

1 STACEY P. GEIS (CA Bar No. 181444)  
 sgeis@earthjustice.org  
 2 GREGORY C. LOARIE (CA Bar No. 215859)  
 gloarie@earthjustice.org  
 3 EARTHJUSTICE  
 50 California Street, Suite 500  
 4 San Francisco, CA 94111  
 Tel: (415) 217-2000  
 5 Fax: (415) 217-2040

6 *Counsel for Plaintiffs*

7 JEFFREY H. WOOD, Acting Assistant Attorney General  
 Environment & Natural Resources Division  
 8 NICOLE M. SMITH, Trial Attorney (CA Bar 303629)  
 U.S. Department of Justice  
 9 Environment & Natural Resources Division  
 10 Wildlife & Marine Resources Section  
 Ben Franklin Station, P.O. Box 7611  
 11 Washington, D.C. 20044-7611  
 Telephone: (202) 305-0368  
 12 Facsimile: (202) 305-0275  
 13 Email: nicole.m.smith@usdoj.gov

14 *Attorneys for Defendants*

17 IN THE UNITED STATES DISTRICT COURT  
 18 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

19	CENTER FOR BIOLOGICAL DIVERSITY, et al.,	)	Case No.: 3:15-cv-05754-JST
20	Plaintiffs,	)	<b>STIPULATED FEE AGREEMENT</b>
21	vs.	)	<b>and</b>
22	U.S. FISH & WILDLIFE SERVICE, et al.,	)	<b>[PROPOSED] ORDER</b>
23	Defendants,	)	
24	and	)	
25	SISKIYOU COUNTY, et al.,	)	
26	Defendant Intervenors.	)	

1 This Stipulated Settlement Agreement (“Agreement”) is entered into by and between  
2 Plaintiffs Center for Biological Diversity and Environmental Protection Information Center  
3 (collectively, “Plaintiffs”), and the United States Fish and Wildlife Service (“FWS”), Ryan K.  
4 Zinke, in his official capacity as Secretary of the Interior, and Greg Sheehan, in his official capacity  
5 as Principal Deputy Director of the United States Fish and Wildlife Service (collectively,  
6 “Defendants”) who, by and through their undersigned counsel, state as follows:

7 WHEREAS, on December 16, 2015, Plaintiffs filed *Center for Biological Diversity, et al., v.*  
8 *U.S. Fish and Wildlife Service, et al.*, 3:15-cv-05754-JST, alleging, among other things that FWS  
9 had failed to consider the best available scientific and commercial information in concluding that  
10 the coastal marten did not warrant listing under the Endangered Species Act (“ESA”);

11 WHEREAS, on December 23, 2016, the parties concluded summary judgment briefing;

12 WHEREAS, on March 28, 2017, this Court granted Plaintiffs’ motion for summary  
13 judgment in part and denied Defendants’ motion for summary judgment;

14 WHEREAS, this Court entered final judgment for Plaintiffs on May 22, 2017;

15 WHEREAS, Defendants filed a notice of appeal to the Ninth Circuit on July 21, 2017;

16 WHEREAS, on October 26, 2017, the Court of Appeals granted Defendants’ motion for  
17 voluntary dismissal of their appeal in this case and returned mandate to this Court;

18 WHEREAS, all appeals having been concluded, Plaintiffs motion for attorneys’ fees and  
19 costs is currently due on or before June 8, 2018 (Dkt. 86);

20 WHEREAS, by letter dated October 27, 2017, Plaintiffs provided Defendants with an offer to  
21 settle their claim for attorneys’ fees and costs;

22 WHEREAS, the parties believe it is in the interests of the parties and of judicial economy to  
23 avoid litigating a fees motion;

24 WEHERAS, the parties have engaged in good faith, and confidential settlement negotiations  
25 concerning Plaintiffs’ claims for attorneys’ fees and costs and have reached a settlement that they  
26 consider to be a just, fair, adequate, and equitable resolution of Plaintiffs’ request for attorneys’ fees  
27 and costs;

1           WHEREAS, Plaintiffs and Defendants agree that settlement of Plaintiffs' motion for  
2 attorneys' fees in this manner is in the public interest and is an appropriate way to resolve the  
3 dispute between them;

4           WHEREAS, the parties enter the Agreement below without any admission of fact or law, or  
5 waiver of any claims or defenses, factual or legal, except as specified in the Agreement;

6           NOW, THEREFORE, Plaintiffs and Defendants hereby stipulate and agree as follows:

7           1. Defendants agree to pay Plaintiffs Center for Biological Diversity and Environmental  
8 Protection Information Center's reasonable attorneys' fees and costs incurred in connection with  
9 their complaint and motion for summary judgment, and pursuant to section 11(g) of the ESA, 16  
10 U.S.C. § 1540(g), in the amount of \$183,122.66. Plaintiffs agree to accept this amount in full  
11 satisfaction of any and all claims, demands, rights, and causes of action for attorneys' fees and costs  
12 incurred in connection with the above-captioned litigation pursuant to the ESA, 16 U.S.C. §  
13 1540(g), and/or any other statute and/or common law theory, through and including the date of this  
14 agreement. Plaintiffs agree that receipt of this payment from Defendants shall operate as a release  
15 of Plaintiffs' claims for attorneys' fees and costs in this matter, through and including the date of  
16 this agreement.

