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8 Attorneys for Plaintiffs Coalition for a Sustainable Delta, Belridge Water
Storage District, Berrenda Mesa Water District, Lost Hills Water District,
9 Wheeler Ridge-Maricopa Water Storage District, and Dee Dillon

10 UNITED STATES DISTRICT COURT

11 EASTERN DISTRICT OF CALIFORNIA

12 COALITION FOR A SUSTAINABLE DELTA,
13 BELRIDGE WATER STORAGE DISTRICT,
BERRENDA MESA WATER DISTRICT, LOST
14 HILLS WATER DISTRICT, WHEELER RIDGE-
MARICOPA WATER STORAGE DISTRICT, and
DEE DILLON,

15 Plaintiffs,

16 vs.

17 JOHN McCAMMAN, in his official capacity as
18 Acting Director of the California Department of Fish
and Game,

19 Defendant,

20 CENTRAL DELTA WATER AGENCY, et al.

21 Defendant-Intervenors,

22 CALIFORNIA SPORTFISHING PROTECTION
23 ALLIANCE, et al.,

24 Defendant-Intervenors.

) Case No: 1:08-CV-00397-OWW-GSA
) (Related to Case Numbers 1:05-cv-OWW-
) GSA and 1:06-cv-00245-OWW-GSA)
)
)

) **SEPARATE STATEMENT OF**
) **UNDISPUTED MATERIAL FACTS IN**
) **SUPPORT OF PLAINTIFFS' MOTION**
) **FOR PARTIAL SUMMARY JUDGMENT**
) **RE LIABILITY (WINTER AND SPRING-**
) **RUN SALMON) AND STANDING**

) Date: March 22, 2010
) Time: 10:00 a.m.
) Courtroom: 3
) Judge: Hon. Oliver W. Wanger

1 Plaintiffs the Coalition for a Sustainable Delta , Belridge Water Storage District, Berrenda Mesa
 2 Water District, Lost Hills Water District, Wheeler Ridge-Maricopa Water Storage District, and Dee
 3 Dillon submit this Statement of Undisputed Material Facts pursuant to Local Rule 56-260(a) in support
 4 of the Motion for Summary Judgment filed by Plaintiffs.

<p>UNDISPUTED MATERIAL FACTS RE: ESA LIABILITY</p>	<p>SUPPORTING EVIDENCE</p>
<p>1. The California Department of Fish and Game (CDFG), enforces the striped bass sport-fishing regulations, and Defendant McCamman is the Acting Director of CDFG.</p>	<p>Scheduling Conf. Order at 11:7-9 (Nov. 6, 2008) (Doc. No. 55); Decl. of Benjamin Z. Rubin in Supp. of Pls.’ Mot. for Partial Summ. J. re Liability (Winter and Sprint-Run Salmon) and Standing (“Rubin Decl.”) ¶ 8, Exh. 5</p> <p>Transcript of Oral Argument on MJOP at 28:25-29:6 (July 23, 2008) (Doc. No. 41); Rubin Decl. ¶ 3, Exh. 2</p>
<p>2. Enforcement of the striped bass sport-fishing regulations results in a larger population of striped bass than there would be absent the regulations.</p>	<p>Dep. of Marty Gingras, Cal. Dep’t of Fish & Game (“CDFG”) Rule 30(b)(6) Designee (“Gingras Depo.”) at 612:2-9 (2010) (admitting that eliminating the size and catch limits for striped bass would reduce the striped bass population); Rubin Decl. ¶ 35, Exh. 30</p> <p>Memorandum from Glenn Delisle, CDFG, to Steve Taylor at 2 (Sept. 16, 1993) (eliminating size limits and daily bag limits would “decimate” the striped bass population); Rubin Decl. ¶ 36, Exh. 44</p> <p>CDFG, <i>Public Proposed Changes to Marine Sport Fishing Regulations for the 2006 Triennial Process, and Department Recommendations for</i></p>

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Acceptance or Denial of Those Changes at 1 (Sept. 2006) (“lowering the minimum size even just one inch will result in greatly increased striped bass catches”); Rubin Decl. ¶ 37, Exh. 45

CDFG, *Draft Conservation Plan for the California Department of Fish and Game Striped Bass Management Program Prepared as Party of an Application for Incidental Take Permits Pursuant to Section 10(a)(1)(B) of the Endangered Species Act* (“*Draft Conservation Plan*”) at 110-11 (May 1998) (“elimination of striped bass fishing regulations or setting regulations that would greatly increase the harvest rate (e.g., no size limits or bag limits) would ultimately severely damage the striped bass fishery and population”); Rubin Decl. ¶ 36, Exh. 38

Donald Koch’s Supp. Resp. to Pls.’ First Set of Req. for Admis. No. 2 (“it is Defendant’s opinion that the striped bass sport-fishing regulations have resulted in a striped bass population in the Delta that is greater than what the population would have been in the absence of those regulations”); Rubin Decl. ¶ 13, Exh. 10

Dep. of Perry L. Herrgesell, Ph.D., CDFG (“Herrgesell Depo.”) at 49:14-50:9 (Aug. 2009) (Striped bass regulations “are based on science. They’re based on catch rates, population abundance. They’re based on this whole multimillion dollar monitoring program And if I said anything different, I would be, you know, not honest to myself and to the department. Regulations are there to protect, and they are protecting the striped bass population.”); Rubin Decl. ¶ 23, Exh. 17

Dep. of Jason DuBois, CDFG (“CDFG”) Expert Witness at 83:5-8 (Dec.

1 2, 2009) (admitting that the striped bass sport-fishing regulations are
2 protecting the striped bass population); Rubin Decl. ¶ 30, Exh. 24

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4 Dep. of Tony Warrington, CDFG at 78:2-10; 86:22-87:2 (May 2009)
5 (eliminating size and catch limit would increase catch of striped bass);
6 Rubin Decl. ¶ 20, Exh. 14

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8 Email from Marty Gingras, CDFG, to Geoff Malloway, Central Coast
9 Fly Fishing (Apr. 2009) (eliminating stripe bass regulations “would
10 reduce” the population); Rubin Decl. ¶ 36, Exh. 43

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12 Minutes of Public Striped Bass Stamp Committee Meeting at 3 (Oct.
13 1999) (“angling pressure dropped when the bag limit was reduced from
14 three fish to two and the minimum size was increased from 16 to 18
15 inches in 1982”); Rubin Decl. ¶ 36, Exh. 41

16
17 CDFG, *Biological Assessment for the California Department of Fish*
18 *and Game Striped Bass Management Program June, 1995 – June, 1996*
19 (“*Biological Assessment*”) at 53 (1996) (“fishing regulations maintain
20 striped bass abundance at a greater level than if fishing was
21 unregulated”); Rubin Decl. ¶ 36, Exh. 39

22
23 CDFG, *A Strategic Framework for the Expenditure of Striped Bass*
24 *Stamp Revenues and Mitigation Funds for the Restoration and*
25 *Maintenance of the San Francisco Bay – Delta Striped Bass Population*
26 (“*Draft Framework*”) at 10 (Draft, Oct. 2002) (explaining that
27 management activities “(e.g., sportfish regulation changes) can
28 indirectly take listed species by increasing the size of the striped bass

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population, potentially causing take through increased striped bass predation”); Rubin Decl. ¶ 36, Exh. 37

Decl. of Rodney Karnofel in Supp. of Mot. to Intervene by Central Delta Water Agency, Et Al. ¶ 19 (eliminating the striped bass sport-fishing regulations “would expose striped bass to the negative impacts of abusive angling practices, leading to [striped bass] population declines, reduced prospects for recovery, and potentially, eradication from the Delta”); Rubin Decl. ¶ 2, Exh. 1

