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**UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF HAWAII**

TURTLE ISLAND RESTORATION  
NETWORK et al., Plaintiffs,

v.

UNITED STATES DEPARTMENT OF  
COMMERCE et al., Defendants

and

HAWAII LONGLINE ASSOCIATION,  
Defendant-Intervenor.

Case No. 1:12-cv-594-SOM-RLP

**STIPULATED SETTLEMENT AGREEMENT  
AND ~~{PROPOSED}~~ ORDER**

Plaintiffs Turtle Island Restoration Network and Center for Biological Diversity ("Plaintiffs"), Defendants U.S. Department of Commerce, National Marine Fisheries Service ("NMFS"), Wilbur L. Ross, in his official capacity as Secretary of Commerce, U.S. Department of the Interior, Ryan Zinke, in his official capacity as Secretary of the Interior, and the United States Fish and Wildlife Service ("FWS") (collectively, the "Federal Defendants"), and Defendant-Intervenor Hawaii Longline

*Turtle Islands Restoration Network, et al. v. Department of Commerce, et al., Civil No. 1:12-cv-594-SOM-RLP, Stipulated Settlement Agreement and Order.*

Association ("HLA" or "Intervenor-Defendant") (collectively, the "Parties"), have agreed to settle the above-captioned case in its entirety on the terms memorialized in this Stipulated Settlement Agreement ("Stipulation").

WHEREAS, on November 2, 2012, Plaintiffs filed a complaint in the action captioned *Turtle Island Restoration Network, et al. v. Department of Commerce, et al.*, Case No. 1:12-cv-00594-SOM-RLP, in the United States District Court for the District of Hawai'i, alleging that the Federal Defendants violated the Magnuson-Stevens Fishery Conservation and Management Act ("MSA"), the Endangered Species Act ("ESA"), the Migratory Bird Treaty Act ("MBTA"), the National Environmental Policy Act ("NEPA"), and the Administrative Procedure Act ("APA"), by issuing a final rule for the Hawai'i shallow-set swordfish longline fishery (the "fishery") that implemented new incidental take levels for certain sea turtles based on a 2012 biological opinion (the "2012 BiOp"), and by issuing a special purpose permit allowing the fishery to incidentally take certain seabirds, Dkt. No. 1;

WHEREAS, on November 20, 2012, HLA moved to intervene as a defendant in all of the claims asserted by Plaintiffs in the above-mentioned action, alleging, in part, that HLA has significant economic, cultural, and regulatory interests in the issues raised in Plaintiffs' complaint, Dkt. No. 8;

WHEREAS, on December 17, 2012, this Court granted HLA's motion to intervene as a defendant in this action, Dkt. No. 18;

WHEREAS, on August 23, 2013, this Court granted summary judgment to Federal Defendants on all claims, Dkt. No. 55;

WHEREAS, on October 21, 2013, Plaintiffs notified this Court of its appeal of this action to the United States Ninth Circuit Court of Appeals, Dkt. No. 58;

WHEREAS, on December 27, 2017, the United States Ninth Circuit Court of Appeals affirmed in part, and reversed in part, this Court's grant of summary judgment in favor of Federal Defendants, finding arbitrary and capricious NMFS's 2012 BiOp's no jeopardy determination as to the loggerhead sea turtles and the FWS's issuance of a special purpose permit for the incidental take of migratory seabirds, but affirming summary judgment to Federal Defendants on all other claims, Dkt. No. 70;

WHEREAS, on March 22, 2017, the United States Ninth Circuit Court of Appeals issued a formal mandate to this Court pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure, Dkt. No. 74;

WHEREAS, NMFS intends to promptly reinstate intra-agency ESA Section 7 consultation for the Hawaii-based shallow-set longline fishery and diligently complete the consultation in a timely manner.

WHEREAS, the Parties, through their authorized representatives, and without any admission or final adjudication of the issues of fact or law with respect to the claims remanded by the United States Ninth Circuit Court of Appeals, have

reached a settlement that they consider to be just, fair, adequate, and an equitable resolution of the remanded issues;

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

NOW, THEREFORE, IT IS STIPULATED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. Those portions of the Biological Opinion published on January 30, 2012 ("2012 BiOp") and those portions of the accompanying 2012 Incidental Take Statement ("ITS") that relate solely to North Pacific loggerhead sea turtles are hereby VACATED and remanded to NMFS. All other provisions of the 2012 BiOp and the ITS shall remain in full force and effect.
2. Following the entry of this Stipulation, NMFS shall, as soon as practicable, initiate rulemaking to close the Hawaii-based shallow-set longline fishery, unless the fishery has already been closed for reaching an annual sea turtle limit as defined by 50 C.F.R. § 665.813(b)(1) (also referred to as the "hard cap limit").
3. The Hawaii-based shallow set longline fishery shall remain closed through December 31, 2018.
4. NMFS shall, as soon as practicable, promulgate a new regulation, which shall be effective on January 1, 2019, establishing the annual limit on North Pacific loggerhead sea turtle physical interactions at 17, consistent with the

incidental take statement from the 2004 Biological Opinion published on February 23, 2004. Those portions of the 2004 Biological Opinion and the terms and conditions of its incidental take statement that relate to North Pacific loggerhead sea turtles are hereby reinstated and shall remain applicable until superseded by a new biological opinion issued by NMFS.

