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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAI‘I

CONSERVATION COUNCIL FOR
HAWAI‘I, a non-profit corporation, and
MICHAEL NAKACHI, an individual,

Plaintiffs

v.

WILBUR L. ROSS, in his official
capacity as Secretary of the United
States Department of Commerce;
NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION,
Department of Commerce; NATIONAL
MARINE FISHERIES SERVICE,
Department of Commerce,

Defendants.

Civ. No. 1:20-cv-00143 ACK-KJM

STIPULATED MOTION TO STAY
THE CASE AND ORDER

Judge: Hon. Alan C. Kay

STIPULATED MOTION TO STAY THE CASE AND ORDER

Plaintiffs Conservation Council for Hawai'i and Michael Nakachi (“Plaintiffs”) and Defendants Wilbur Ross, in his official capacity as Secretary of the United States Department of Commerce (“Secretary”), the National Oceanic and Atmospheric Administration (“NOAA”), and the National Marine Fisheries Service (“NMFS”) (collectively, “Defendants”) by and through their undersigned counsel, state as follows:

WHEREAS, on April 2, 2020, Plaintiffs filed a Complaint alleging violations of the Magnuson-Stevens Fishery Conservation and Management Act (“Magnuson-Stevens Act”), 16 U.S.C. §§ 1801-1891d, and the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701-06;

WHEREAS, Plaintiffs’ Complaint, ECF No. 1, asserts that Defendants failed to immediately notify the Western Pacific Fishery Management Council (“Council”) pursuant to Magnuson-Stevens Act Section 304(e), 16 U.S.C. § 1854(e), that the oceanic whitetip shark is overfished and subject to overfishing and arbitrarily and capriciously concluded in its annual status of fisheries report to Congress that it is “unknown” whether the oceanic whitetip shark in the Western and Central Pacific is overfished or subject to overfishing;

WHEREAS, on April 10, 2020, the NMFS Pacific Islands Fisheries Science Center (“PIFSC”) found that the Western and Central Pacific Fisheries

Commission's 2019 stock assessment, which considered the oceanic whitetip shark in the Western and Central Pacific to be overfished and experiencing overfishing, was the best scientific information available for determining the status of the stock and for use in management of the stock. *See* Attachment 1;

WHEREAS, on May 1, 2020, the NOAA Assistant Administrator for Fisheries, after considering the PIFSC finding, determined that the Western and Central Pacific Ocean stock of oceanic whitetip sharks is subject to overfishing and is overfished ("status determination"), and Defendants sent this status determination to the Council by letter on the same date. *See* Attachment 1;

WHEREAS, Defendants advised the Council in the letter that it is obligated to respond to the status determination pursuant to Section 304(i) of the Magnuson-Stevens Act, 16 U.S.C. § 1854(i), because the overfishing of the oceanic whitetip shark is due largely to excessive international fishing pressure and because the international fishery management commission has not adopted management measures that will end overfishing and rebuild the stock;

WHEREAS, Defendants advised the Council by letter that it is required, pursuant to Section 304(i) of the Magnuson-Stevens Act, to:

1. Within one year, develop and submit recommendations to the Secretary of Commerce for domestic regulations to address the relative impact of fishing

vessels of the United States on the Western and Central Pacific oceanic whitetip shark stock; and

2. Develop and submit recommendations to the Secretary of State and to Congress for international actions that will end overfishing and rebuild the Western and Central Pacific oceanic whitetip shark stock, taking into account the relative impact of vessels of other nations and vessels of the United States on the stock;

WHEREAS, in or about August 2020, NOAA expects to transmit the status determination to the Office of the Federal Register for publication, and post the status determination on its website as a quarterly update;

WHEREAS, NOAA expects to include the new status determination in the 2020 Annual Report to Congress, which is anticipated in or about June 2021;

WHEREAS, the Parties believe that it is in the interests of the Parties and the Court to stay the case until NOAA publishes the status determination in a Federal Register notice and posts the status determination on its website in order to conserve resources and time. *Landis v. North American Co.*, 299 U.S. 248, 255 (1936) (“[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.”);

NOW, THEREFORE, the Parties hereby stipulate as follows:

1. The Parties agree to a stay of this litigation pending the: 1) publication of the status determination in a Federal Register notice; and 2) posting of the status determination as a quarterly update on NOAA's website. Defendants agree to notify Plaintiffs when each of these events occurs.
2. Upon Defendants' notification that the events in Paragraph 1 have occurred, the Parties shall jointly and promptly stipulate to the dismissal of Plaintiffs' claims in this litigation without prejudice. Notwithstanding dismissal of this action without prejudice, Plaintiffs agree not to bring or join any court proceeding alleging that Defendants have unlawfully failed to notify the Western Pacific Fisheries Management Council that oceanic whitetip sharks are overfished and subject to overfishing.
3. In dismissing this action, the Parties agree that each Party shall bear its own attorneys' fees and costs incurred as a result of this litigation.
4. This stay shall expire on December 31, 2020, or upon the Parties' joint notice of dismissal, whichever occurs first. This Stipulation may be modified, and the stay may be terminated or extended, by written stipulation of all Parties filed with and approved by the Court.
5. Plaintiffs' sole remedy for an alleged violation of this Stipulation is to petition the Court to lift the stay and to recommence the litigation. If the stay

is lifted and litigation recommenced, Defendants reserve all their defenses and arguments.

6. No part of this Stipulation shall have precedential value in any litigation or in representations before any court or forum in any public setting. Except as expressly provided in this Stipulation, the Parties do not waive or relinquish any legal rights, claims, or defenses they may have.

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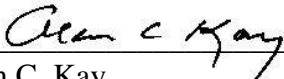
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APPROVED AND SO ORDERED.
DATED: Honolulu, Hawai'i, June 29, 2020.





Alan C. Kay
Sr. United States District Judge