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8 Attorneys for Plaintiffs
 9 NATURAL RESOURCES DEFENSE COUNCIL, INC.,
 INTERNATIONAL FUND FOR ANIMAL WELFARE,
 10 THE HUMANE SOCIETY OF THE UNITED STATES,
 CETACEAN SOCIETY INTERNATIONAL, LEAGUE FOR
 11 COASTAL PROTECTION, OCEAN FUTURES SOCIETY,
 and JEAN-MICHEL COUSTEAU

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 14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT OF CALIFORNIA
 16 SAN FRANCISCO DIVISION
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18 NATURAL RESOURCES DEFENSE COUNCIL,
 INC., et al.,

19 Plaintiffs,

20 v.

21 CARLOS M. GUTIERREZ, SECRETARY OF
 22 THE UNITED STATES DEPARTMENT OF
 COMMERCE, et al.

23 Defendants.
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Civil Action No. CV 07-04771 EDL

STIPULATION AND [~~PROPOSED~~]
 ORDER REGARDING SETTLEMENT
 OF ATTORNEYS' FEES, COSTS, AND
 EXPENSES

Judge: Hon. Elizabeth D. Laporte
 Ctrm: E
 Hearing Date: January 20, 2009
 Time: 2 p.m.

1 Plaintiffs, Natural Resources Defense Council, Inc., International Fund for Animal
2 Welfare, the Humane Society of the United States, Cetacean Society International, League for
3 Coastal Protection, Ocean Futures Society, and Jean-Michel Cousteau, and Defendants, Carlos M.
4 Gutierrez, Secretary of the United States Department of Commerce, the National Marine Fisheries
5 Service, James Balsiger, Acting Assistant Administrator for Fisheries of the National Oceanic and
6 Atmospheric Administration, William Brennan, Acting Administrator of the National Oceanic and
7 Atmospheric Administration, the United States Department of the Navy, Donald C. Winter,
8 Secretary of the Navy; and Admiral Gary Roughead, Chief of Naval Operations (the “Parties”),
9 hereby stipulate and agree as follows:

10 **RECITALS**

11 WHEREAS, on September 17, 2007, Plaintiffs filed this action alleging violations of the
12 Endangered Species Act (“ESA”), 16 U.S.C. §§ 1531-1544, the National Environmental Policy
13 Act (“NEPA”), 42 U.S.C. §§ 4321-4370f, and the Marine Mammal Protection Act (“MMPA”),
14 16 U.S.C. 1371-1421h, and requesting injunctive relief to enjoin Defendants’ use of SURTASS low-
15 frequency active (“LFA”) sonar;

16 WHEREAS, on February 6, 2008, the District Court for the Northern District of California
17 granted in part and denied in part Plaintiffs’ Motion for Preliminary Injunction and ordered the
18 Parties to meet and confer regarding the terms of a tailored preliminary injunction that would
19 restrict, but not prohibit, the use of LFA sonar pending final resolution of this action;

20 WHEREAS, on August 8, 2008, after participating in two settlement conferences, the Parties
21 filed a Stipulated Settlement Agreement (“August 2008 Stipulation”) which resolved the entire
22 action and provided for the dismissal with prejudice of the above-captioned lawsuit;

23 WHEREAS, the Court entered an Order approving the Stipulation on August 12, 2008
24 (“August 2008 Order”);

25 WHEREAS, the August 2008 Stipulation and Order provided that Defendants would pay
26 Plaintiffs a reasonable amount for their costs of litigation, including reasonable attorneys’ fees, while
27 preserving the right to contest specific fees or expenses, including hourly rates, and further provided
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1 that the Parties would employ good faith efforts to reach an expeditious negotiated resolution of the
2 amount of such costs and fees;

3 WHEREAS, the August 2008 Stipulation and Order provided that the Court would retain
4 jurisdiction of the case for purposes of resolving attorneys' fees and cost reimbursement issues under
5 the Equal Access to Justice Act ("EAJA") in the event the Parties are not able to reach a negotiated
6 resolution thereof;

7 WHEREAS, on September 26, 2008, Plaintiffs applied for attorneys' fees, costs, and
8 expenses under EAJA by filing their Motion for Fees and Costs Pursuant to 28 U.S.C. § 2412
9 (hereinafter "Motion");

10 WHEREAS, the Parties have negotiated a settlement of Plaintiffs' claim for attorneys' fees,
11 costs and expenses;

12 WHEREAS, the Parties enter this Stipulation Regarding Settlement of Attorneys' Fees,
13 Costs, and Expenses ("Stipulation") without any admission of fact or law, or waiver of any claims or
14 defenses, factual or legal.

