

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

OCEANA, INC.,

Plaintiff,

v.

PENNY PRITZKER,

Secretary, United States Department of
Commerce, et al.,

Defendants.¹

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) Civil Action No. 12-0041 (PLF)
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MEMORANDUM OPINION AND ORDER

This matter is before the Court on defendants' third motion to stay all proceedings in this case until January 10, 2014. Plaintiff opposes the motion, and defendants have filed a reply in further support of their motion. The Court will grant the motion and will stay all proceedings in this case through January 10, 2014.

Defendants assert that the biological opinions that plaintiff challenges in this case soon will be replaced and superseded by a new comprehensive biological opinion that will make briefing and decision on any challenge to the current biological opinions moot. They have represented that the National Marine Fisheries Service ("NMFS") has published its draft comprehensive biological opinion and has received public comment. The agency now needs additional time to review those public comments and revise its draft biological opinion as

¹ The Court has substituted as the lead defendant Penny Pritzker, the current Secretary of Commerce, for former Acting Secretary Dr. Rebecca Blank under Rule 25(d) of the Federal Rules of Civil Procedure.

appropriate. NMFS expects to complete the new biological opinion by January 10, 2014. Once that new biological opinion is complete, it will replace and supersede all of the old biological opinions challenged in this case, and NMFS represents that those old opinions will be rendered null and void. The defendants argue that without the requested extension, NMFS staff that would otherwise be completing the new biological opinion will have to be diverted to compile administrative records for the old biological opinions that are about to be superseded. Such a result would cause a significant waste of judicial and party resources.

In view of these representations, and despite plaintiff's strong opposition to any stay, it appears to the Court that a stay through January 10, 2014 will conserve the resources of both the Court and counsel. Counsel will not need to focus on biological opinions that will be superseded, and the Court will be able to address only the matters truly at issue. See, e.g., Rio Grande Silvery Minnow v. Bureau of Reclamation, 601 F.3d 1096, 1113-14 (10th Cir. 2010); American Rivers v. National Marine Fisheries Serv., 126 F.3d 1118, 1124 (9th Cir. 1997); see also National Wildlife Fed'n v. EPA, 925 F.2d 470, 472 (D.C. Cir. 1991) (staying case to allow agency to complete new rulemaking on ground of conservation of judicial resources because agency action "carried the prospect of mooted . . . procedural attacks and of changing the substance to be reviewed"). Accordingly, and for the foregoing reasons, it is hereby

ORDERED that defendants' motion to stay proceedings [Dkt. No. 27] is GRANTED; it is

FURTHER ORDERED that this case is stayed in its entirety through January 10, 2014; and it is

FURTHER ORDERED that the parties thereafter shall meet and confer and, on or before January 28, 2014, shall file a proposed schedule setting a date for the production of the administrative record and a reasonable briefing schedule for the consideration of dispositive motions. No further extensions of time will be granted except for exceptional cause.

SO ORDERED.

DATE: November 27, 2013

/s/ _____
PAUL L. FRIEDMAN
United States District Judge