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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

RICHARD W. WISKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case No: C-02-3901-SC

CENTER FOR BIOLOGICAL DIVERSITY, et al;

Plaintiffs,

STIPULATED SETTLEMENT AGREEMENT

v.

NATIONAL MARINE FISHERIES SERVICE;

Defendant.

ENTERED IN CIVIL DOCKET 4/30/03

UNITED FISHERMEN OF ALASKA, et al;

Intervenor-Defendants

Plaintiffs Center for Biological Diversity and Turtle Island Restoration Network ("Plaintiffs"), Defendant, National Marine Fisheries Service ("NMFS"), and United Fisherman of Alaska, et al. (Intervenor-Defendants) (collectively the "Parties"), by and through undersigned counsel, say as follows:

WHEREAS, On August 14, 2002, Plaintiffs Center for Biological Diversity and Turtle Island Restoration Network sued Defendant National Marine Fisheries Service ("NMFS") alleging violations of § 118 of the Marine Mammal Protection Act ("MMPA"). 16 U.S.C. § 1387. Specifically, the Plaintiffs' complaint alleges that NMFS is violating § 118(b)(3) of the MMPA by failing to complete and submit to Congress a report on the progress of commercial fisheries towards reaching the MMPA's zero mortality rate goal. 16 U.S.C. § 1387(b)(3). Additionally, Plaintiffs' complaint alleges that NMFS is violating § 118(f) by failing to convene take reduction teams and complete take reduction plans for various marine mammal stocks that Plaintiffs believe are required by the statute. 16 U.S.C. § 1387(f);

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1 WHEREAS, the Parties, through their authorized representatives, and without any admission or
2 final adjudication of the issues of fact or law with respect to the Claims of Plaintiffs' Complaint, have
3 reached a settlement that they consider to be a just, fair, adequate, and equitable resolution of Plaintiffs'
4 Complaint;

5 WHEREAS, the Parties agree that venue is proper and this Court has jurisdiction over the parties
6 and subject matter of this action;

7 WHEREAS, all Parties agree that settlement of this action in this manner is in the public interest
8 and is an appropriate way to resolve the dispute between them;

9 THEREFORE, THE PARTIES AGREE AND STIPULATE TO THE FOLLOWING:

10 1. NMFS shall submit for publication in the Federal Register an advance notice of proposed
11 rulemaking on a regulation to define "Zero Mortality Rate Goal" ("ZMRG") within 60 days of court
12 approval of this stipulation.

13 2. Within 14 months of court approval of this stipulation, NMFS shall submit for
14 publication in the Federal Register a final rule defining ZMRG.

15 3. Within 14 months of court approval of this stipulation, NMFS shall submit to Congress
16 the report on progress of commercial fisheries towards reducing marine mammal bycatch as required
17 under 16 U.S.C. § 1387(b)(3).

18 4. NMFS shall, pursuant to Section 118(f) of the MMPA, 16 U.S.C. § 1387(f), convene a
19 take reduction team for the Atlantic portion of Atlantic Ocean, Caribbean, Gulf of Mexico, Large Pelagic
20 Longline Fishery ("Atlantic Longline Fishery") no later than June 30, 2005. In the interim, NMFS shall
21 carry out abundance surveys and observer programs for the fishery. Specifically, beginning no later than
22 summer 2004, NMFS shall conduct appropriate cetacean sighting surveys in the Atlantic portion of the
23 Atlantic Longline Fishery to gather data to develop new abundance estimates for the common dolphin
24 and pilot whale cetacean stocks. NMFS shall provide a copy of such updated abundance estimates to
25 the Plaintiffs no later than May 30, 2005.

26 5. NMFS shall, pursuant to § 118(f) of the MMPA, 16 U.S.C. § 1387(f), convene a take
27 reduction team for the Atlantic Squid, Mackerel, Butterfish Trawl Fishery ("Atlantic Trawl Fishery")

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1 no later than September 30, 2006. In the interim, NMFS shall carry out abundance surveys and observer
2 programs for the fishery. Specifically, NMFS shall deploy increased observer coverage on the Atlantic
3 Trawl Fishery to obtain at least two successive years of updated marine mammal injury and mortality
4 estimates for the common dolphin and pilot whales prior to convening the take reduction team.

5 6. For each of the take reductions teams described in paragraphs 4 and 5, beginning six
6 months after such team is established, and every 90 days thereafter until a final take reduction plan and
7 accompanying implementing regulations are issued, NMFS shall provide Plaintiffs a brief written update
8 on the status of the take reduction team and its progress towards developing a take reduction plan.
9 Unless otherwise notified in writing by Plaintiffs, the written update shall be sent to:

10 Brendan Cummings
11 CENTER FOR BIOLOGICAL DIVERSITY
12 P.O. Box 493
13 54870 Pine Crest Ave.
14 Idyllwild, CA 92549

15 7. Upon approval of this settlement, Plaintiffs' Complaint shall be dismissed pursuant to
16 Federal Rule of Civil Procedure 41(a)(1), and the Agreement shall apply to and be binding upon the
17 Parties hereto and anyone acting on their behalf, including successors, employees, agents, elected and
18 appointed officers, and assigns.

