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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NW Coalition for Alternatives to
Pesticides, LLC. et al.

Plaintiffs,

v.

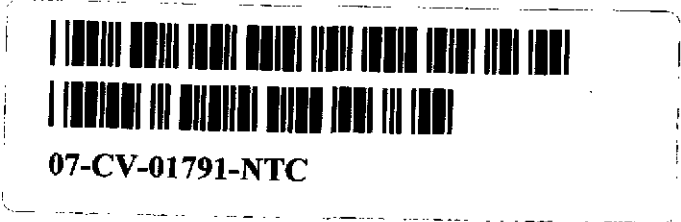
NMFS,

Defendant.

NO. 07-1791-RSL

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

Plaintiffs Northwest Coalition for Alternatives to Pesticides, Pacific Coast Federation of
Fishermen's Associations, and Institute for Fisheries Resources ("Plaintiffs"), and defendant the
Secretary of Commerce, through the National Marine Fisheries Service ("NMFS"), declare as
follows:



Settlement Agreement

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P.O. Box 7369
Washington, D.C. 20044-7369

1 WHEREAS, Plaintiffs filed the present case on November 5, 2007 in the district court for
2 the Western District of Washington captioned Northwest Coalition for Alternatives to Pesticides
3 v. NMFS, No. 07-1791-RSL (W.D. Wash), in which Plaintiffs seek (a) a judgment declaring that
4 NMFS's failure to complete section 7(a)(2) consultations on 37 pesticides in a timely fashion,
5 violates section 7(b)(1) of the ESA and its implementing regulations and section 706(1) of the
6 Administrative Procedure Act ("APA"), and (b) an order compelling NMFS to complete the
7 consultations within two years;

9 WHEREAS, on July 2, 2002, the district court for the Western District of Washington, in
10 Washington Toxics Coalition v. EPA, No. C01-132C, (W.D. Wash. July 2, 2002), ordered the
11 U.S. Environmental Protection Agency ("EPA") to consult with NMFS, as required under
12 section 7(a)(2) of the Endangered Species Act ("ESA"), to ensure that 54 EPA-registered
13 pesticides will not jeopardize the survival and recovery of 26 threatened and endangered salmon
14 and steelhead species and will not adversely modify their designated critical habitat;

16 WHEREAS, pursuant to the Washington Toxics order, between August 2002 and
17 December 2004, EPA began to initiate consultations with NMFS on 37 pesticides EPA
18 determined "may affect" listed salmon and steelhead in the Pacific Northwest;

20 WHEREAS, over five years have passed since EPA began to initiate the first of the
21 court-ordered consultations;

22 WHEREAS, NMFS has not completed the consultations initiated between August 2002
23 and December 2004, nor has NMFS issued any biological opinions;

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WHEREAS, NMFS understands that it is generally EPA's intention to make public the draft biological opinions it receives from NMFS regarding pesticide actions under the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA");

WHEREAS, it is in the interests of the parties and judicial economy to resolve the claims in this lawsuit without protracted litigation; and

WHEREAS, the parties enter this Settlement Agreement without any admission of fact or law, or any waiver of any factual or legal claims or defenses.

NOW, THEREFORE, the parties agree and stipulate to the following:

1. NMFS will complete the consultations on the 37 pesticides at issue in this case consistent with requirements of the ESA and its implementing regulations and in accordance with the schedule mutually agreed to by the parties and attached to this settlement agreement as Attachment 1 ("Consultation Schedule"). NMFS agrees to conduct the consultations pursuant to the regulations set forth in 50 C.F.R. 402.01- 402.14.

2. Given that EPA has consented to the public release of a draft of the biological opinion for chlorpyrifos, malathion, and diazinon (identified as Biological Opinion 1 in the Consultation Schedule), on or before July 31, 2008, NMFS shall provide the public with a draft of Biological Opinion 1 that shall be identical to any draft provided to EPA, including any draft reasonable and prudent alternatives and incidental take statements provided to EPA on or before that date. NMFS shall consider any timely comments received on draft Biological Opinion 1 as

1 NMFS completes the consultations in accordance with the Consultation Schedule.

2 3. The parties agree that neither this settlement agreement nor any of its terms,
3 including the provision of the draft biological opinion referred to in paragraph 2, supra, act as res
4 judicata or create or establish precedent before this Court or any future tribunal.

