

RONALD J. TENPAS, Ass't Attorney General
United States Department of Justice
Environment and Natural Resources Division
LORI CARAMANIAN, Trial Attorney
Natural Resources Section
JEAN E. WILLIAMS, Chief
JAMES A. MAYSONETT, Trial Attorney, D.C. Bar 463856
Wildlife and Marine Resources Section
Benjamin Franklin Station, P.O. Box 7397
Washington, D.C. 20044-7397
Telephone: (202) 305-0216
Facsimile: (202) 305-0275
Attorneys for Federal Defendants

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

THE HUMANE SOCIETY OF THE
UNITED STATES, *et al.*,

Plaintiffs,

v.

CARLOS M. GUTIERREZ, *et al.*

Defendants,

OREGON DEPARTMENT OF FISH AND
WILDLIFE,

WASHINGTON DEPARTMENT OF FISH
AND WILDLIFE,

Applicant-Intervenor-
Defendants.

Civ. No. 08-0357 (MO)

JOINT STIPULATION

JOINT STIPULATION

On March 24, 2008, Plaintiffs filed suit challenging the National Marine Fisheries Service's ("NMFS") decision to authorize the States of Oregon, Washington, and Idaho

(“States”) to remove up to 425 California sea lions below Bonneville Dam on the Columbia River over the course of the next 5 years.

On March 28, 2008, Plaintiffs sought a preliminary injunction. On April 16, 2008, this court heard and denied Plaintiffs’ motion for a preliminary injunction.

On April 17, 2008, Plaintiffs filed a timely notice of appeal and sought an emergency stay pending appeal. On April 23, 2008, the Ninth Circuit granted the emergency stay with respect to the lethal removal of California sea lions, but allowed non-lethal trapping and relocation to continue.

The parties have since reached an agreement and hereby submit the following joint stipulation and proposed schedule for the Court’s approval. This schedule has been designed to allow these issues to be resolved both before this Court and, as may be necessary, before the Ninth Circuit Court of Appeals, before the beginning of next season.

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

1. NMFS and the States shall not engage in the permanent removal of sea lions from the Columbia River (lethal or non-lethal, including permanent relocation) before March 1, 2009 (unless this Court enters a final decision in this matter that is not timely appealed or the Ninth Circuit enters a decision on an appeal of a final decision before that date, in which case this restriction shall be lifted upon entry of such a decision); provided however that nothing in this agreement prevents NMFS and the States from engaging in the non-lethal temporary trapping, branding, and return of such sea lions to their natural habitat.

2. Nothing in this Stipulation shall prevent NMFS and the States from engaging in non-lethal hazing and deterrence of sea lions in the Columbia River (including at Bonneville Dam).

3. In the event of an emergency requiring the permanent removal of a sea lion at Bonneville Dam before March 1, 2009, the parties will confer in good faith to modify this Stipulation in writing to address the emergency. In the event that the parties cannot agree on a modification, any party may seek modification of the Stipulation by the District Court for good cause.

4. Upon entry of this Stipulation, Plaintiffs shall dismiss their pending appeal before the Ninth Circuit Court of Appeals.

5. The parties agree to seek expedited briefing and resolution of the merits of this case in the District Court and the Court of Appeals. The parties jointly request that the district court resolve the case no later than September 15, 2008. To facilitate the resolution of this case by September 15, 2008, the parties propose the following scheduling:

a. The Federal Defendants shall submit the administrative record by June 13, 2008.

b. The Plaintiffs shall file their motion for summary judgment by July 3, 2008.

c. The Federal Defendants and Defendant-Intervenors shall file their opposition and cross-motion for summary judgment by July 23, 2008.

d. The Plaintiffs shall file their opposition and reply in support of summary judgment by August 8, 2008.

e. The Federal Defendants and Defendant-Intervenors shall file their reply by August 22, 2008.

f. The parties request that the Court schedule oral argument on cross-motions for summary judgment as soon as possible after the completion of briefing on the schedule set out above.

6. The parties will also jointly request that the Ninth Circuit Court of Appeals expedite any appeal of the district court's decision and that any such appeal be resolved on or before March 1, 2009 (subject to, in the case of an adverse decision against the Federal Defendants, an appeal being authorized by the Solicitor General).

7. Counsel for the Federal Defendants has been authorized by all parties to execute and file this Joint Stipulation on behalf of all parties.

Respectfully submitted,

For Defendants:

For Plaintiffs:

/s/ Gary K. Kahn

RONALD J. TENPAS, Ass't Attorney General
United States Department of Justice
Environment and Natural Resources Division
LORI CARAMANIAN, Trial Attorney
Natural Resources Section
JEAN E. WILLIAMS, Chief

Gary K. Kahn
OSB No. 81481
Peggy Hennessy
OSB No. 87250
Telephone: (503) 777-5473

/s/ James A. Maysonett

*Attorneys for Plaintiffs The Humane Society of
the United States, Wild Fish Conservancy,
Bethanie O'Driscoll, and Andrea Kozil*

JAMES A. MAYSONETT, Trial Attorney,
D.C. Bar 463856
Wildlife and Marine Resources Section
Benjamin Franklin Station, P.O. Box 7397
Washington, D.C. 20044-7397
Telephone: (202) 305-0216
Facsimile: (202) 305-0275
Attorneys for Federal Defendants

For Applicant-Defendant-Intervenors:

ROBERT M. MCKENNA
Attorney General

/s/ Sheila Lynch

SHEILA LYNCH, WSBA #26343
Assistant Attorney General
Attorneys for Applicant-Defendant-Intervenor
Washington Department of Fish and Wildlife

HARDY MYERS
Attorney General

/s/ Marc Abrams

MARC ABRAMS #89014
Senior Assistant Attorney General
Trial Attorney
Tel (503) 947-4700
Fax (503) 947-4793
marc.abrams@doj.state.or.us
Attorneys for Applicant-Defendant-Intervenor
Oregon Department of Fish and Wildlife

SO ORDERED this ____ day of May, 2008:

United States District Judge Michael Mosman