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*Attorneys for Federal Defendants*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

CONSERVATION COUNCIL FOR  
HAWAI'I; CENTER FOR  
BIOLOGICAL DIVERSITY;  
DEFENDERS OF WILDLIFE;  
NATIONAL PARKS  
CONSERVATION ASSOCIATION;  
NATURAL RESOURCES DEFENSE  
COUNCIL; SIERRA CLUB; and  
WILDEARTH GUARDIANS

Plaintiffs,

v.

CIVIL NO. 1:21-cv-00040-JAO-  
KJM

**STIPULATION TO STAY  
PROCEEDINGS FOR 60 DAYS;  
ORDER**

SCOTT de la VEGA, Acting Secretary  
of the Interior; U.S. FISH AND  
WILDLIFE SERVICE; WYNN  
COGGINS, Acting Secretary of  
Commerce; and NATIONAL MARINE  
FISHERIES SERVICE,

Federal Defendants.

The parties in the above-captioned case stipulate to a stay of proceedings for 60 days. In support of the joint stipulation, the parties set forth the following reasons:

1. This case<sup>1</sup> challenges an Endangered Species Act (“ESA”) final rule promulgated by U.S. Fish and Wildlife Service within the U.S. Department of the Interior, and the National Marine Fisheries Service within the National Oceanic and Atmospheric Administration, U.S. Department of Commerce. *See* 85 Fed. Reg. 81411 (Dec. 16, 2020) (Habitat Definition Rule).
2. On January 14, 2021, Plaintiffs filed a complaint in this Court challenging the Habitat Definition Rule. ECF 1.
3. Federal Defendants’ responsive pleading is due on March 19, 2021.
4. On January 20, 2021, President Biden issued an Executive Order entitled

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<sup>1</sup> There is another case challenging the same rule, *State of California v. de la Vega*, 21-cv-00440-JST (N.D. Cal.), filed in the Northern District of California. Federal Defendants and State-Plaintiffs in that case will be filing a similar stipulated motion once the complaint is served.

“Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.” In conformance with the Executive Order, Federal Defendants are reviewing many rules promulgated in the last four years, including the final rule at issue in this case.

5. Agencies have inherent authority to review past decisions and to revise, replace, or repeal a decision to the extent permitted by law and supported by a reasoned explanation. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *Motor Vehicle Mfrs. Ass’n v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 42 (1983); *Sierra Club v. Van Antwerp*, 560 F. Supp. 2d 21, 23 (D.D.C. 2008).

An agency’s interpretation of a statute it administers is not “carved in stone” but must be evaluated “on a continuing basis,” for example, “in response to . . . a change in administrations.” *Nat’l Cable & Telecomm. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005) (internal quotation marks and citations omitted).

6. The Parties request a stay of proceedings for 60 days to give appropriate officials adequate time to review the final rule and determine how they would like to proceed with this litigation. Accordingly, the Parties respectfully request that the Court enter an order staying this case for a period of 60 days, continue the Rule 16 Scheduling Conference, which is currently set for March 15, 2021 (ECF 5), and vacate any pending deadlines, including those associated with the Rule 16 Scheduling Conference. At the end of the stay, the Parties will provide a joint

status report proposing further proceedings.

7. Granting this motion will not prejudice any party, will conserve the Parties' resources, and will promote the interest of judicial economy.

DATED: February 9, 2021.

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*Attorneys for Plaintiffs*

APPROVED AND SO ORDERED.

DATED: Honolulu, Hawai‘i, February 10, 2021.



  
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Kenneth J. Mansfield  
United States Magistrate Judge

*Conservation Council for Hawai‘i, et al. v. de la Vega, et al.*, Civil No. 1:21-cv-00040-JAO-KJM; STIPULATION TO STAY PROCEEDINGS FOR 60 DAYS; ORDER