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14 UNITED STATES DISTRICT COURT  
 15 FOR THE NORTHERN DISTRICT OF CALIFORNIA

16 \_\_\_\_\_ )  
 17 CENTER FOR BIOLOGICAL DIVERSITY, )  
 18 NATURAL RESOURCES DEFENSE COUNCIL, )  
 19 and PACIFIC ENVIRONMENT, non-profit )  
 20 corporations, )

Case No. 3:07-cv-06406-MHP

21 Plaintiffs,

22 v.

23 KEN SALAZAR<sup>1</sup>, Secretary of the Interior )  
 24 and U.S. FISH AND WILDLIFE SERVICE, )

25 Defendants. )

26 \_\_\_\_\_ )  
 27 **JOINT STIPULATION TO MODIFY THE CONSENT DECREE AND EXTEND THE**  
 28 **SCHEDULE FOR SUBMISSION OF THE YELLOW BILLED LOON 12-MONTH**  
**FINDING WITH ~~PROPOSED~~ ORDER**

Plaintiffs, Center for Biological Diversity, et. al. (“CBD”), and Defendants, the U.S. Fish and Wildlife Service and Ken Salazar, Secretary of the Interior (collectively “the Service”), by and through their undersigned counsel, respectfully submit this joint stipulation for the Court’s approval.

<sup>1</sup> Under Fed. R. Civ. Pro. 25(d), Defendants have substituted Ken Salazar for Dirk Kempthorne as the current Secretary of the Interior.

1           WHEREAS:

- 2           •       On April 5, 2004, Plaintiffs submitted a petition to list the yellow-billed loon as  
3                   “threatened” or “endangered” under the Endangered Species Act (“ESA”).  
4  
5           •       On June 6, 2007, the Secretary published a 90-day finding under 16 U.S.C. §  
6                   1533(b)(3)(A) that the petition presented substantial information that listing may  
7                   be warranted. 72 Fed. Reg. 31,256 (June 6, 2007).  
8  
9           •       Under the ESA, the Service had one year from the date it received the Petition to  
10                   make a “12-month finding” that listing the yellow-billed loon as threatened or  
11                   endangered was warranted, warranted but precluded, or not warranted. 16 U.S.C.  
12                   § 1533(b)(3)(B). The Secretary has not issued a 12-month finding.  
13  
14           •       On December 19, 2007, Plaintiffs filed a Complaint for declaratory and injunctive  
15                   relief, pursuant to the ESA, 16 U.S.C. § 1540(g)(1)(C), and the Administrative  
16                   Procedure Act (“APA”), 5 U.S.C. § 706.  
17  
18           •       On April 11, 2008, the parties settled this matter and agreed that the Service  
19                   would submit for publication to the Federal Register a 12-month finding on  
20                   Plaintiffs’ petition to list the yellow-billed loon by February 15, 2009. See Doc.  
21                   No. 19.  
22  
23           •       Officials within the new administration are currently reviewing the yellow-billed  
24                   loon finding and request an additional month to complete their review.

24           THEREFORE:

25           The parties have stipulated to an extension of the 12-month finding for the yellow-billed  
26 loon from February 15, 2009 to March 16, 2009.

27           It is so stipulated this 3<sup>rd</sup> day of February, 2009,

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14 ~~[PROPOSED]~~ ORDER

15 The Parties have stipulated to modify the consent decree in this matter. The terms and  
16 conditions of the Joint Stipulation to Modify the Consent Decree are hereby adopted as an  
17 ORDER of this Court. It is ordered that:

18 1. The Service will submit a 12-month finding for the yellow-billed loon to the  
19 Federal Register for publication no later than March 16, 2009.

20 2. The remaining terms of the April 11, 2008 consent decree shall otherwise remain  
21 in full force and effect

22 Dated: this 4th day of February, 2009.

23  
24 United States District Court



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27  
28 JOINT STIPULATION TO  
MODIFY CONSENT DECREE