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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF HAWAI'I

CONSERVATION COUNCIL FOR
HAWAI'I, et al.,

Plaintiffs,

v.

DEBRA HAALAND, U.S. Secretary
of the Interior, et al.,

Defendants.

Civil No. 1:21-00040 JAO-KJM

SECOND JOINT STATUS REPORT
RE: STIPULATION REGARDING
HABITAT DEFINITION RULE [ECF
28]

Counsel for Federal Defendants consulted with counsel for Plaintiffs and provide this status report on the U.S. Fish and Wildlife Service's ("FWS") and the National Marine Fisheries Service's ("NMFS") (collectively, the "Services") implementation of the Stipulation Regarding the Habitat Definition Rule (ECF 28).

1. Plaintiffs filed a Complaint on January 14, 2021, challenging the Services' Habitat Definition Rule, 85 Fed. Reg. 81411 (Dec. 16, 2020).

2. On July 8, 2021, the Services transmitted a draft proposed rescission rule ("Proposed Rescission Rule") to the Office of Management and Budget ("OMB") for review under Executive Order 12866 (Sept. 30, 1993).

3. With the Services' initiation of rulemaking to rescind the Habitat Definition Rule, the Parties stipulated to stay the case pending completion of the Services' rulemaking process or until June 16, 2022, whichever is earlier. See Stipulation and Order (ECF 28) ¶ 8. The Court granted the stay (ECF 28) and ordered the parties to file a status report every 90 days (ECF 29).

4. Under Paragraph 5.a. of the Stipulation, the Services submitted the Proposed Rescission Rule to the Office of Federal Register by October 18, 2021. The Proposed Rescission Rule was published in the Federal Register on October 27, 2021. *See* 86 Fed. Reg. 59353.

5. Under paragraph 5.b. of the Stipulation, the Services provided an initial 30-day public comment period, 86 Fed. Reg. at 59353, and extended it an

additional 15 days to December 13, 2021, 86 Fed. Reg. 67013.

6. Under paragraph 5.c., and as applicable here, the Services agreed to submit a final rule to OMB under Executive Order 12866 by March 7, 2022. Based on progress made to date, the Services believe they are on track to satisfy this condition in the Stipulation.

7. Under paragraph 6, the Services agreed to notify Plaintiffs before finalizing guidance relating to application of the Habitat Definition Rule during the rulemaking process. ECF 28 ¶ 6. At this time and given the status of the rulemaking, the Services do not plan to finalize any guidance relating to application of the Habitat Definition Rule.

DATED: February 14, 2022

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