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24 Attorneys for Defendants

25 **IN THE UNITED STATES DISTRICT COURT**
 26 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

27 CENTER FOR BIOLOGICAL DIVERSITY)
 28 and TURTLE ISLAND RESTORATION)
 29 NETWORK,)
 30)
 31 Plaintiffs,)
 32)
 33 v.)
 34)
 35 KEN SALAZAR and UNITED STATES)
 36 FISH & WILDLIFE SERVICE,)
 37)
 38 Defendants.)

No. C 10-992 SC

**STIPULATION AND [~~PROPOSED~~]
 ORDER MODIFYING STIPULATED
 SETTLEMENT AGREEMENT AND
 ORDER OF DISMISSAL**

39 Stipulation and [Proposed] Order
 40 Modifying Stipulated Settlement
 41 Agreement and Order of Dismissal

1
2 Pursuant to Civil L.R. 7-12, this Stipulated Settlement Agreement is entered into by and
3 between Plaintiffs Center for Biological Diversity and Turtle Island Restoration Network, and
4 Federal Defendants Ken Salazar, Secretary of the United States Department of the Interior, and
5 the United States Fish and Wildlife Service (collectively “FWS” or “Service”):

6 WHEREAS, on December 18, 2008, the Service made 12-month findings, pursuant to 16
7 U.S.C. § 1533(b)(3)(B)(ii), that listing seven penguin species, or subpopulations thereof
8 (collectively the “seven penguin species”) was warranted, and issued a proposed listing
9 regulation for these species pursuant to 16 U.S.C. § 1533(b)(5), 73 Fed. Reg. 77,264 (Dec. 18,
10 2008); 73 Fed. Reg. 77,303 (Dec. 18, 2008); 73 Fed. Reg. 77,332 (Dec. 18, 2008);

11 WHEREAS, on March 9, 2010, Plaintiffs filed a Complaint for declaratory and injunctive
12 relief, challenging the Service’s failure, as to the seven penguin species, to issue a final listing
13 determination within one year as required by 16 U.S.C. § 1533(b)(6)(A)(i);

14 WHEREAS, on June 3, 2010, the Court approved the parties’ Stipulated Settlement
15 Agreement resolving this action, and entered an Order dismissing this case, Doc. No. 8;

16 WHEREAS, it has come to the parties’ attention that paragraph 3 of the Stipulated
17 Settlement Agreement, as submitted to the Court, misidentifies the species at issue;

18 WHEREAS, Paragraph 5 of the Stipulated Settlement Agreement and Order provides that
19 this Court may modify the terms of the Order upon good cause shown;

20 WHEREAS, Plaintiffs and Defendants agree that correction of the Stipulated Settlement
21 Agreement and Order is advisable;

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

24 //

25 //

26 //

27
28 Stipulation and [Proposed] Order
Modifying Stipulated Settlement
Agreement and Order of Dismissal

1 1. Paragraph 3 of the Stipulated Settlement Agreement and Order shall be modified to read
2 as follows:

3 3. On or before January 28, 2011, the Service shall submit to the *Federal Register* a final
4 listing determination, pursuant to 16 U.S.C. § 1533(b)(6)(A)(i), as to its proposal to list
5 the Campbell Plateau portion of the range of the New Zealand/Australia distinct
6 population segment of the southern rockhopper penguin, *Eudyptes chrysocome*.

7 2. The remaining provisions of the Stipulated Settlement Agreement and Order shall remain
8 in effect and are unchanged by this modification.

9
10 Dated: June 14, 2010

Respectfully submitted,

11 IGNACIA S. MORENO, Asst. Attorney General
12 JEAN E. WILLIAMS, Section Chief

13
14 /s/ Lawson E. Fite
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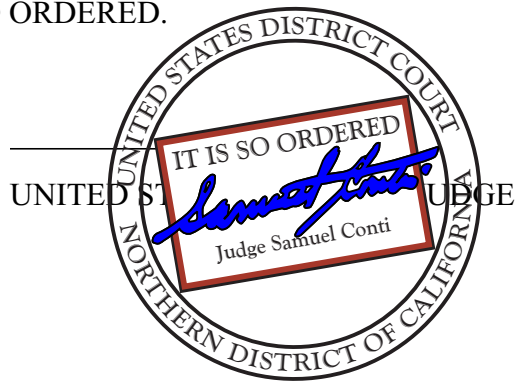
26 /s/ Catherine W. Kilduff (by LEF, as authorized
27 6/14/10)
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Miyoko Sakashita (CA Bar No. 239639)
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PURSUANT TO STIPULATION, IT IS SO ORDERED.



6/15/10