15 **THEREFORE THE PARTIES HEREBY STIPULATE AS FOLLOWS:**

16 1. Defendants agree to pay and Plaintiffs agree to accept \$750,000.00 in full settlement
17 of all Plaintiffs' claims under any authority for attorneys' fees, costs, and expenses incurred in the
18 above-captioned litigation.

19 2. Defendants will make payment of the \$750,000.00 in two installments of
20 \$375,000.00.

21 3. Both installments of \$375,000.00 shall be paid no later than 30 days after the Court's
22 entry of the Stipulation and Order. However, Defendants will make best efforts to complete the
23 payment of both installments before December 31, 2008.

24 4. All payments will be made by electronic funds transfer to Morrison & Foerster LLP,
25 425 Market Street, San Francisco, California 94105.

26 5. Plaintiffs agree to provide within one day after the effective date of this Stipulation
27 the following information necessary for Defendants to process the disbursements: the Plaintiffs'
28 names, the payees' names, the payees' address, the payees' bank account number, the account type,

1 the bank routing transit number (“RTN”), the payees’ tax identification number, and a complete and
2 accurate NOAA Vendor Profile Form for electronic funds transfers. Any delay in providing any part
3 of this information shall extend the deadlines in paragraph 3 by the length of the delay.

4 6. By this Stipulation, Defendants do not waive any right to contest any aspect of
5 attorneys’ fees, costs, or expenses, including hourly rates, claimed by Plaintiffs or Plaintiffs’ counsel
6 in future litigation. This Stipulation has no precedential value and shall not be used as evidence in
7 any other attorneys’ fees litigation.

8 7. No provision of this Stipulation shall be interpreted as or constitute a commitment or
9 requirement that Defendants obligate or pay funds in violation of the Anti-Deficiency Act, 31 U.S.C.
10 § 1341, or any other law or regulation.

11 8. Because this Stipulation resolves all of Plaintiffs’ claims to fees, costs, and expenses
12 in the above-captioned matter (“Fee Claims”) under any authority, Plaintiffs hereby withdraw their
13 Motion and release Defendants from the Fee Claims.

14 9. This Stipulation contains the entire agreement between the parties to this Stipulation,
15 and all previous understandings, agreements, and communications prior to the date hereof, whether
16 express or implied, oral or written, relating to the subject matter of this Stipulation, are fully and
17 completely extinguished and superseded by this Stipulation. This Stipulation may be modified upon
18 mutual written consent of the parties and the Court’s approval of a joint stipulation to modify this
19 Stipulation.

20 10. The undersigned representatives of the Plaintiffs and Defendants certify that they are
21 fully authorized by the party or parties whom they represent to enter into the terms and conditions of
22 this Stipulation and to legally bind them to it.

23 11. The provisions of this Stipulation shall apply to and be binding upon each of the
24 parties including, but not limited to, their officers, directors, servants, employees, successors, and
25 assigns.

26 12. The parties further ask that the Court vacate the hearing on Plaintiffs’ Motion, which
27 is currently set for January 20, 2009, at 2:00 PM.

1 **SO STIPULATED.**

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Dated: December 11, 2008

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By: /s/ Kristen L. Gustafson
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Counsel for Federal Defendants

Dated: December 11, 2008

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JOEL R. REYNOLDS

By: /s/ Robin S. Stafford
Robin S. Stafford

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NATURAL RESOURCES DEFENSE COUNCIL,
INC.; INTERNATIONAL FUND FOR ANIMAL
WELFARE; THE HUMANE SOCIETY OF THE
UNITED STATES; CETACEAN SOCIETY
INTERNATIONAL; LEAGUE FOR COASTAL
PROTECTION; OCEAN FUTURES SOCIETY;
JEAN-MICHEL COUSTEAU

SIGNATURE ATTESTATION

I, Robin Stafford, am the ECF User whose ID and password are being used to file this Stipulation. In compliance with General Order 45, X.B., I hereby attest that Kristen L. Gustafson has concurred in this filing.

The terms of the above Stipulation are hereby APPROVED and SO ORDERED. Plaintiffs' Motion for Fees and Costs Pursuant to 28 U.S.C. § 2412 is hereby withdrawn.

Dated: December 12, 2008.

By: _____