Central Delta Water Agency, Et Al. Resp. to Pls.’ Second Set of Req. for Admis. Nos. 40-43 (admitting that eliminating the striped bass sport-fishing regulations would reduce the striped bass population in the Delta, and reduce the striped bass’ prospects for recovery); Rubin Decl. ¶ 31, Exh. 25

Jerry Neuburger, *CSPA’s Mike Jackson ready to defend the beleaguered Delta Striped Bass in federal court on July 14* (California Sportfishing Protection Alliance) July 2008, at 2 (the “lack of regulation would be the death knell” for the striped bass in the Delta); Rubin Decl. ¶ 41, Exh. 49

Expert Report of Dr. David H. Bennett, *Effect of Sport-Fishing Regulations on Striped Bass Population and Predation in the Delta* (“Bennett Expert Report”) at 8, 25 (Oct. 2009) (“Elimination of the size and creel regulations would reduce the population of striped bass approximately 60-70%”); Rubin Decl. ¶ 24, Exh. 19

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	<p>Herrgesell Depo. at 93:17-95:4 (estimating that CDFG spent between \$500,000 and \$800,000 annually on enforcement of the striped bass sport-fishing regulations); Rubin Decl. 23, Exh. 17</p>
<p>3. Striped bass prey on Sacramento River winter-run chinook salmon and Central Valley spring-run chinook salmon.</p>	<p>Gingras Depo. at 498:13-21 (estimating striped bass predation on winter-run and spring-run chinook salmon averages between 5% and 25%); Rubin Decl. ¶ 35, Exh. 29</p> <p><i>Id.</i> at 552:25-553:3, 607:24-608:6 (admitting “striped bass predation is one of many factors contributing to the decline of the listed species”); Rubin Decl. ¶ 35, Exhs. 29-30</p> <p><i>Id.</i> at 607:18-20 (admitting “predation by striped bass increases mortality on those listed species”); Rubin Decl. ¶ 35, Exh. 30</p> <p><i>Id.</i> at 643:5-644:6 (admitting striped bass predation “can influence viability of Central Valley salmonids”); Rubin Decl. ¶ 35, Exh. 30</p> <p><i>Id.</i> at 662:1-9 (striped bass food habits studies found that “salmon are common in stomachs of striped bass”); Rubin Decl. ¶ 35, Exh. 30</p> <p><i>Id.</i> at 446:25-447:1 (agreeing with findings by Lindley & Mohr regarding the effects of striped bass predation on winter-run chinook salmon); Rubin Decl. ¶ 35, Exh. 29</p> <p>Dep. of Matthew Nobriga, CDFG Expert Witness (“Nobriga Depo.”) at 119:1-8 (2009) (estimating that striped bass predation on winter-run and spring-run chinook salmon averages between 6% and 50%); Rubin</p>

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Decl. ¶ 32, Exh. 26

Id. at 110:1-111:2 (agreeing that Lindley & Mohr used a sound scientific method when estimating striped bass predation on winter-run chinook salmon averaged 9%); Rubin Decl. ¶ 32; Exh. 26

Donald Koch’s Resp. to Pls.’ Second Set of Req. for Admis. No. 45 (admitting that “striped bass predation at Clifton Court Forebay is a significant cause of mortality of the Listed Species”); Rubin Decl. ¶ 15, Exh. 12

Matthew L. Nobriga & Frederick Feyrer, *Shallow-Water Piscivore-Prey Dynamics in California’s Sacramento-San Joaquin Delta*, San Francisco Estuary & Watershed Science at 9 (May 2007) (“striped bass likely remains the most significant predator of Chinook salmon”); Rubin Decl. ¶ 36, Exh. 36

