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Attorneys for Defendants

15 **IN THE UNITED STATES DISTRICT COURT**
16 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
17 **(San Francisco Division)**

18 CENTER FOR BIOLOGICAL DIVERSITY,)
19 and TURTLE ISLAND RESTORATION)
20 NETWORK,)

21 Plaintiffs,)

22 v.)

23 DEBRA HAALAND, in her official capacity as)
24 Secretary of the U.S. Department of the Interior,)
25 and U.S. FISH AND WILDLIFE SERVICE,)

26 Defendants.)

No. 3:21-cv-1182-JCS

27 **STIPULATED SETTLEMENT AGREEMENT AND [PROPOSED] ORDER**

28 This Stipulated Settlement Agreement (“Agreement”) is entered into by and between
Plaintiffs Center for Biological Diversity and Turtle Island Restoration Network and Defendants
Debra Haaland, in her official capacity as Secretary of the United States Department of the

1 Interior, and the United States Fish and Wildlife Service (“Service”), who by and through their
2 undersigned counsel, state as follows:

3 WHEREAS, on February 18, 2021, Plaintiffs filed a complaint for declaratory and
4 injunctive relief, alleging that Defendants had violated the Marine Mammal Protection Act
5 (“MMPA”) and Administrative Procedure Act (“APA”) by failing to timely review and revise
6 the stock assessment reports for nine marine mammal stocks as required by 16 U.S.C. § 1386(c).
7 ECF No. 1;

8
9 WHEREAS, on May 17, 2021, Defendants filed a motion to dismiss the complaint for
10 lack of subject matter jurisdiction and failure to state a claim. ECF No. 17;

11
12 WHEREAS, on June 24, 2021, the Federal Register published the Service’s final revised
13 stock assessment reports for the southern sea otter, Chukchi/Bering Sea polar bear, and Southern
14 Beaufort Sea polar bear stocks, pursuant to 16 U.S.C. § 1386(b)(3). *See* ECF No. 23;

15
16 WHEREAS, on October 20, 2021, the Court granted Defendants’ motion to dismiss with
17 leave to amend. ECF No. 26;

18
19 WHEREAS, on November 5, 2021, Plaintiffs filed an amended complaint for declaratory
20 and injunctive relief, alleging that Defendants had violated the MMPA and APA by failing to
21 review and, in the alternative, failing to revise stock assessment reports for six marine mammal
22 stocks as required by 16 U.S.C. § 1386(c). ECF No. 28;

23
24 WHEREAS, on November 19, 2021, Defendants filed an answer to Plaintiffs’ amended
25 complaint. ECF No. 29;

26
27 WHEREAS, pursuant to its reviews under 16 U.S.C. § 1386(c), in 2021, the Service
28 preliminarily determined that revision is warranted for the remaining six stocks at issue in the
above-captioned case;

1 WHEREAS, the parties, by and through their authorized representatives, and without any
2 admission or final adjudication of the issues of fact or law with respect of Plaintiffs’ substantive
3 claims or Plaintiffs’ demand for attorneys’ fees and costs, have reached a settlement that they
4 consider to be in the public interest and just, fair, adequate, and equitable;
5

6 WHEREAS, the parties believe it is in the interest of judicial economy and the parties’
7 best interests to avoid litigation of the issues in dispute and attorneys’ fees and costs;

8 WHEREAS, for any marine mammal listed in Paragraph 1 for which FWS has submitted
9 a notice of availability of a draft revised stock assessment report, FWS anticipates issuing a final
10 determination on a revision of a stock assessment consistent with the procedures of 16 U.S.C. §
11 1386(b)(3);
12

13 THEREFORE, the parties hereby stipulate and agree as follows:

14 1. FWS shall submit to the Office of the Federal Register a notice of the availability
15 of a draft revised stock assessment report for the following marine mammals:

- 16 a. Florida manatee by July 29, 2022
- 17 b. Puerto Rico manatee by July 29, 2022
- 18 c. Northern sea otter – southwest Alaska stock by February 1, 2023
- 19 d. Northern sea otter – southcentral Alaska stock by February 1, 2023
- 20 e. Northern sea otter – southeast Alaska stock by February 1, 2023
- 21 f. Pacific walrus by February 1, 2023

22 2. This Agreement requires Defendants to take the action described in Paragraph 1
23 by the deadlines specified in that Paragraph. The Agreement shall not (and shall not be construed
24 to) limit or modify the discretion accorded to the Service by the MMPA, APA, or general
25 principles of administrative law with respect to the procedures to be followed in making any
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1 determination required herein, or as to the substance of any determination. No provision of this
2 Agreement shall be interpreted as, or constitute, a commitment or requirement that Defendants
3 take any action in contravention of the MMPA, the APA, or any other law or regulation, either
4 substantive or procedural.
5

6 3. To challenge any final determination made by the Service, consistent with the
7 procedures of 16 U.S.C. § 1386(b)(3), Plaintiffs will be required to file a separate action and
8 otherwise comply with applicable legal requirements.

