Perhaps ten to twelve years ago, while crossing the open water to Catalina Island,
17 I saw a blue whale. Catalina Island is about 25 miles off the coast toward Los Angeles. The
18 captain announced that a blue whale was off one side of the ferry. It was amazing to see a blue
19 whale. I know blue and fin whales are in the area. I would like more wildlife to fill our oceans so
20 that the encounters can be serendipitous.

21 11. On another occasion five years ago or so, after a dive off La Jolla, California, my
22 fellow divers and I saw a gray whale swimming with what appeared to be a buoy trailing behind
23 it. We alerted the San Diego Lifeguards, who investigated. It was determined the whale was
24 tangled in fishing gear and appeared to have been struggling for some time. Thankfully the
25 lifeguards were able to free the whale from its entanglement, but that episode really brought
26 home to me the negative impact that people can have on the environment and the animals in it. I
27
28

1 was excited to see a whale that close to shore, but I was also depressed to see it struggling and to
2 find out that it was due to careless human activities.

3 12. My interests in marine wildlife, and why I care about industrial fishing practices
4 like longline fishing, are primarily recreational and moral. I enjoy going to the ocean, whether on
5 the shore, on a boat, or in the water, to observe and research marine wildlife. The enjoyment I
6 derive from these activities comes from watching the wildlife, not taking it from its habitat.

7 13. From a moral standpoint, I believe that humans are using up too much of the
8 planet. Methods like longline fishing are not a long-term sustainable endeavor because it
9 wastefully catches endangered animals. Nature is not an economic opportunity to exploit. Rather,
10 we have a moral obligation to understand our role in the ecosystem, and even when we have a
11 need to use natural resources, we should be doing so in a responsible and sustainable manner.

12 14. Even when I am not taking part in a coastal activity, knowing that humans are
13 despoiling part of the natural world by catching endangered species on longlines disappoints and
14 depresses me. I am concerned that leatherback sea turtles are going extinct and will be pushed
15 closer to that endpoint by the longline fishing permit. I am also concerned that other animals that
16 might not be endangered now could become endangered if fishing practices are not well-
17 managed and highly selective. I believe the original conservation reasons supporting a ban on
18 longline fishing were valid, and without any clear evidence that the original science has changed
19 or been superseded, I see no reason that the fishery should be re-opened.

20 15. I am concerned about the issuance of the longline fishing permits off California
21 because it is a reversal of the policy that kept the fishery closed for years over the concerns of
22 bycatch and damage to endangered species. I am worried that these problems still exist, that the
23 longlines unintentionally catch marine wildlife that they should not be catching. I worry that I
24 will not be able to see the marine mammals, sea turtles, and sharks that I frequently see and look
25 for off California because of entanglements in fishing gear. The potential extinction of sea
26 turtles, sharks, and marine mammals bothers me because I want to know that these animals are
27 alive in the Pacific Ocean, even if I do not see them.

1 16. I have personal knowledge of the facts set forth in this declaration. If called as a
2 witness, I could and would testify to these facts. As to those matters that reflect an opinion, they
3 reflect my personal opinion and judgment. I declare under penalty of perjury that the foregoing
4 declaration is true and correct to the best of my knowledge. I executed this declaration on
5 September 11, 2019.

6 
7 _____
8 Mark Stabb
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28