Steven T. Lindley & Michael S. Mohr, *Modeling the effect of striped bass (Morone saxatilis) on the population viability of Sacramento River winter-run Chinook salmon (Oncorhynchus tshawytscha)*, Fishery Bulletin Vol. 101 (“Lindley & Mohr”) at 328 (2003) (“the current striped bass population of roughly 1×10^6 adults consumes about 9% of winter-run chinook salmon outmigrants”); Rubin Decl. ¶ 40, Exh. 48

Expert Report of Dr. Charles H. Hanson, *Striped Bass Predation on Listed Fish Within the Bay-Delta Estuary and Tributary Rivers* (“Hanson Expert Report”) at 4, 30-34 (Oct. 2009) (estimating a striped bass predation rate of 21% on winter-run chinook salmon); Rubin Decl.

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¶ 24, Exh. 18

Id. at 4, 34-35 (estimating a striped bass predation rate of 42% on spring-run chinook salmon); Rubin Decl. ¶ 24, Exh. 18

Id. at 9-10, 60-63 (1996) (CDFG unpublished bioenergetics predation estimate, estimating that striped bass predation on winter-run chinook salmon averages 30%); Rubin Decl. ¶ 24, Exh. 18

Memorandum from Lisa Holsinger and Steve Lindley, Nat'l Marine Fisheries Service, to Don Stevens, CDFG (Sept. 1996) (striped bass predation "is a minimum of 10-18% of the winter-run chinook juvenile production"); Rubin Decl. ¶ 36, Exh. 32

Memorandum from Alec D. MacCall, Nat'l Marine Fisheries Service, to Lisa Holsinger, Nat'l Marine Fisheries Service at 1-2 (Apr. 1996) (CDFG "grossly underestimates the potential impact on winter-run" as "impact of the additional striped bass now translates to a risk of a 15 to 30% loss of the outmigrating winter-run smolts"); Rubin Decl. ¶ 36, Exh. 33

Answer of Def. Donald Koch to Pls.' First Am. Compl. ¶ 21 (admitting that striped bass prey on the "Listed Species"); Rubin Decl. ¶ 6, Exh. 3

California Sportfishing Protection Alliance, Et Al. Resp. to Pls.' First Set of Req. for Admis. No. 5 (admitting that striped bass prey on the Listed Species); Rubin Decl. ¶ 11, Exh. 7

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<p>4. Striped bass predation on Sacramento River winter-run chinook salmon and Central Valley spring-run chinook salmon increases as the striped bass population increases, and vice versa.</p>	<p>Gingras Depo. at 485:10-13 (“I do agree that reduction in striped bass abundance . . . would reduce total juvenile salmon predation and mortality, with a corresponding increase in juvenile salmon survival”); Rubin Decl. ¶ 35, Exh. 29</p> <p><i>Id.</i> at 501:9-11 (admitting striped bass predation is “proportional to striped bass abundance”); Rubin Decl. ¶ 35, Exh. 29</p> <p>Nobriga Depo. at 259:24-260:6 (agreeing with Dr. Hanson’s conclusion that “a reduction in striped bass abundance would not be expected to substantially increase other salmon predators in the River, but rather would reduce total juvenile salmon predation and mortality, with a corresponding increase in juvenile salmon survival”); Rubin Decl. ¶ 32, Exh. 27</p> <p><i>Id.</i> at 293:3-5 (“I would agree that less striped bass would create some increase in salmon”); Rubin Decl. ¶ 32, Exh. 27</p> <p>Hanson Expert Report at 4, 40 (“A reduction in striped bass abundance . . . would, in my opinion, contribute to a proportional reduction in the total mortality of juvenile winter-run and spring-run Chinook salmon”); Rubin Decl. ¶ 24, Exh. 18</p> <p><i>Id.</i> at 4, 40 (a 60-70% reduction in striped bass abundance would reduce striped bass predation mortality by 14% for the winter-run chinook salmon and by 27% for the spring-run chinook salmon); Rubin Decl. ¶ 24, Exh. 18</p>
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1 Bennett Expert Report at 8, 25 (“Elimination of the size and creel
2 regulations would reduce the population of striped bass approximately
3 60-70% and proportionally reduce striped bass predation on the listed
4 fishes”); Rubin Decl. ¶ 24, Exh. 19

