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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

**JOINT STATUS REPORT AND
STIPULATION FOR STAY OF
PROCEEDINGS; ORDER**

DEBRA HAALAND, Secretary of the Interior; U.S. FISH AND WILDLIFE SERVICE; GINA M. RAIMONDO, Acting Secretary of Commerce; and NATIONAL MARINE FISHERIES SERVICE,

Federal Defendants.

In accordance with the Court's order, the parties submit the following joint status report and stipulate to a continued stay of proceedings.

1. This case¹ 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. 81,411 (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. On January 20, 2021, President Biden issued an Executive Order entitled "Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis." In conformance with the Executive Order,

¹ 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. That case has been stayed for 60 days, and State-Plaintiffs in that case have agreed to extend the existing stay for another 60 days.

Federal Defendants are reviewing many rules promulgated in the last four years, including the final rule at issue in this case.

4. On February 9, 2021, the Parties requested 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. The Court granted that request on February 10, 2021. ECF 12.

5. Over the last 60 days, Federal Defendants have discussed internally how the agencies intend to proceed with the contested regulation. These discussions have been aided by the recent confirmations of Secretaries of the Interior and Commerce. Based on those discussions, on April 9, 2021, Federal Defendants informed Plaintiffs' counsel that they need time to address the contested regulation and this litigation. Plaintiffs have indicated that they do not oppose a stay provided that the following conditions are met.

Plaintiffs' Conditions:

6. If the additional stay is granted, Federal Defendants will take the first 14-21 days to finalize a proposed plan forward for the regulation. At the conclusion of that process, Federal Defendants will meet and confer with Plaintiffs on the proposed plan and begin discussions on whether the Parties can come to agreement on a pathway forward.

7. Pursuant to Fed. R. Civ. P. 15(a)(2), Federal Defendants consent to Plaintiffs

filing an amended complaint during the pendency of this stay. Federal Defendants will file a responsive pleading to the amended complaint within 14 days of any expired stay.

8. Federal Defendants do not currently have timelines for producing the administrative record. By May 17, 2021, the agencies will prepare a good faith estimate as to when the administrative record can be filed with the Court.

9. For the above stated reasons, the Parties jointly request the Court to continue the stay of proceedings in this case until May 17, 2021, subject to the commitments above.

DATED: April 12, 2021.

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APPROVED AND SO ORDERED

DATED: Honolulu, Hawaii, April 13, 2021.





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; JOINT STATUS REPORT AND STIPULATION FOR STAY OF PROCEEDINGS; ORDER