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15 Attorneys for Plaintiffs

16 **UNITED STATES DISTRICT COURT FOR THE**
17 **NORTHERN DISTRICT OF CALIFORNIA**
18 **OAKLAND DIVISION**

19 CENTER FOR BIOLOGICAL DIVERSITY, a
20 non-profit corporation, NATURAL RESOURCES
21 DEFENSE COUNCIL, a non-profit corporation,
and GREENPEACE, INC., a non-profit
22 corporation;

23 Plaintiffs,

24 v.

25 DIRK KEMPTHORNE, United States Secretary
26 of the Interior and UNITED STATES FISH AND
27 WILDLIFE SERVICE;

28 Defendants.

CASE NO.: C-08-1339-CW

PLAINTIFFS' STATUS REPORT

Date: May 15, 2008

Time: 2:00 p.m.

Judge: Honorable Claudia Wilkin

Courtroom: Courtroom 2, 4th Floor

1 On April 28, 2008 this Court issued an order granting Plaintiffs' Motion for Summary
2 Judgment, finding Defendants in violation of the Endangered Species Act, 16 U.S.C. § 1531 et seq.
3 ("ESA"), for failing to publish a final listing decision for the polar bear by January 9, 2008. Order
4 Granting Plaintiffs' Motion for Summary Judgment and Injunction (April 28, 2008, Dkt # 35,
5 hereinafter ("April 28 Order")). The Court ordered Defendants to publish a final listing determination
6 for the polar bear in the Federal Register by May 15, 2008, and to make any final regulation effective
7 upon publication pursuant to 5 U.S.C. § 553(d)(3). Id. at 10. The Court also directed the parties to
8 notify the Court whether the final listing determination has been published. Id.

9 On May 14, 2008, Defendants Secretary on Interior Dirk Kempthorne and U.S. Fish and
10 Wildlife Service Director Dale Hall announced that they had signed a final rule listing the polar bear as
11 Threatened throughout its range. Because Defendants chose to delay approval of the listing
12 determination to the last possible minute, the final listing rule will not be published in the Federal
13 Register on or before May 15, 2008 as required by the Court's Order. See Defendants' Notice of
14 Submission of Final Listing Determination for the Polar Bear (Dkt # 71) ("Defendants will notify the
15 Court and the parties when they have information regarding the publication date of the final
16 determination."); see also Federal Register Public Inspection List at
17 <http://federalregister.gov/page2.aspx> (listing all documents scheduled for publication on May 15, 2008,
18 and not showing polar bear rule.).

19 In short, Defendants have violated this Court's Order, depriving the polar bear of the legal
20 protections to which it is entitled until such currently-undetermined time as the final listing rule is
21 actually published in the Federal Register. Plaintiffs therefore request that the Court keep the current
22 status conference scheduled for May 15, 2008 on calendar to address what additional relief, if any, is
23 appropriate given Defendants' actions in contravention of the Court's Order.

24 Additionally, the final listing rule fails to designate critical habitat for the polar bear
25 notwithstanding the fact that the ESA requires that the Secretary shall "concurrently with making a
26 determination ...that a species is an endangered species or a threatened species, designate any habitat of
27 such species which is then considered to be critical habitat." 16 U.S.C. § 1533(a)(3)(A)(i). Moreover,
28 accompanying the final listing rule is an "Interim Final Rule", issued by Defendants without the

1 opportunity for public notice or comment, which purports to eliminate the protections of Section 9 of
2 the ESA, 16 U.S.C. § 1538, for the polar bear. Plaintiffs believe that these actions and omissions by
3 Defendants constitute violations of Section 4 of the ESA, 16 U.S.C. § 1533, and other applicable laws,
4 and deprive the polar bear of lawfully required protections under the ESA. Plaintiffs therefore would
5 request at the status conference that the Court set out a schedule for prompt resolution of these
6 outstanding issues.

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8
9 DATE: May 14th, 2008

Respectfully Submitted,

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11 By: /s/Brendan Cummings

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