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6 *Listen to the River: An Independent Review of the CVPIA Fisheries*
7 *Program* at 47 (Dec. 2008) (“programs that encourage population
8 increases and thus fishing opportunities for exotic predatory species
9 such as striped bass (e.g., California Fish and Game Commission and
10 the CPVIA itself) clearly conflict with CVPIA and ESA mandates to
11 protect and rebuild depressed stocks of native salmonids”); Rubin Decl.
12 ¶ 39, Exh. 47

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14 *Biological Assessment* at 53 (1996) (the result of maintaining striped
15 bass abundance at a greater level “is greater predation on the species of
16 concern”); Rubin Decl. ¶ 36, Exh. 39

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18 *Id.* at 53 (eliminating striped bass regulations “would further depress the
19 striped bass population and reduce predation on winter-run chinook
20 salmon”); Rubin Decl. ¶ 36, Exh. 39

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22 *Draft Conservation Plan* at 111 (“it is reasonable to assume that
23 predation on winter-run chinook salmon . . . would decrease roughly in
24 proportion to whatever decline occurred in striped bass abundance due
25 to regulation changes”); Rubin Decl. ¶ 36, Exh. 38

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27 CDFG, *Draft Striped Bass Management Program Environmental*
28 *Impact Report* at 57, 60 (May 1998) (explaining that a decrease in the

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striped bass population resulting from the “No Project” alternative would lead to a “commensurate decrease in predation on” winter-run and spring-run chinook salmon); Rubin Decl. ¶ 36, Exh. 31

Draft Framework at 10 (explaining that management activities “(e.g., sportfish regulation changes) can indirectly take listed species by increasing the size of the striped bass population, potentially causing take through increased striped bass predation”); Rubin Decl. ¶ 36, Exh. 37

Donald Koch’s Resp. to Pls.’ First Set of Req. for Admis. Nos. 6-7 (admitting that “it is probable [that] an increase in striped bass population would result in an increase in striped bass predation” on the winter-run and spring-run chinook salmon); Rubin Decl. ¶ 12, Exh. 8

California Sportfishing Protection Alliance, Et Al.’s Respon. to Pls. First Set of Req. for Admis. No. 7 (admitting that as the striped bass population increases, striped bass predation on the winter-run chinook salmon increases); Rubin Decl. ¶ 11, Exh. 7

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<p style="text-align: center;">UNDISPUTED MATERIAL FACTS RE DEE DILLON'S STANDING</p>	<p style="text-align: center;">SUPPORTING EVIDENCE</p>
<p>5. Mr. Dillon, a member of the Coalition for a Sustainable Delta, has frequently visited, and has definite plans to continue to visit, the Delta with his family to appreciate the natural environment, to escape from the urban environment, and to engage in various recreational and conservation activities, including boating, photography, swimming, kayaking, fishing for salmon and striped bass, and wildlife viewing (e.g.,</p>	<p>Dillon Decl. at ¶¶ 1-7</p> <p>Plaintiff Dee Dillon's Resps. to Def. Donald Koch's Interrogs., Set One ("Dillon Discovery Responses") Nos. 1-4, 6 (May 2009); Rubin Decl. ¶ 21, Exh. 15</p>

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<p>witnessing salmon migrating through the Delta).</p>	
<p>6. The decline of Sacramento River winter-run chinook salmon and Central Valley spring-run chinook salmon upsets Mr. Dillon and has negatively impacted Mr. Dillon's use and enjoyment of the Delta by, among other things, impairing his ability to fish for and view salmon and other native species.</p>	<p>Dillon Decl. at ¶¶ 3, 5-6 Dillon Discovery Responses, Nos. 1-4, 6; Rubin Decl. ¶ 21, Exh. 15</p>
<p>7. Striped bass predation is one of a number of factors that contribute to the decline of Sacramento River</p>	<p>Donald Koch's Resp. to Pls.' Second Set of Req. for Admis. No. 45 (admitting that "striped bass predation at Clifton Court Forebay is a significant cause of mortality of the Listed Species"); Rubin Decl. ¶ 15, Exh. 12 Gingras Depo. at 552:25-553:3, 607:24-608:6 (admitting that striped</p>