5
6 4. NMFS may modify the Consultation Schedule by reordering Biological Opinions
7 7 through 17 (as identified in the Consultation Schedule), so long as any such modification is in
8 the public interest and NMFS completes all of the biological opinions listed in the Consultation
9 Schedule by February 29, 2012.

10 5. Defendants represent that they intend to make every effort to comply with the
11 terms of this Stipulation in good faith. If, however, through unforeseen circumstances, events
12 should change after the Stipulation becomes effective, Defendants will notify all other parties of
13 record as soon as reasonably possible of the change and the reason therefor. The parties agree to
14 attempt to work reasonably toward a mutually acceptable solution. In the event a solution is
15 reached, the parties shall jointly move this Court to amend the Stipulation, as the parties agree
16 that this Stipulation may be amended or modified only by order of this Court. If the parties are
17 unable to agree, the parties reserve the right to seek judicial intervention to enforce, alter, or
18 amend the terms and conditions of this Stipulation.
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21 6. Based on Defendants' agreement to complete 37 consultations with the issuance
22 of biological opinions in accordance with the Consultation Schedule, Plaintiffs agree to dismiss
23 their action with prejudice. Nothing in this Stipulation shall preclude Plaintiffs from bringing
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1 claims challenging any final biological opinions issued in accordance with the Consultation
2 Schedule. Any challenge to a final biological opinion issued in accordance with the
3 Consultation Schedule will be brought in a new lawsuit.

4
5 7. Defendants agree that Plaintiffs are the "prevailing party" in this action, and agree
6 to pay to Plaintiffs reasonable attorneys' fees and costs, pursuant to Equal Access to Justice Act
7 (EAJA), 28 U.S.C. § 2412(d)(1)(A). Therefore, Defendants agree to settle all of Plaintiffs'
8 claims for costs and attorneys' fees in the above-captioned litigation for a total of \$41,000.00. A
9 check will be made payable in that amount to Plaintiffs' undersigned counsel, Earthjustice, c/o
10 Joshua Osborne-Klein, 705 Second Avenue, Suite 203, Seattle, Washington 98104-1711.

11
12 8. Defendants agree to submit all necessary paperwork for the processing of the
13 attorneys' fee award to the Department of the Commerce's, pursuant to 28 U.S.C.
14 § 2412(d)(1)(A), within ten (10) business days of receipt of the court order approving this
15 stipulation.

16
17 9. This Court shall retain jurisdiction over this matter and allow this action to be
18 reopened for the purpose of enabling the Parties to this Stipulated Settlement Agreement to apply
19 to the Court for any further order that may be necessary to construe, carry out, enforce
20 compliance and/or resolve any dispute regarding the terms or conditions of this Stipulated
21 Settlement Agreement, and for granting any further relief as the interests of justice may require.

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1 10. This Stipulated Settlement Agreement shall become effective upon the date of its
2 entry by the Court. If for any reason the District Court does not enter this Stipulated Settlement
3 Agreement, the obligations set forth in this Agreement are null and void.

4 11. This Stipulation is not to be construed as a concession by any party as to the
5 validity of any fact or legal position concerning the claims or defenses in this action.

6 12. Nothing in this Stipulation shall be interpreted or constitute a commitment or
7 requirement that the agencies to obligate or pay funds in contravention of the Anti-Deficiency
8 Act, 31 U.S.C. § 1341.

9 13. Nothing in this Stipulation shall be construed to limit or modify the discretion
10 accorded the agencies by law with respect to the procedures to be followed in completing the
11 actions set forth above or the substance of any biological opinion.