5. NMFS shall not increase the allowable incidental take of North Pacific loggerhead sea turtles by the Hawaii-based shallow-set longline fishery above the annual sea turtle interaction hard cap limit of 17, except through a new regulation issued under applicable authority and after issuance of a new biological opinion by NMFS.
6. FWS's grant of the special purpose permit to NMFS on August 24, 2012, and renewed on May 28, 2015, authorizing the incidental take of migratory birds by the Hawaii shallow-set longline fishery was arbitrary and capricious as decided by the Ninth Circuit Court of Appeals in Turtle Island Restoration Network et al. v. U.S. Department of Commerce et al., No. 13-17123 (9th Cir. Dec. 27, 2017), and declaratory relief is accordingly granted in favor of Plaintiffs as to the issuance of this special purpose permit.
7. The Parties reserve the right to seek to have this Court modify this Stipulation on any grounds provided in Federal Rule of Civil Procedure 60(b).

8. In the event of a disagreement amongst Plaintiffs, Federal Defendants, and/or HLA concerning the interpretation or performance of any aspect of this Stipulation, the dissatisfied party shall provide the other parties with written notice of the dispute and a request for negotiations. The parties shall confer in order to attempt to resolve the dispute within 14 days after receipt of the notice, or such time thereafter as is mutually agreed upon. If the parties are unable to resolve the dispute within 21 days after receipt of the notice, or such time thereafter as is mutually agreed upon, then any party may petition the Court to resolve the dispute. The Court will consider such future requests as it deems appropriate.
9. In the event that NMFS fails to satisfy any requirement specified in this Stipulation, Plaintiffs' and Intervenor-Defendant's first remedy shall be a motion to enforce the terms of this Stipulation. This Stipulation shall not, in the first instance, be enforceable through a proceeding for contempt of court.
10. Plaintiffs reserve any claims for recovery of their attorneys' fees and costs from Federal Defendants through and including the date the Court approves this Stipulation, as described in the Equal Access to Justice Act, 28 U.S.C. § 2412, and/or the ESA, 16 U.S.C. § 1540(g). Federal Defendants and Plaintiffs agree to attempt to resolve Plaintiffs' claim for fees and costs expeditiously.

Federal Defendants and Plaintiffs further recognize that Plaintiffs reserve the right to seek additional fees and costs incurred arising from a need to apply to the Court for such an award, to enforce or defend against efforts to modify this Stipulation or for any other unforeseen continuation of this action. By entering this Stipulation, Federal Defendants do not waive any right to contest fees or costs claimed by Plaintiffs, including the hourly rate.

11. If Federal Defendants and Plaintiffs cannot agree on the amount of such fees within 120 days of the Court approving this Stipulation, the parties will submit their proposed briefing schedule to the Court for the purpose of resolving such claims.

12. No provision of this Stipulation shall be interpreted as or constitute a commitment or requirement that the Federal Defendants take action in contravention of any law or regulation, either substantive or procedural. Nothing in this Stipulation shall be construed to limit or modify the discretion accorded to Federal Defendants by the ESA, MSA, NEPA, MBTA, APA, or the 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.

13. No provision of this Stipulation shall be interpreted as, or constitute, a commitment or requirement that Federal Defendants are obligated to spend funds in violation of the

Anti-Deficiency Act, 31 U.S.C. § 1341, or any other provisions of law.

14. The parties agree that this Stipulation was negotiated in good faith and that entry of this Stipulation constitutes a settlement of claims that were vigorously contested, denied, and disputed by the parties. By entering into this Stipulation, the parties do not waive any defense, except that the Federal Defendants recognize that Plaintiffs reserve their claims to an award of their reasonable attorney fees, costs and expenses in accordance with law as set out in Paragraph 10.

15. The undersigned representatives of the Parties certify that they are fully authorized by the Parties they represent to agree to the terms and conditions of this Stipulation and do hereby agree to the terms herein.

16. Upon entry of this Stipulation, Plaintiffs' Complaint shall be dismissed with prejudice. The dismissal shall apply to and be binding upon the parties hereto and anyone acting on their behalf, including successors, employees, agents, elected and appointed officers, and assigns. Plaintiffs agree not to bring, assist any other party in bringing, or join Federal Defendants or any other party in any court proceeding that concerns alleged violations of law identical to or significantly similar to the allegations in Plaintiffs' complaint. Judgment shall not be



entered in this case prior to resolution of Plaintiffs' claims for awards of attorneys' fees and litigation costs.

17. This Stipulation does not constitute an admission or evidence of any fact, wrongdoing, misconduct, or liability on the part of the United States, including without limitation, Federal Defendants, their officers, or any other person affiliated with them, or any interpretation of any applicable provision of law. This Stipulation has no precedential value and shall not be used as evidence in any other court proceeding or in any other settlement discussions.

18. Plaintiffs' sole judicial remedy to address the merits of any final action that may ensue from Federal Defendants' performance of their obligations under this Stipulation is to file a separate lawsuit challenging such final action. Federal Defendants and HLA reserve all defenses, claims, or arguments that may be asserted in response to such challenges.

19. Notwithstanding the dismissal of this action, this Court retains jurisdiction to resolve Plaintiffs' claims for attorneys' fees and costs, to oversee compliance with the terms of this Stipulation, and to resolve any dispute between the parties pertaining to it. *See Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375 (1994).

20. The terms of this Stipulation 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.

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

WHEREFORE, after reviewing the terms and conditions of this Stipulation, the parties hereby consent and agree to its terms and conditions. Accordingly, the parties jointly and respectfully request entry of the attached Order.

IT IS SO STIPULATED.

Dated this 4th day of May, 2018.

By: /s/ Paul H. Achitoff by  
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**ORDER**

The terms and conditions of this Stipulated Settlement Agreement are hereby adopted as an enforceable Order of this Court, and this matter is hereby DISMISSED with prejudice.

IT IS SO ORDERED.

DATED: This 4th day of May 2018.



/s/ Susan Oki Mollway  
Susan Oki Mollway  
United States District Judge