1 winter-run chinook
2 salmon and Central
3 Valley spring-run
4 chinook salmon.

bass predation is one of the factors contributing to the decline of the
winter-run and spring-run chinook salmon); Rubin Decl. ¶ 35, Exhs. 29-
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5 *Id.* at 607:18-20 (admitting “predation by striped bass increases
6 mortality on those listed species”); Rubin Decl. ¶ 35, Exh. 29

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8 *Id.* at 643:5-644:6 (admitting striped bass predation “can influence
9 viability of Central Valley salmonids”); Rubin Decl. ¶ 35, Exh. 30

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11 *Id.* at 626:7-14 (admitting that due to the presence of several million
12 juvenile and adult striped bass in the Delta, even a small predation rate
13 by striped bass (e.g., 3 per 1000 striped bass stomachs) would kill many
14 of the “listed species”); Rubin Decl. ¶ 35, Exh. 30

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16 Nat’l Marine Fisheries Serv., *Public Draft Recovery Plan for the*
17 *Evolutionary Significant Units of Sacramento River Winter-Run*
18 *Chinook Salmon and Central Valley Spring-Run Chinook Salmon and*
19 *the Distinct Population Segment of Central Valley Steelhead (“Draft*
20 *Recovery Plan”)* at p. ES-2 (2009) (identifying “predation of Chinook
21 salmon and steelhead from introduced species such as striped bass and
22 black bass” as one of the four important stressors); Rubin Decl. ¶ 38
23 Exh. 46

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25 *Id.* at 157 (calling for implementation of “programs and measures
26 designed to control non-native predatory fish (e.g., striped bass,
27 largemouth bass, and smallmouth bass), including harvest management
28 techniques”); Rubin Decl. ¶ 38 Exh. 46

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Id. at Appendix A-1 and B-2 to B-5 (identifying predation as a “very high stressor” on Sacramento River winter-run chinook salmon and Central Valley spring-run chinook salmon); Rubin Decl. ¶ 38 Exh. 46

Matthew L. Nobriga & Frederick Feyrer, *Shallow-Water Piscivore-Prey Dynamics in California’s Sacramento-San Joaquin Delta*, San Francisco Estuary & Watershed Science at 9 (May 2007) (“striped bass likely remains the most significant predator of Chinook salmon”); Rubin Decl. ¶ 36, Exh. 36

Lindley & Mohr at 328 (“analysis suggests that striped bass predation may be a significant risk factor for winter-run chinook salmon”); Rubin Decl. ¶ 40, Exh. 48

Hanson Expert Report at 40, 41 (although a variety of factors affect the survival of emigrating juvenile salmonids within the river and Delta, striped bass predation is “a major factor”); Rubin Decl. ¶ 24, Exh. 18

Email from Marty Gingras, CDFG, to Neil Manji et al., CDFG (Feb. 2007) (“With the status of the Delta smelt and a few other natives in the tank, and recent ‘back of the envelope’ calculations indicating striped bass predation could be a very significant factor, we probably should not take steps to increase the abundance of anadromous striped bass.”); Rubin Decl. ¶ 36, Exh. 35

Donald Koch’s Resp. to Pl. Coalition for a Sustainable Delta’s Interrogatory No. 11 (“Defendant does not contend that predation does