17           2. Plaintiffs' release set forth in paragraph 1 is expressly limited to the above-captioned action  
18 and does not apply to any other litigation including, but not limited to, any future litigation  
19 regarding any coastal marten listing decision. By this Agreement, Defendants do not waive any  
20 right to contest attorneys' fees claimed by Plaintiffs, or their counsel, including hourly rates, in any  
21 future litigation, or continuation of the present actions. Further, this Agreement has no precedential  
22 value and shall not be used as evidence in any other attorneys' fees litigation.

23           3. Plaintiffs agree to furnish Defendants with the information necessary to effectuate the  
24 payment specified in paragraph 1 above. Defendants agree to submit all necessary paperwork for  
25 the processing of the attorneys' fees award to the Department of the Treasury's Judgment Fund  
26 Office, pursuant to 16 U.S.C. § 1540(g)(4), within ten (10) days of the receipt of the necessary  
27 information from Plaintiffs or the approval of this Agreement by the Court, whichever is later.  
28

1 Plaintiffs' attorneys agree to send confirmation of the receipt of the payment to counsel for  
2 Defendants within 14 days of such payment.

3 4. Plaintiffs and Defendants agree that this Agreement was negotiated and entered into in good  
4 faith and that it constitutes a settlement of claims that were vigorously contested, denied, and  
5 disputed. By entering into this Agreement, neither Plaintiffs nor Defendants waive any claim or  
6 defense, except as expressly provided herein.

7 5. No provision of this Agreement shall be interpreted as, or constitutes, a commitment or  
8 requirement that Defendants are obligated to spend funds in violation of the Anti-Deficiency Act,  
9 31 U.S.C. § 1341, or any other law or regulation.

10 6. No provision of this Agreement shall be interpreted to or constitute a commitment or  
11 requirement that the Defendants take action in contravention of the ESA, the APA, or any other law  
12 or regulation, either substantive or procedural.

13 7. The Agreement contains all of the agreement between Plaintiffs and Defendants, and is  
14 intended to be the final and sole agreement between them. Plaintiffs, and Defendants agree that any  
15 prior or contemporaneous representations or understanding not explicitly contained in this written  
16 Agreement, whether written or oral, are of no further legal or equitable force or effect.

17 8. The terms of this Agreement shall become effective upon entry of an order by the Court  
18 (similar in substance to the attached Proposed Order) approving the Agreement.

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

22  
23 Respectfully submitted,

24 JEFFREY H. WOOD  
25 Acting Assistant Attorney General  
26 SETH M. BARSKY, Chief  
MEREDITH L. FLAX, Assistant Chief

27 Dated: May 22, 2018

28 /s/ Nicole M. Smith  
NICOLE M. SMITH, Trial Attorney  
U.S. Department of Justice  
Environment & Natural Resources Division

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2 Ben Franklin Station, P.O. Box 7611  
3 Washington, D.C. 20044-7611  
4 Tel: (202) 305-0368 / Fax: (202) 305-0275  
5 Email: nicole.m.smith@usdoj.gov

6 *Attorneys for Federal Defendants*

7 STACEY P. GEIS (CA Bar No. 181444)  
8 sgeis@earthjustice.org

9 Dated: May 22, 2018

10 /s/ Gregory C. Loarie (as authorized May 22, 2018)

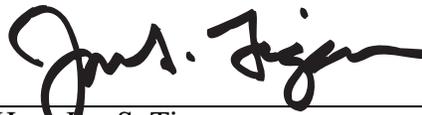
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12 gloarie@earthjustice.org  
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15 San Francisco, CA 94111  
16 Tel: (415) 217-2000 / Fax: (415) 217-2040

17 *Attorneys for Plaintiffs*

18 **~~PROPOSED~~ ORDER**

19 Pursuant to stipulation, IT IS SO ORDERED that the parties' stipulation is APPROVED and  
20 ADOPTED. Defendants shall pay Plaintiffs a total of \$183,122.66 for attorneys' fees and costs for  
21 this lawsuit.

22 Dated: May 22, 2018

23 

24 \_\_\_\_\_  
25 Hon. Jon S. Tigar  
26 United States District Court Judge