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15 Attorneys for Defendants

16
 17 **IN THE UNITED STATES DISTRICT COURT**
 18 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

19 _____
 CENTER FOR BIOLOGICAL DIVERSITY)
 and TURTLE ISLAND RESTORATION)
 20 NETWORK,)

21 Plaintiffs,)

22 v.)

23 KEN SALAZAR and UNITED STATES)
 FISH & WILDLIFE SERVICE,)

24 Defendants.)
 25)
 26 _____)

No. C 10-992 SC

STIPULATION AND ~~PROPOSED~~
ORDER MODIFYING STIPULATED
SETTLEMENT AGREEMENT AND
ORDER OF DISMISSAL

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

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

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

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

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

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

17 WHEREAS, the parties previously stipulated to one modification of the Stipulated
18 Settlement Agreement and Order, which the Court approved on June 15, 2010 (Doc. No. 10);

19 WHEREAS, pursuant to the Stipulated Settlement Agreement and Order, the Service
20 timely submitted to the *Federal Register* and issued, on August 3, 2010, a final rule listing the
21 yellow-eyed penguin, white-flipped penguin, Fiordland crested penguin, Humboldt penguin,
22 and erect-crested penguin as threatened species, 75 Fed. Reg. 45,497;

23 WHEREAS, pursuant to the Stipulated Settlement Agreement and Order, the Service
24 timely submitted to the *Federal Register* and issued, on September 28, 2010, a final rule listing
25 the African penguin as an endangered species, 75 Fed. Reg. 59,645;

26 WHEREAS, paragraph 3 of the Stipulated Settlement Agreement and Order, as modified,
27 provides that: On or before January 28, 2011, the Service shall submit to the Federal Register a

1 final listing determination, pursuant to 16 U.S.C. § 1533(b)(6)(A)(i), as to its proposal to list the
2 Campbell Plateau portion of the range of the New Zealand/Australia distinct population segment
3 of the southern rockhopper penguin, *Eudyptes chrysocome*;

4 WHEREAS, the Service has been working diligently to meet the deadline established in
5 paragraph 3;

6 WHEREAS, this listing determination involves complex analysis;

7 WHEREAS, the Service needs a limited amount of additional time to complete its
8 analysis and determination regarding the southern rockhopper penguin;

9 WHEREAS, Plaintiffs consent to modification of the Stipulated Settlement Agreement
10 and Order;

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

13
14 1. Paragraph 3 of the Stipulated Settlement Agreement and Order, as modified, shall be
15 further modified to read as follows:

16 3. On or before February 18, 2011, the Service shall submit to the *Federal Register* a
17 final listing determination, pursuant to 16 U.S.C. § 1533(b)(6)(A)(i), as to its proposal to
18 list the Campbell Plateau portion of the range of the New Zealand/Australia distinct
19 population segment of the southern rockhopper penguin, *Eudyptes chrysocome*.

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

22 Dated: January 20, 2011

Respectfully submitted,

23 IGNACIA S. MORENO, Asst. Attorney General
24 SETH M. BARSKY, Section Chief

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26 /s/ Lawson E. Fite
27 LAWSON E. FITE, Trial Attorney

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

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/s/ Catherine W. Kilduff (by LEF, as authorized
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Attorneys for Plaintiffs

PURSUANT TO STIPULATION, IT IS SO ORDERED.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
IT IS SO ORDERED
Samuel Conti
Judge Samuel Conti
JUDGE