19 8. Plaintiffs' claim regarding the report to Congress is dismissed with prejudice.

20 9. Plaintiffs' claims regarding the failure to convene take reduction teams and complete take
21 reduction plans for the Atlantic Longline Fishery and the Atlantic Trawl Fishery are dismissed with
22 prejudice.

23 10. Plaintiffs' claims regarding the failure to convene take reduction teams and complete
24 take reduction plans for all other marine mammals stocks and/or fisheries listed in Plaintiffs' complaint
25 are dismissed without prejudice. Plaintiffs aver, however, that they have no intent to refile such claims
26 absent new information regarding, or changes in, the status of these marine mammal stocks, levels of
27 bycatch to such stocks, or the nature or regulation of these fisheries.

28 11. The Parties agree that this Settlement Agreement ("Agreement") was negotiated in good
29 faith and it constitutes a settlement of claims that were vigorously contested, denied, and disputed by

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1 the parties. By entering into this Agreement, the Parties do not waive any claim or defense on any
2 grounds.

3 12. No party shall use this Agreement or the terms herein as evidence in any other proceeding
4 regarding NMFS' implementation of the MMPA.

5 13. NMFS shall pay Plaintiffs \$14,325.00 within 45 days of the Courts approval of this
6 Agreement in full satisfaction of all claims that Plaintiffs may have for attorney's fees, costs and
7 expenses in this matter. Plaintiffs agree that receipt of this payment shall operate as a release of
8 plaintiffs' claims for attorney's fees, costs, and expenses in this matter up to and including the date of
9 the approval of this agreement.

10 14. The undersigned representatives of each party certify that they are fully authorized by the
11 party or parties they represent to agree to the terms and conditions of this Agreement and do hereby
12 agree to the terms herein.

13 15 No provision of this Agreement shall be interpreted as limiting or modifying the
14 discretion afforded Defendant under the Marine Mammal Protection Act, the Administrative Procedure
15 Act, or any other law or regulation, either substantive or procedural. Further, nothing herein constitutes,
16 or shall be interpreted as, a commitment or requirement that the Defendant take action in contravention
17 of the Marine Mammal Protection Act, the Administrative Procedure Act, or any other law or regulation,
18 either substantive or procedural.

19 16. This Agreement places no obligations or commitments on Intervenor-Defendants. By
20 signing this Agreement, Intervenor-Defendants indicate that they consent to resolution of this litigation
21 through this Agreement and reserve all rights that any party would have with respect to this Agreement
22 and this litigation.

23 17. The terms of this Agreement shall become effective upon entry of an order by the Court
24 ratifying this Agreement.

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18 Plaintiffs' remedy for breach of this Agreement and the Court's Order shall be limited solely to enforcement of the terms of the Agreement and shall not include contempt.

DATED: 7/25/03


Brendan Cummings (CA Bar # 193952)
CENTER FOR BIOLOGICAL DIVERSITY
P.O. Box 453
54870 Pine Crest Ave.
Idyllwild, CA 92549
Telephone: (909) 659-6053
Facsimile: (909) 659-2484

AARON COURTNEY (OR Bar # 93525)
Pacific Environmental Advocacy Center
Northwestern School of Law of Lewis and Clark College
10015 S.W. Terwilliger Blvd.
Portland, Oregon 97219-7799
Telephone: (503) 768-6727
Facsimile: (503) 768-6642
Pro Hac Vice
Attorneys for Plaintiff

DATED: April 23, 2003

THOMAS L. SANSONETTI
Assistant Attorney General
JEANE E. WILLIAMS, Section Chief

s/ ROBERT GUDECK, Trial Attorney
U.S. Department of Justice
Environment & Natural Resources Division
Wildlife & Marine Resources Section
Ben Franklin Station, P.O. Box 7369
Washington, D.C. 20044-7369
Telephone: 202-305-0500
Facsimile: 202-305-0275

DAVID W. SHAPIRO
Interim United States Attorney
JAMES A. CODA, Asst. U.S. Attorney
Northern District of California
10th Floor, Box 36055
450 Golden Gate Avenue
San Francisco, CA 94102

Attorneys for Defendants

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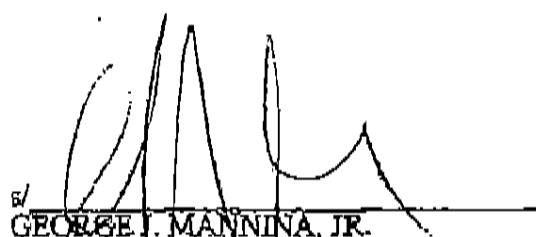
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DATED: April 24, 2003



GEORGE I. MANNINA, JR.
O'Connor & Hannan, L.L.P.
1666 K Street, N.W., Suite 500
Washington, D.C. 20006
Telephone: 202-887-1400
Facsimile: 202-466-3215

DONALD PUTTERMAN
KATHLEEN SCANLAN
Sideman & Bancroft L.L.P.
One Embarcadero Center, Eighth Floor
San Francisco, CA 94111
Telephone: 415-392-1960
Facsimile: 415-392-0827

Attorneys for Intervenor-Defendants

IT IS SO ORDERED, this 4/29 day of 2003:

SAMUEL CONTI

United States District Judge

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