



conservation of these seals and (2) consider the economic impacts of designating critical habitat, 77 Fed. Reg. 76706, 76719 (Dec. 28, 2012), 77 Fed. Reg. 76740, 76750 (Dec. 28, 2012);<sup>1</sup>

WHEREAS, the listing of these seals as threatened under the ESA was subsequently challenged in the U.S. District Court for the District of Alaska, and in 2014 that district court found unlawful and vacated the listing rule for the Beringia DPS of the bearded seal, and in 2016 the court found unlawful and vacated the listing rule for the Arctic subspecies of the ringed seal. *Alaska Oil and Gas Ass'n v. Pritzker*, Nos. 4:13-cv-00018-RRB, 4:13-cv-00021-RRB, 4:13-cv-00022-RRB, 2014 WL 3726121 (D. Alaska July 25, 2014); *Alaska Oil and Gas Ass'n v. Ross*, Case No. 4:14-cv-00029-RRB, Case No. 4:15-cv-00002-RRB, Case No. 4:15-cv-00005-RRB, 2016 WL 1125744 (D. Alaska March 17, 2016);

WHEREAS, in 2016 and then in 2018, the U.S. Court of Appeals for the Ninth Circuit reversed the district court rulings in the bearded and ringed seal cases. *Alaska Oil and Gas Ass'n v. Pritzker*, 840 F.3d 671 (9th Cir. 2016), *cert. denied*, 138 S. Ct. 924 (Jan. 22, 2018); *Alaska Oil and Gas Ass'n v. Ross*, 722 Fed. App. 666 (9th Cir. 2018). In 2017 and 2018, respectively, the district court entered judgment for defendants in these cases pursuant to the decisions of the Ninth Circuit, *Alaska Oil and Gas Ass'n v. Pritzker*, Nos. 4:13-cv-00018-RRB, 4:13-cv-00021-RRB, 4:13-cv-00022-RRB, Judgment in a Civil Case, ECF No. 97 (D. Alaska May 12, 2017); *Alaska Oil and Gas Ass'n v. Ross*, Case No. 4:14-cv-00029-RRB, Case No. 4:15-cv-

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<sup>1</sup> NMFS also listed the Okhotsk and Baltic subspecies of the ringed seal as threatened, the Ladoga subspecies of the ringed seal as endangered, and the Okhotsk DPS of the bearded seal as threatened. In the listing rules, NMFS determined not to designate critical habitat for these seals because their known distributions occur outside of the jurisdiction of the United States. *See* 50 C.F.R. § 424.12(g). Plaintiff has not brought any claim in this lawsuit for these other listed seals, and Defendants make no commitment in this stipulation to take any action with respect to them.

00002-RRB, Case No. 4:15-cv-00005-RRB, Judgment in a Civil Case, ECF No. 91 (D. Alaska May 15, 2018);

WHEREAS, prior to the district court's vacatur of the listing rule for the Arctic subspecies of the ringed seal in 2016, NMFS issued a proposed rule to designate critical habitat for that seal, 79 Fed. Reg. 73010 (Dec. 9, 2014), but has not made a final determination with respect to that proposal. NMFS has not issued a proposed critical habitat rule for the Beringia DPS of the bearded seal;

WHEREAS, on June 13, 2019, Plaintiff filed the above-captioned action to compel NMFS to issue final critical habitat rules by dates certain for the Arctic subspecies of the ringed seal and the Beringia DPS of the bearded seal (ECF 1);

WHEREAS, notwithstanding that NMFS issued a proposed rule to designate critical habitat for the Arctic subspecies of the ringed seal in 2014, NMFS intends to concurrently make new critical habitat determinations, including the issuance of any proposed and final rules, for both the Arctic subspecies of the ringed seal and the Beringia DPS of the bearded seal, and Plaintiff is amenable to that approach to resolving the claims in Plaintiff's Complaint;

WHEREAS, 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 Plaintiff's claim, have reached a settlement that they consider to be a just, fair, adequate, and equitable resolution of all disputes set forth in Plaintiff's complaint; and

WHEREAS, the parties agree that settlement of this action in this manner is in the public interest and an appropriate way to resolve Plaintiff's Complaint.

