IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

CENTER FOR BIOLOGICAL DIVERSITY, *et al.*,

Plaintiffs,

v.

U.S. FISH & WILDLIFE SERVICE, *et al.*,

Defendants.
_____/

No. C 16-06040 WHA

ORDER DENYING STIPULATED REQUEST FOR EXTENSION

In this action for declaratory and injunctive relief under the Endangered Species Act regarding the status of the Pacific fisher, an order dated May 17, 2019 gave the United States Fish & Wildlife Service ("the Service") until October 26, 2019, to submit a revised proposed listing for publication in the Federal Register and until April 25, 2020, to submit a final listing determination (Dkt. No. 105). The parties have stipulated to and request a 30-day extension of the deadline to publish the final listing determination (Dkt. No. 114). The cause given is that a member of the public has requested an extension of the notice-and-comment period by 90 days. The deadlines have already been extended twice (Dkt. Nos. 105, 91).

Rule 60(b)(5) provides grounds for relief from a final judgment where "applying it prospectively is no longer equitable." Our court of appeals has adopted the "more flexible standard of evaluating motions that seek to invoke the equity provision of Rule 60(b)(5)" announced in *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367 (1992). *Bellevue Manor Assocs. v. United States*, 165 F.3d 1249, 1256 (9th Cir. 1999). "[A] party seeking modification of a [final judgment] bears the burden of establishing that a significant change in circumstances

warrants revision of the [judgment]." *Rufo*, 502 U.S. at 383. "If the moving party meets this standard, the court should consider whether the proposed modification is suitably tailored to the changed circumstance." *Ibid*.

Meaningful notice-and-comment is fundamental to an agency's careful rulemaking. But this final rule has been long delayed and twice extended. Under the May 17 order, the public will already enjoy a 45 day notice-and-comment period (Dkt. No. 105) — this is sufficient for a diligent member of the public to comment on the proposed rule. The extension is **DENIED**.

IT IS SO ORDERED.

Dated: December 3, 2019.

WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE