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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

CENTER FOR BIOLOGICAL DIVERSITY;
NATIVE FISH SOCIETY; UMPQUA
WATERSHEDS; and PACIFIC RIVERS,

Plaintiffs,

v.

NATIONAL MARINE FISHERIES SERVICE;
EUGENIO PIÑEIRO SOLER, in his official
capacity as Assistant Administrator for Fisheries of
the National Marine Fisheries Service; and
HOWARD LUTNICK, in his official capacity as
Secretary of the U.S. Department of Commerce,

Defendants.

Case No. 3:25-cv-00258-AR

**STIPULATED SETTLEMENT
AGREEMENT**

This Stipulated Settlement Agreement (“Agreement”) is entered into by and between Plaintiffs Center for Biological Diversity, Native Fish Society, Umpqua Watersheds, and Pacific Rivers (collectively, “Plaintiffs”) and Defendants the National Marine Fisheries Service (“Service”), Eugenio Piñeiro Soler, in his official capacity as Assistant Administrator for Fisheries of the Service, and Howard Lutnick, in his official capacity as Secretary of the U.S. Department of Commerce (collectively, “Defendants”), who, by and through their undersigned counsel, state as follows:

WHEREAS, Defendants received Plaintiffs Center for Biological Diversity, Native Fish Society, and Umpqua Watersheds’ petition dated August 4, 2022, requesting the Service list the Oregon Coast (“OC”) and Southern Oregon and Northern California Coastal (“SONCC”) evolutionary significant units (“ESU”) of Chinook salmon (*Oncorhynchus tshawytscha*) as threatened or endangered under the Endangered Species Act (“ESA”), 16 U.S.C. § 1531 et seq.;

WHEREAS, on January 11, 2023, in accordance with 16 U.S.C. § 1533(b)(3)(A), the Service published a “90-day finding” concluding that Plaintiffs’ petition dated August 4, 2022, presented substantial information that listing the OC and SONCC Chinook salmon ESUs may be warranted under the ESA, 88 Fed. Reg. 1548, 1555 (Jan. 11, 2023);

WHEREAS, Defendants received Plaintiffs Center for Biological Diversity and Pacific Rivers’ petition dated July 17, 2023, requesting the Service list the Washington Coast (“WC”) spring-run ESU of Chinook salmon as threatened or endangered under the ESA, 16 U.S.C. § 1531 et seq.;

WHEREAS, on December 7, 2023, in accordance with 16 U.S.C. § 1533(b)(3)(A), the Service published a “90-day finding” concluding that Plaintiffs’ petition dated July 17, 2023,

presented substantial information that listing the WC spring-run Chinook salmon ESU may be warranted under the ESA, 88 Fed. Reg. 85178, 85184 (Dec. 7, 2023);

WHEREAS, Defendants received Plaintiffs' letter dated November 15, 2024, stating their intent to file suit to compel the Service to complete "12-month findings" with respect to the petitions to list the OC, SONCC, and WC spring-run Chinook salmon ESUs pursuant to 16 U.S.C. § 1533(b)(3)(B);

WHEREAS, on February 18, 2025, Plaintiffs filed the above-captioned action to compel the Service to complete the 12-month findings with respect to the petitions to list the OC, SONCC, and WC spring-run Chinook salmon ESUs by dates certain;

WHEREAS, on April 18, 2025, the Court granted Defendants' unopposed motion for an extension of time to respond to Plaintiffs' Complaint until June 23, 2025;

WHEREAS, on June 17, 2025; the Court granted Defendants' unopposed motion for an extension of time to respond to Plaintiffs' Complaint until June 30, 2025;

WHEREAS, Plaintiffs and Defendants (collectively, "the Parties"), by and through their authorized representatives, and without any admission or final adjudication of the issues of fact or law with respect to Plaintiffs' claims, have negotiated a settlement that they consider to be in the public interest and a just, fair, adequate, and equitable resolution of the disputes set forth in Plaintiffs' Complaint;

NOW, THEREFORE, the Parties hereby stipulate and agree as follows:

1. On or before November 3, 2025, the Service shall review the status of the OC and SONCC Chinook salmon ESUs and submit to the Office of the Federal Register 12-month findings as to whether listing the OC and SONCC Chinook salmon ESUs as threatened or

endangered is (a) not warranted; (b) warranted; or (c) warranted but precluded by other pending proposals, pursuant to 16 U.S.C. § 1533(b)(3)(B).

2. On or before January 2, 2026, the Service shall review the status of the WC spring-run Chinook salmon ESU and submit to the Office of the Federal Register a 12-month finding as to whether listing the WC spring-run Chinook salmon ESU as threatened or endangered is (a) not warranted; (b) warranted; or (c) warranted but precluded by other pending proposals, pursuant to 16 U.S.C. § 1533(b)(3)(B).

3. The order entering this Agreement may be modified by the Court upon good cause shown, consistent with the Federal Rules of Civil Procedure, by written stipulation between the Parties filed with and approved by the Court, or upon written motion filed by one of the Parties and granted by the Court. In the event that either party seeks to modify the terms of this Agreement, including the deadlines specified in Paragraphs 1 and 2, or in the event of a dispute arising out of or relating to this Agreement, or in the event that either party believes that the other party has failed to comply with any term or condition of this Agreement, the party seeking the modification, raising the dispute, or seeking enforcement shall provide the other party with notice of the claim or modification. The Parties agree that they will meet and confer (either telephonically or in person) at the earliest possible time in a good-faith effort to resolve the claim before seeking relief from the Court. If the Parties are unable to resolve the claim themselves, either party may seek relief from the Court.

