

1 181. The Tuna Canners do not add methylmercury to canned tuna. Joint
2 Stipulation of Facts, p. 5. It is undisputed that there is no currently known way to remove
3 methylmercury from tuna or canned tuna products. *Id.*

4 **III. VIRTUALLY ALL METHYLMERCURY IN TUNA IS NATURALLY**
5 **OCCURRING**

6 182. It is undisputed that methylmercury is not deposited in the ocean as a result of
7 industrial pollution. Fitzgerald, 23 Tr. 2932:23-27; Morel, 8 Tr. 872:13-25. As noted above,
8 methylmercury is created biologically by the methylation of elemental mercury by SRBs or
9 through a chemical process in deep ocean vents.

10 183. In order for there to be a relationship between the methylmercury in the ocean
11 and human generated pollution, inorganic mercury would have to be methylated in the mixed
12 layer, the thermocline or the coastal regions. *See, e.g.*, TX 647. Dr. Morel testified
13 persuasively that neither the methylation of mercury nor methylmercury itself has been
14 observed in the mixed layer of the open ocean. Morel, 9 Tr. 1016:18-20; 25 Tr. 3174:8-12;
15 TX 146, p. 1900.

16 184. There is no dispute that most of the methylmercury in the ocean exists
17 completely independently of human activity. The State's expert, Dr. Fitzgerald, concedes
18 that between fifty and seventy-five percent of the ocean's methylmercury is naturally
19 occurring. Fitzgerald, 23 Tr. 2861:9-27. Dr. Morel testified that at least ninety-five percent
20 of the methylmercury in the ocean is naturally occurring. Morel, 8 Tr. 956:13-15; 25 Tr.
21 3217:16-19. Indeed, Dr. Morel stated that the amount of methylmercury in the deep ocean
22 that is anthropogenic is more likely 1.5% ("the best number"). Morel, 8 Tr. 954: 25-26. As
23 for the percentage of methylmercury in tuna that is anthropogenic, according to Dr. Morel,
24 "It is either zero or 1.5 per cent." Morel, 8 Tr. 954: 27-28. As detailed below, this Court
25 finds Dr. Morel's opinion is more credible and better supported by the evidence presented.

26 185. Dr. Morel's opinion is based on: (1) comparisons of mercury concentration
27 levels in century-old museum fish to modern fish; (2) a scientific study he conducted with a
28 team of other scientists published in 1998 in which they found no difference in