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	<p>not reduce the population” of each of the Listed Species); Rubin Decl. ¶ 12, Exh. 9</p> <p>Plaintiffs also Hereby Incorporate the Supporting Evidence Previously Cited in Support of Statement 3</p>
<p>8. Enjoining the enforcement of the striped bass sport-fishing regulations would likely reduce striped bass predation on Sacramento River winter-run chinook salmon and Central Valley spring-run chinook salmon.</p>	<p>Gingras Depo. at 504:7-505:7 (admitting that eliminating the size and two fish bag limit “would reduce the predation” on the winter-run chinook salmon and spring-run chinook salmon); Rubin Decl. ¶ 35, Exh. 29</p> <p><i>Id.</i> at 612:3-9 (admitting that eliminating the striped bass catch and size limits would reduce the striped bass population); Rubin Decl. ¶ 35, Exh. 29</p> <p>Hanson Expert Report at 40 (estimating that eliminating the striped bass size and catch limits would reduce striped bass predation on winter-run and spring-run chinook salmon by 14% and 27%, respectively); Rubin Decl. ¶ 24, Exh. 18</p> <p>Rebuttal and Supplemental Expert Report of Dr. Charles H. Hanson at 3 (Nov. 2009) (a reduction in striped bass abundance “would reduce total juvenile salmon predation and mortality, with a corresponding increase in juvenile salmon survival”); Rubin Decl. ¶ 29, Exh. 23</p> <p>Bennett Expert Report at 8, 25 (“Elimination of the size and creel regulations would reduce the population of striped bass approximately 60-70% and proportionally reduce striped bass predation on the listed</p>

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	<p>fishes”); Rubin Decl. ¶ 24, Exh. 19</p> <p>Plaintiffs also Hereby Incorporate the Supporting Evidence Previously Cited in Support of Statements 2-4</p>
<p>9. Enjoining the enforcement of the striped bass sport-fishing regulations would likely benefit Sacramento River winter-run chinook salmon and Central Valley spring-run chinook salmon by increasing the populations of said species.</p>	<p>Gingras Depo. at 474:1-5 (admitting that deregulation would benefit the salmon species); Rubin Decl. ¶ 35, Exh. 29</p> <p><i>Id.</i> at 403:7-12, 615:3-14 (admitting that “odds are” that deregulation is likely to help the salmon recovery); Rubin Decl. ¶ 35, Exhs. 29-30</p> <p><i>Id.</i> at 485:10-13 (admitting a reduction in striped bass abundance “would reduce total juvenile salmon predation and mortality, with a corresponding increase in juvenile salmon survival”); Rubin Decl. ¶ 35, Exh. 29</p> <p><i>Id.</i> at 507:7-8 (admitting that modifying the striped bass sport-fishing regulations would have some “beneficial effect”); Rubin Decl. ¶ 35, Exh. 29</p> <p><i>Id.</i> at 609:20-610:6 (admitting that eliminating the striped bass sport-fishing regulations would contribute to the recovery of the winter-run and spring-run salmon, assuming that deregulation would reduce striped bass abundance); Rubin Decl. ¶ 35, Exh. 30</p> <p>Nobriga Depo. at 259:24-260:6 (agreeing with Dr. Hanson’s conclusion that “a reduction in striped bass abundance would not be expected to substantially increase other salmon predators in the River, but rather</p>