4. In the event that Defendants fail to meet the deadlines specified in Paragraphs 1 or 2 and have not sought to modify them, Plaintiffs' first remedy shall be a motion to enforce the terms of this Agreement, after following the dispute resolution procedures described above. This

Agreement shall not, in the first instance, be enforceable through a proceeding for contempt of court.

5. No provision of this Agreement shall be interpreted as, or constitute, a commitment or requirement that Defendants take action in contravention of the ESA, the Administrative Procedure Act (“APA”), or any other law or regulation, either substantive or procedural. Likewise, nothing in this Agreement shall be interpreted as, or shall constitute, a requirement that Defendants are obligated to take any action in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable appropriations law. Nothing in this Agreement shall be construed to limit or modify the discretion accorded to the Service by the ESA, the APA, or general principles of administrative law with respect to the procedures to be followed in making any finding required herein, or as to the substance of any finding made pursuant to Paragraphs 1 or 2. To challenge any finding issued pursuant to Paragraphs 1 or 2, Plaintiffs will be required to file a separate action. Defendants reserve the right to raise any applicable claims or defenses to such challenges.

6. Without waiving any defenses or making any admissions, Defendants agree to pay Plaintiffs \$9,000.00 in attorneys’ fees and costs. Plaintiffs agree to accept the \$9,000.00 from Defendants in full satisfaction of any and all claims, demands, rights, and causes of action for any and all attorneys’ fees and costs Plaintiffs reasonably incurred in connection with the above captioned litigation through the signing of this Agreement, including in pursuit of Plaintiffs’ claims for such fees, costs, and expenses.

7. Plaintiffs also acknowledge that under 31 U.S.C. §§ 3711, 3716, 26 U.S.C. § 6402(d), 31 C.F.R. §§ 285.5, 901.3, and other authorities, the United States will offset against

the award of attorneys' fees and costs Plaintiffs' delinquent debts to the United States, if any. *See Astrue v. Ratliff*, 560 U.S. 586 (2010).

8. Payment will be made to Plaintiffs by electronic funds transfer into the trust account identified in Paragraph 9. Plaintiffs and their attorneys agree to hold Defendants harmless in any litigation, further suit, or claim arising from the payment of the agreed-upon settlement amount, other than for an allegation of Defendants' breach of this Agreement.

9. No later than ten (10) days after the entry of an order approving this Agreement, Plaintiffs' counsel shall provide counsel for Defendants the following information necessary to process the payment set forth in Paragraph 6: the Plaintiffs' name, the payee's name, the payee's address, the payee's bank name and bank address, the payee's bank account name and account number, the account type, the Automated Clearing House ("ACH") routing number or the American Banking Association ("ABA") routing number for FedWire payment, the bank routing transit number ("RTN"), and Plaintiffs' tax identification number.

10. Defendants agree to submit to the U.S. Department of the Treasury's Judgment Fund Office, pursuant to 16 U.S.C. § 1540(g)(4), all necessary paperwork for the processing of the attorneys' fees award within fifteen (15) days from receipt of the necessary information from Plaintiffs or from approval of this Agreement by the Court, whichever is later. Plaintiffs, through counsel, shall confirm receipt of the payment to Defendants within seven (7) business days of Plaintiffs' counsel receiving notice of such payment.

11. By entering into this Agreement, Defendants do not waive any right to contest fees and costs claimed by Plaintiffs or Plaintiffs' counsel in any future litigation or continuation of the present action.

12. The Parties agree that this Agreement was negotiated in good faith and that it constitutes a settlement of claims disputed by the Parties. No part of this Agreement shall have precedential value in any litigation or in representations before any court or forum or in any public setting. Nothing in this Agreement shall be construed or offered as evidence in any proceeding as an admission or concession of any wrongdoing, liability, or any issue of fact or law concerning the claims settled under this Agreement or any similar claims brought in the future by any other party. No party shall use this Agreement or the terms herein as evidence of what does or does not constitute a reasonable timeline for making findings regarding the listing of any species. Except as expressly provided in this Agreement, the Parties do not waive or relinquish any legal rights, claims, or defenses they may have.

13. This Agreement contains all the terms of agreement between the Parties concerning Plaintiffs' Complaint and is intended to be the final and sole agreement between the Parties with respect thereto. The Parties agree that any prior or contemporaneous representations or understanding not explicitly contained in this written Agreement, whether written or oral, are of no further legal or equitable force or effect.

14. The undersigned representatives of each party certify that they are fully authorized by the party or parties they represent to agree to the terms and conditions of this Agreement and do hereby agree to the terms herein. Further, each party, by and through its undersigned representative, represents and warrants that it has the legal power and authority to enter into this Agreement and bind itself to the terms and conditions contained in this Agreement.

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

16. Upon adoption of this Agreement by the Court, all counts of Plaintiffs' Complaint shall be dismissed with prejudice. Notwithstanding the dismissal of this action, however, the Parties hereby stipulate and respectfully request that the Court retain jurisdiction to oversee compliance with the terms of this Agreement and to resolve any motions to modify such terms. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994).

Respectfully submitted this 26th day of June, 2025.

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