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Honorable John C. Coughenour

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01-CV-00132-ORD

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

WASHINGTON TOXICS COALITION,  
et al.,

Plaintiffs,

v.

ENVIRONMENTAL PROTECTION  
AGENCY, et al.,

Defendants,

and

CROPLIFE AMERICA, et al.,

Intervenor-Defendants.

No. C01-0132 C

STIPULATION AND ORDER  
REMOVING OREGON COAST  
COHO FROM  
JANUARY 22, 2004 ORDER

Note on Motion Calendar:  
March 10, 2006

WHEREAS on January 22, 2004, the Court entered an order granting Plaintiffs' motion for further injunctive relief with respect to 26 Evolutionarily Significant Units ("ESUs") of salmon listed as "threatened" or "endangered" species under the Endangered Species Act ("ESA"), including the Oregon coast coho ESU;

WHEREAS on September 10, 2001, the U.S. District Court for the District of Oregon in *Alsea Valley Alliance v. Evans*, 161 F. Supp. 2d 1154, 1163-64 (D. Or. 2001) issued an order that declared unlawful and "set aside" as arbitrary and capricious the listing

1 of the Oregon coast coho ESU as a "threatened" species under the ESA and remanded the  
2 matter to the National Marine Fisheries Service ("NMFS"), which order was subsequently  
3 stayed pending appeal;

4 WHEREAS the U.S. Court of Appeals for the Ninth Circuit dismissed the *Alsea*  
5 *Valley* appeal for lack of jurisdiction and dissolved the stay *sub nom. Alsea Valley Alliance*  
6 *v. Dep't of Commerce*, 358 F.3d 1181 (9th Cir. 2004);

7 WHEREAS on remand from the district court in *Alsea Valley*, NMFS proposed to  
8 list the Oregon coast coho ESU as a "threatened" species on June 14, 2004, 69 Fed. Reg.  
9 33102; and

10 WHEREAS on January 19, 2006, 71 Fed. Reg. 3033, 3047, NMFS withdrew the  
11 proposed listing and stated that the "Oregon Coast coho ESU does not warrant listing  
12 under the ESA at this time and [we] therefore withdraw the proposed listing";

13 WHEREFORE, the Parties hereby stipulate to modifying the injunctive relief  
14 awarded in the Court's January 22, 2004 order by removing the Oregon coast coho ESU  
15 from the enumeration of covered ESUs in Section I of that order, and by removing the  
16 reference to the critical habitat of the Oregon coast coho ESU from Section II of that order;  
17 *Provided*, That the January 22, 2004 order would revert to its original scope including  
18 Oregon coast coho salmon if that salmon were relisted as a threatened or endangered  
19 species under the ESA.

1  
2 Dated this 10th day of March, 2006

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22  
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Dated this 10th day of March, 2006

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**ORDER**

Based on the above Stipulation,

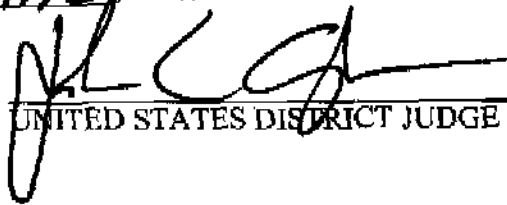
It is hereby ORDERED that the Court's Order of January 22, 2004 is modified as follows:

1. Section I of the Order is modified by striking the phrase "Oregon coast coho (63 Fed. Reg. 42,587 (Aug. 10, 1998));" from footnote 1 on page 2;

2. Section II of the Order is modified by striking the phrase "Oregon coast coho salmon" from footnote 2 on page 3.

It is further ORDERED that, if the Oregon coast coho salmon were to be relisted as a threatened or endangered species under the Endangered Species Act, the January 22, 2004 Order would revert to its original scope prior to the above-ordered modifications.

Dated this 15 day of March, 2006.

  
UNITED STATES DISTRICT JUDGE

Presented by:

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