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 16 OUR CHILDREN'S EARTH and ECOLOGICAL RIGHTS FOUNDATION

17 **UNITED STATE DISTRICT COURT**
 18 **NORTHERN DISTRICT OF CALIFORNIA**

19 _____)
 20 OUR CHILDREN'S EARTH)
 21 FOUNDATION, et al.,)

22 Plaintiffs,)

23 v.)

24 NATIONAL MARINE FISHERIES)
 25 SERVICE, et al.,)

26 Defendants.)
 27 _____)
 28

Civil Case No.: 3:14-cv-01130-SC

JOINT STIPULATION AND ~~PROPOSED~~ ORDER

Courtroom: 1, 17th Floor
 Hon. Samuel Conti

1 WHEREAS on July 23, 2014 at the parties' request, the Court issued an order requiring
2 the parties to file their case management statement no later than August 29, 2014, and setting the
3 case management conference for September 5, 2014.

4 WHEREAS on July 23, 2014, Plaintiffs also agreed that if NMFS issued the 2014
5 biological opinion in August, Plaintiffs would voluntarily dismiss their APA claim challenging
6 the 2008 biological opinion. ECF No. 36.

7 WHEREAS on August 27, 2014, NMFS issued the 2014 biological opinion.

8 WHEREAS the new 2014 biological opinion issued on August 27, 2014 moots Plaintiffs
9 First Claim (ECF No. 20) challenging the prior, now superseded 2008 biological opinion as
10 arbitrary and capricious.

11 WHEREAS the Plaintiffs and Federal Defendants have filed cross-motions for summary
12 judgment on the Plaintiffs' FOIA claims. The Federal Defendants will be filing their final reply
13 brief in support of their cross-motion for summary judgment on August 29, 2014—at which
14 point the cross summary judgment motions will be fully briefed. The parties have previously
15 stipulated and the Court has ordered that there will be no hearing on these cross-motions, which
16 will stand submitted as of August 29, 2014.

17 WHEREAS the parties agree that there are no case management issues to be decided at
18 this time. The Court's ruling on the pending cross-motions for summary judgment on Plaintiffs'
19 FOIA claims may dispose of all remaining issues in this case, but if not, any further case
20 management scheduling should await a ruling on these cross-motions.

21 Accordingly, the parties thus stipulate, subject to the Court's approval, to the following:

22 1. Plaintiffs' APA claim (First Claim, ECF No. 20) challenging the 2008 biological
23 opinion as arbitrary and capricious shall be deemed dismissed effective upon the Court's order
24 approving this stipulation.

25 2. This Court's order requiring the parties to file their case management statement
26 no later than August 29, 2014 is vacated.

27 3. The case management conference set for September 5, 2014 at 10 AM is vacated.
28

1 Dated: August 28, 2014

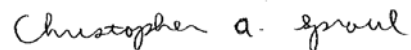
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3 Respectfully Submitted,

4 s/ Coby Howell
5 MELINDA HAAG
6 UNITED STATES ATTORNEY
7 MICHAEL T. PYLE
8 Assistant U.S. Attorney

9
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11 Acting Assistant Attorney General
12 SETH M. BARSKY, Chief

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30 Foundation and Ecological Rights
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32 s/ Sarah G. Flanagan
33 Sarah G. Flanagan
34 Attorney for Defendant-Intervenor The
35 Board of Trustees of The Leland Stanford
36 Junior University

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~~PROPOSED~~ ORDER

Pursuant to stipulation, IT IS SO ORDERED.

DATED: ~~August~~ 9/3, 2014



Hon. Samuel Conti
United States District Judge