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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

CONSERVATION COUNCIL FOR
HAWAI'I, *et al.*,

Plaintiffs,

v.

NATIONAL MARINE FISHERIES
SERVICE, *et al.*,

Defendants.

) CIVIL NO. 13-00684 SOM RLP
)
) PLAINTIFFS CONSERVATION
) COUNCIL FOR HAWAI'I, ANIMAL
) WELFARE INSTITUTE, CENTER
) FOR BIOLOGICAL DIVERSITY,
) AND OCEAN MAMMAL
) INSTITUTE'S MOTION FOR
) SUMMARY JUDGMENT;
) MEMORANDUM IN SUPPORT OF
) MOTION; CERTIFICATE OF
) COMPLIANCE; CERTIFICATE OF
) SERVICE

NATURAL RESOURCES DEFENSE
COUNCIL, INC., *et al.*,

Plaintiffs,

v.

NATIONAL MARINE FISHERIES
SERVICE, *et al.*,

Defendants.

)
)
) CIVIL NO. 14- 00153 SOM RLP
) (CONSOLIDATED CASE)
)
)
) Judge: Hon. Susan Oki Mollway
)
) Trial Date: None Assigned

PLAINTIFFS CONSERVATION COUNCIL FOR HAWAI‘I, ANIMAL
WELFARE INSTITUTE, CENTER FOR BIOLOGICAL DIVERSITY, AND
OCEAN MAMMAL INSTITUTE’S MOTION FOR SUMMARY JUDGMENT

Pursuant to Federal Rule of Civil Procedure 56 and Local Rule 56.1, plaintiffs Conservation Council for Hawai‘i, Animal Welfare Institute, the Center for Biological Diversity, and Ocean Mammal Institute, through their counsel Earthjustice, hereby move for summary judgment that:

1. The National Marine Fisheries Service (“NMFS”) violated and is violating the Marine Mammal Protection Act (“MMPA”), 16 U.S.C. §§ 1361 et seq., and Administrative Procedure Act, 5 U.S.C. §§ 701 et seq., by failing to prepare legally adequate regulations and associated Letters of Authorization to allow incidental take of marine mammals associated with U.S. Navy training and testing in the Hawaii-Southern California Training and Testing Study Area during the period of December 2013 through December 2018;
2. NMFS has violated and is violating the Endangered Species Act, 16 U.S.C. §§ 1531 et seq., and Administrative Procedure Act by failing to prepare a legally adequate biological opinion and incidental take statement for U.S. Navy training and testing in the Hawaii-Southern California Training and Testing Study Area during the period of December 2013 through December 2018 and for promulgation of

related MMPA incidental take regulations and associated Letters of Authorization;

3. The Navy has violated and is violating the National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq., and Administrative Procedure Act by failing to prepare a legally adequate environmental impact statement (“EIS”) for U.S. Navy training and testing in the Hawaii-Southern California Training and Testing Study Area during the period of December 2013 through December 2018; and
4. NMFS has violated and is violating the National Environmental Policy Act and Administrative Procedure Act by adopting and relying on a legally deficient EIS to promulgate MMPA regulations and issue associated Letters of Authorization to allow incidental take of marine mammals associated with U.S. Navy training and testing in the Hawaii-Southern California Training and Testing Study Area during the period of December 2013 through December 2018.

This motion is based on the pleadings and other papers on file herein, the memorandum attached hereto, the concise statement, declarations and exhibits filed herewith, and such other matters as may be presented to the Court.

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DATED: Honolulu, Hawai‘i, October 30, 2014.

EARTHJUSTICE
850 Richards Street, Suite 400
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By: /s/ David L. Henkin
DAVID L. HENKIN
Attorneys for Plaintiffs Conservation
Council for Hawai‘i, Animal Welfare
Institute, the Center for Biological Diversity,
and Ocean Mammal Institute