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

1. On or before September 15, 2020, NMFS shall submit to the Federal Register for publication proposed determinations concerning the designation of critical habitat for the Arctic subspecies of the ringed seal and the Beringia DPS of the bearded seal, and if NMFS determines to propose critical habitat, NMFS shall submit for publication in the Federal Register a proposed critical habitat rule (or rules) on that same date;

2. On or before September 15, 2021, to the extent NMFS has published a proposed rule to designate critical habitat pursuant to the preceding paragraph, NMFS shall submit to the Federal Register for publication a final determination concerning the designation of critical habitat for the Arctic subspecies of the ringed seal and the Beringia DPS of the bearded seal;

3. The deadlines set forth in paragraphs 1 and 2 will be extended by thirty (30) days in the event that interagency review of any proposed rule in accordance with Executive Order 12866 exceeds ninety days. In addition to any extension pursuant to the preceding sentence, the deadline in paragraph 2 will be extended by thirty (30) days in the event that interagency review of any final rule in accordance with Executive Order 12866 exceeds ninety days.

4. 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 1-3, in the event of a dispute arising out of or relating to this Agreement, or in the event that any party believes that another 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. 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.

5. In the event that Defendants fail to meet a deadline specified in this agreement and have not sought to modify it, Plaintiff's first remedy shall be a motion to enforce the terms of this Agreement, after following the dispute resolution procedures described in Paragraph 4, above. This Agreement shall not, in the first instance, be enforceable through a proceeding for contempt of court.

6. Without waiving any defenses or making any admissions, Defendants agree to pay Plaintiff \$4,900 in attorneys' fees and costs. Plaintiff agrees to accept the \$4,900 from Defendants in full satisfaction of any and all claims, demands, rights, and causes of action for any and all attorneys' fees and costs Plaintiff reasonably incurred in connection with the above captioned litigation through the signing of this Agreement.

7. Plaintiff agrees to furnish Defendants with the information necessary to effectuate the \$4,900 payment set forth in Paragraph 6. Payment will be made to the Center for Biological Diversity by electronic funds transfer. Defendants agree to submit all necessary paperwork for the processing of the attorneys' fees award within fifteen (15) days from receipt of the necessary information from Plaintiff or from approval of this agreement by the Court, whichever is later. Plaintiff shall provide confirmation of the receipt of the payment to undersigned counsel for Defendants within fourteen (14) days of receipt of the payment.

8. 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. No party shall use this Agreement or the terms herein as relevant evidence with regard to any issue whatsoever,

including what does or does not constitute a reasonable time for making a determination regarding critical habitat for any listed species.

9. This Agreement only requires that Defendants take the actions specified in Paragraphs 1, 2, 6 and 7. 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. Nothing in this Agreement shall be construed to limit or modify the discretion accorded to NMFS by the ESA, the APA, or general principles of administrative law with respect to the procedures to be followed in making any determination required herein, or as to the substance of any final determination. To challenge any final determination issued in accordance with this Agreement, Plaintiff will be required to file a separate action. Plaintiff reserves the right to challenge substantive decisions made by Defendants pursuant to this Agreement, and Defendants reserve the right to raise any applicable claims or defenses.

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

11. The parties agree that this Agreement was negotiated in good faith and that this Agreement constitutes a settlement of claims that were disputed by the parties. By entering into this Agreement none of the parties waives or relinquishes any legal rights, claims or defenses it may have that are not specifically and explicitly waived or relinquished herein.

12. The terms of this Agreement constitute the entire agreement of the parties, and no statement, agreement, or understanding, oral or written, which is not contained herein, shall be

recognized or enforced. Except as may be expressly stated herein, this Agreement supersedes all prior agreements, negotiations, and discussions between the parties with respect to the subject matter addressed herein.

13. The undersigned representatives of each party certify that they are fully authorized by the party or parties they represent to agree to the Court's entry of the terms and conditions of this Agreement and do hereby agree to the terms herein.

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

15. Upon approval of this Agreement by the Court, all counts of Plaintiff's Complaint shall be dismissed with prejudice. Notwithstanding the stipulated dismissal of Plaintiffs' legal claims, 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. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994).

DATED: November 25, 2019.

Respectfully submitted,

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/s/ Clifford E. Stevens, Jr.  
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## **CERTIFICATE OF SERVICE**

I hereby certify that on November 25, 2019, I electronically filed the foregoing stipulation with the Clerk of the Court using the CM/ECF system, which will send notification of this filing to the attorneys of record.

/s/ Clifford E. Stevens, Jr.