12 Each undersigned representative of the parties certifies that he or she is fully authorized
13 to enter into and execute the terms and conditions of this settlement agreement.

14 Date: July 30, 2008
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Respectfully submitted,

STEPHEN D. MASHUDA
JOSHUA OSBORNE-KLEIN
Earthjustice
705 Second Avenue, Suite 203
Seattle, Washington 98104-1711
(206)343-7340



JOSHUA OSBORNE-KLEIN

RONALD TENPAS, Assistant Attorney General
JEAN E. WILLIAMS, Chief
LISA L. RUSSELL, Assistant Chief
U.S. Department of Justice
Environment & Natural Resources Division
Wildlife & Marine Resources Section
Ben Franklin Station, P.O. Box 7369
Washington, D.C. 20044-7369
Telephone: (202) 353-7548
Facsimile: (202) 305-0275



COURTNEY TAYLOR

IT IS SO AGREED AND AFFIRMED

DATED: Aug. 1, 2008



Robert S. Lasnik
United States District Judge

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Exhibit 1

Order of Consultations	Biological Opinion Number	Active Ingredient	Use	Final Biological Opinion Deadline
Biological Opinion 1—Initial Organophosphates				
1	1	Chlorpyrifos	Insecticide	October 31, 2008 (draft July 31, 2008)
2	1	Malathion (crop and non-crop uses)	Insecticide	October 31, 2008 (draft July 31, 2008)
3	1	Diazinon	Insecticide	October 31, 2008 (draft July 31, 2008)
Biological Opinion 2—Carbamates				
4	2	Carbofuran	Insecticide	March 31, 2009
5	2	Carbaryl	Insecticide	March 31, 2009
6	2	Methomyl	Insecticide	March 31, 2009
Biological Opinion 3—Remaining Organophosphates				
7	3	Azinphos-methyl	Insecticide	June 30, 2010
8	3	Dimethoate	Insecticide	June 30, 2010
9	3	Phorate	Insecticide	June 30, 2010
10	3	Methidathion	Insecticide	June 30, 2010
11	3	Naled	Insecticide	June 30, 2010
12	3	Methyl parathion	Insecticide	June 30, 2010
13	3	Disulfoton	Insecticide	June 30, 2010
14	3	Fenamiphos	Insecticide	June 30, 2010
15	3	Methamidophos	Insecticide	June 30, 2010
16	3	Phosmet	Insecticide	June 30, 2010
17	3	Ethoprop	Insecticide	June 30, 2010
18	3	Bensulide	Herbicide	June 30, 2010
Biological Opinion 4—Herbicides				
19	4	2, 4-D	Herbicide	November 30, 2010
20	4	Triclopyr BEE	Herbicide	November 30, 2010
Biological Opinion 5—Herbicides				
21	5	Diuron (crop and non-crop uses)	Herbicide	November 30, 2010
22	5	Linuron	Herbicide	November 30, 2010
Biological Opinion 6—Fungicides				
23	6	Chlorothalonil	Fungicide	November 30, 2010
24	6	Captan	Fungicide	November 30, 2010
Biological Opinion 7—Herbicides				
25	7	Oryzalin	Herbicide	February 29, 2012
26	7	Trifluralin	Herbicide	February 29, 2012
Biological Opinion 8—Herbicides				
27	8	Molinate	Herbicide	February 29, 2012
28	8	Thiobencarb	Herbicide	February 29, 2012
Biological Opinions 9-17—Ungrouped				
29	9	Propargite	Insecticide	February 29, 2012
30	10	Fenbutatin-oxide	Insecticide	February 29, 2012
31	11	Diflubenzuron	Insecticide/fungicide	February 29, 2012
32	12	1,3-D	Insecticide	February 29, 2012
33	13	Lindane	Insecticide	February 29, 2012
34	14	Racemic metolachlor	Herbicide	February 29, 2012
35	15	Bromoxynil	Herbicide	February 29, 2012
36	16	Prometryn	Herbicide	February 29, 2012
37	17	Pendimethalin	Herbicide	February 29, 2012