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	<p>would reduce total juvenile salmon predation and mortality, with a corresponding increase in juvenile salmon survival”); Rubin Decl. ¶ 32, Exh. 27</p> <p><i>Id.</i> at 293:3-5 (“I would agree that less striped bass would create some increase in salmon”); Rubin Decl. ¶ 32, Exh. 27</p> <p><i>Draft Recovery Plan</i> at 157 (calling for implementation of “programs and measures designed to control non-native predatory fish (e.g., striped bass, largemouth bass, and smallmouth bass), including harvest management techniques”); Rubin Decl. ¶ 38, Exh. 46</p> <p><i>Listen to the River: An Independent Review of the CVPIA Fisheries Program</i> at 47 (Dec. 2008) (“programs that encourage population increases and thus fishing opportunities for exotic predatory species such as striped bass (e.g., California Fish and Game Commission and the CPVIA itself) clearly conflict with CVPIA and ESA mandates to protect and rebuild depressed stocks of native salmonids”); Rubin Decl. ¶ 39, Exh. 47</p> <p>Plaintiffs also Hereby Incorporate the Supporting Evidence Previously Cited in Support of Statements 2, 3, 4, 7, and 8</p>
<p>10. Enjoining the enforcement of the striped bass sport-fishing regulations</p>	<p>Gingras Depo. at 447:4-9 (agreeing with Dr. Hanson’s conclusion that a reduction in the striped bass population would contribute “to a reduction in the risk of extinction of winter-run salmon”); Rubin Decl. ¶ 35, Exh. 29</p>

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<p>would likely benefit Sacramento River winter-run chinook salmon and Central Valley spring-run chinook salmon by reducing their risk of extinction.</p>	<p><i>Id.</i> at 474:1-5 (admitting that deregulation would benefit the salmon species); Rubin Decl. ¶ 35, Exh. 29</p> <p><i>Id.</i> at 403:7-12, 615:3-14 (admitting that “odds are” that deregulation is likely to help the salmon recovery); Rubin Decl. ¶ 35, Exh. 29</p> <p><i>Id.</i> at 485:10-13 (admitting a reduction in striped bass abundance “would reduce total juvenile salmon predation and mortality, with a corresponding increase in juvenile salmon survival”); Rubin Decl. ¶ 35, Exh. 29</p> <p><i>Id.</i> at 507:7-8 (admitting that modifying the striped bass sport-fishing regulations would have some “beneficial effect”); Rubin Decl. ¶ 35, Exh. 29</p> <p><i>Id.</i> at 609:20-610:6 (admitting that eliminating the striped bass sport-fishing regulations would contribute to the recovery of the winter-run and spring-run salmon, assuming that deregulation would reduce striped bass abundance); Rubin Decl. ¶ 35, Exh. 30</p> <p>Nobriga Depo. at 259:24-260:6 (agreeing with Dr. Hanson’s conclusion that “a reduction in striped bass abundance would not be expected to substantially increase other salmon predators in the River, but rather would reduce total juvenile salmon predation and mortality, with a corresponding increase in juvenile salmon survival”); Rubin Decl. ¶ 32, Exh. 27</p>
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1 *Id.* at 293:3-5 (“I would agree that less striped bass would create some
2 increase in salmon”); Rubin Decl. ¶ 32, Exh. 27

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4 Hanson Expert Report at 40 (“Reducing striped bass predation mortality
5 on listed salmonids would substantially reduce the risk of their
6 extinction and increase the probability of recovery of these species”);
7 Rubin Decl. ¶ 24, Exh. 18

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9 *Id.* at 41 (“Reducing striped bass abundance through deregulation would
10 substantially reduce predation mortality and benefit the population of
11 winter-run and spring-run Chinook salmon,” thereby contributing to
12 their recovery); Rubin Decl. ¶ 24, Exh. 18

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14 Lindley & Mohr at 327 (a striped bass population that declines from
15 700,000 to 512,000 reduces the risk of winter-run chinook salmon
16 extinction by 2%); Rubin Decl. ¶ 40, Exh. 48

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18 *Draft Recovery Plan* at 157 (calling for implementation of “programs
19 and measures designed to control non-native predatory fish (e.g., striped
20 bass, largemouth bass, and smallmouth bass), including harvest
21 management techniques”); Rubin Decl. ¶ 38, Exh. 46

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23 *Listen to the River: An Independent Review of the CVPIA Fisheries*
24 *Program* at 24 (Dec. 2008) (“predation by a larger striped bass
25 population on juvenile winter-run chinook may impede recovery of
26 winter-run chinook”); Rubin Decl ¶ 39, Exh. 47