9 4. The order entering this Agreement may be modified by the Court upon good
10 cause shown consistent with the Federal Rules of Civil Procedure, by written stipulation between
11 the parties filed with and approved by the Court, or upon written motion filed by one of the
12 parties and granted by the Court. In the event that either party seeks to modify the terms of this
13 Agreement, including the deadline specified in Paragraph 1, or in the event of a dispute arising
14 out of or relating to this Agreement, or in the event that either party believes that the other party
15 has failed to comply with any term or condition of this Agreement, the party seeking the
16 modification, raising the dispute, or seeking enforcement shall provide the other party with
17 written notice of the claim. The parties agree that they will meet and confer (either telephonically
18 or in-person) at the earliest possible time in a good-faith effort to resolve the claim before
19 seeking relief from the Court. If the parties are unable to resolve the claim themselves, either
20 party may seek relief from the Court.
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24 5. In the event that Defendants fail to meet the deadlines specified in Paragraph 1,
25 Defendants have not sought to modify the deadlines, and the parties cannot resolve the claim
26 pursuant to the meet and confer provisions of Paragraph 4, Plaintiffs' first remedy shall be a
27 motion to enforce the terms of this Agreement. No party shall institute a proceeding for contempt
28

1 of court unless Defendants are in violation of a separate order of the Court resolving a motion to
2 enforce the terms of the Agreement.

3 6. No party shall use this Agreement or its terms as evidence of what does or does
4 not constitute a reasonable timeline for reviewing stock assessment reports or preparing draft
5 revised stock assessment reports in any other administrative or judicial proceeding regarding
6 Defendants' implementation of the MMPA. No part of this Agreement shall have precedential
7 value in any pending or future litigation or administrative action or in representations before any
8 court or forum or in any public setting.
9

10 7. Nothing in this Agreement shall be construed or offered in evidence in any
11 proceeding as an admission or concession of wrongdoing, liability, or any issue of fact or law
12 concerning the claims settled under this Agreement. The Parties do not waive any claim or
13 defense they may have concerning the claims settled under this Agreement or any similar claims
14 brought in the future by any other party. This Agreement is executed solely for the purpose of
15 compromising and settling Plaintiffs' amended complaint, and nothing herein shall be construed
16 as precedent in any other context.
17

18 8. Defendants agree to settle Plaintiffs' entire claim for attorneys' fees and costs in
19 the above-captioned matter for a total of \$20,000 pursuant to the Equal Access to Justice Act, 28
20 U.S.C. § 2412(d).
21

22 9. Plaintiffs agree to accept payment of \$20,000 in full satisfaction of any and all
23 claims for attorneys' fees and costs in the above-captioned matter, through and including the date
24 of this Agreement.
25

26 10. Plaintiffs agree that receipt of this payment of \$20,000 shall operate as a release
27 of any and all claims for attorneys' fees and costs that they possess against the United States,
28

1 including each named Defendants, incurred in the above-captioned matter, through and including
2 the date of this Agreement.

3 11. Defendants' payment, as identified in Paragraph 8 above, shall be accomplished
4 via electronic funds transfer. Within ten (10) business days after the entry of an order approving
5 this Agreement, Plaintiffs' counsel will provide Defendants' counsel with the appropriate
6 account number and other information needed to facilitate payment.
7

8 12. Defendants shall submit the necessary paperwork for the payment within twenty-
9 eight (28) days after the Court's approval of this Agreement, or the receipt of the information
10 necessary to effectuate payment, whichever is later.
11

12 13. Plaintiffs shall send written confirmation of the receipt of payment to Defendants'
13 counsel within fourteen (14) days of receiving the payment.

14 14. Plaintiffs and Plaintiffs' counsel agree to hold Defendants harmless in any
15 litigation, further suit, or claim arising from errors not attributable to Defendants that are related
16 to the authorized transfer of the agreed-upon settlement amount.
17

18 15. Nothing in this Agreement shall be interpreted as, or shall constitute, a
19 requirement that Defendants are obligated to pay any funds exceeding those available or take any
20 action in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other law or
21 regulation.
22

23 16. By this Agreement, Defendants do not waive any right to contest fees claimed by
24 Plaintiffs or Plaintiffs' counsel, including hourly rates, in any future litigation or continuation of
25 the above-captioned matter. Further, the provisions in this Agreement relating to attorneys' fees
26 and costs have no precedential value in any other context and shall not be cited in any other
27 litigation except as necessary to enforce the terms of this Agreement.
28

1 17. The parties agree that this Agreement was negotiated in good faith and that it
2 constitutes a settlement of claims that were denied and disputed by the parties. The Agreement
3 contains all of the agreement between the parties and is intended to be the final and sole
4 agreement between the parties. The parties agree that any prior or contemporaneous
5 representations or understandings not explicitly contained in this written Agreement, whether
6 written or oral, are of no further legal or equitable force or effect.

8 18. The terms of this Agreement shall become effective upon entry of an order by the
9 Court approving the Agreement.

10 19. Upon approval of this Agreement by the Court, Plaintiffs' amended complaint
11 shall be dismissed with prejudice. Notwithstanding the dismissal of this action, the parties
12 stipulate and respectfully request that the Court retain jurisdiction to oversee compliance with the
13 terms of this Agreement and to resolve any motions to modify such terms, until Defendants
14 satisfy their obligations under the Agreement. *See Kokkonen v. Guardian Life Ins. Co. of Am.*,
15 511 U.S. 375 (1994).

16 20. The undersigned representatives of each party certify that they are fully
17 authorized by the party they represent to agree to the Court's entry of the terms and conditions of
18 this Agreement and that they agree to the terms herein.

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21
22 Dated: May 16, 2022

Respectfully submitted,

23 /s/ Emily Suzanne Jeffers
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Attorneys for Defendants

IT IS SO ORDERED.

Dated: _____

Signed by: _____

JOSEPH C. SPERO
Chief Magistrate Judge