

## SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This action is currently pending in Multnomah County Circuit Court Case Number 18CV57532 (“Action”). The parties to this Action are Center for Biological Diversity, Cascadia Wildlands, and Tierra Curry (“petitioners”), represented by Ryan A. Shannon and Nicholas S. Cady, and Oregon Department of Fish and Wildlife, and Curt Melcher (“respondents”) represented by Nina R. Englander and Darsee Staley. Petitioners and respondents are collectively referred to as the “Parties.” The Parties have agreed to settle the Action for the consideration set forth in this Settlement Agreement and Release of Claims (“Agreement”).

The terms of this Agreement are as follows:

**1. Respondents’ Actions:** As consideration for petitioners’ Release of Claims and on behalf of the Released Parties defined below, respondents agree to:

a. Schedule a rulemaking hearing for the Fish and Wildlife Commission (“Commission”) to take final action on the concepts proposed by petitioners in their May 9, 2018 Petition to Initiate Rulemaking to Amend OAR 635-050-0110 to Prohibit Marten Trapping in Portions of Western Oregon by no later than September 13, 2019.

Respondents shall file all notices and conduct the rulemaking proceedings consistent with ORS 183.335, and will, within 5 days of its adoption, file any final rule that issues from the Commission’s final action; and

b. For the 2018-19 harvest season, provide a summary of Humboldt marten harvest data from coastal Oregon counties submitted pursuant to the reporting requirement in OAR 635-050-0045(2). This summary will be provided as part of the rulemaking proceedings identified in paragraph 1(a) above. ODFW will make efforts to obtain information regarding the location of any marten harvested in Douglas and Lane Counties for the 2018-19 harvest season to distinguish between the harvest of any Humboldt marten versus other subspecies of marten.

**2. Petitioners' Release of Claims:** In consideration of respondents' Actions set forth in paragraph 1 above, petitioners individually and on behalf of any successors, agents and assigns hereby release, acquit, and forever discharge respondents and all those in interest with them, including the State of Oregon and all of its political subdivisions, agencies, departments, administrators, officers, current and former employees, agents, attorneys, and insurers (collectively "Released Parties"), from any and all claims, demands, or causes of action, whether known or unknown, under any legal, equitable, or other theory, that were or could have been raised in this Action. Petitioners reserve their rights to challenge the final rulemaking promulgated pursuant to this settlement.

**3. Each Party is Responsible for Own Attorney Fees and Costs:** The Parties acknowledge and agree that they are solely responsible for paying any attorney fees and costs they incurred and that neither the Parties nor their attorneys will seek an award of attorney fees or costs.

**4. No Admission of Fault or Future Precedent:** The Parties agree that this Agreement is not to be construed as an admission or proof of any liability or fault whatsoever on the part of the Released Parties. This Agreement does not establish a precedent in the settlement of any current or future dispute among the Parties, and shall not be admissible as evidence in any future arbitration, administrative or court proceeding except in a proceeding brought to enforce the terms of this Agreement. In the event petitioners pursue a claim waived or released pursuant to this Agreement, the Released Parties may plead this Agreement as an absolute defense.

**5. Invalidity:** If any term contained in this Agreement shall for any reason be held to be invalid, illegal, void, or unenforceable in any respect, such term shall be deemed modified so as to conform as nearly as possible to such invalid, illegal, void, or unenforceable provision while still remaining valid and enforceable, and the remaining terms shall not be affected.

**6. Binding Agreement and Ownership of Claims:** This Agreement shall be binding upon the Parties, and their heirs, representatives, executors, administrators, successors in

interest, insurers and assigns. The Parties acknowledge that they have not transferred or assigned, or purported to transfer or assign, to any person or entity, any claim, or any portion of interest of any claim that was or could have been raised in the Action.

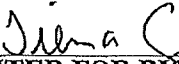
7. **Acknowledgment of the Terms of the Agreement:** By the signatures below, the Parties acknowledge that they have read and know the contents of this Agreement, that they fully understand its terms and that they enter into the Agreement voluntarily for the purpose of making a full compromise and settlement. Each of the Parties further represents it has consulted or has had the opportunity to consult with legal counsel of its choice concerning the legal effect of this Agreement before signing it, and that each party executes this Agreement voluntarily. Further, the persons executing and delivering the Agreement represent and warrant that they are authorized to do so and that the execution of delivery of the Agreement is lawful and voluntary.

8. **Voluntary Dismissal with Prejudice:** Counsel for petitioners shall file a Notice of Voluntary Dismissal and General Judgment of Dismissal with Prejudice. The Parties agree to execute any further documents and take any further actions, as may be reasonable and necessary, in order to carry out the purpose and intent of this Agreement.

9. **Waiver of Rule of Construction Against Drafter:** This Agreement was jointly drafted and approved by the Parties. The Parties hereby waive application of any rule that would otherwise require any ambiguities in this Agreement to be interpreted against the drafter.

10. **Counterparts:** This Agreement may be executed in counterparts, including counterparts received by facsimile or electronic transmission, with each counterpart constituting an original. The executing Parties agree that a photocopy or other signed copy of this Agreement is as effective as the original.

**IT IS SO AGREED TO BY THE PARTIES:**

  
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**CENTER FOR BIOLOGICAL DIVERSITY  
CASCADIA WILDLANDS,  
AND TIERRA CURRY**  
Plaintiffs

DATED this 31<sup>ST</sup> day of December, 2018.



**OREGON DEPT. OF FISH & WILDLIFE**  
**CURT MELCHER, DIRECTOR**  
Respondents

DATED this 2<sup>nd</sup> day of January 2019  
~~December, 2018.~~

**APPROVED AS TO FORM:**



**RYAN A. SHANNON, OSB #155537**  
**NICHOLAS S. CADY, OSB #113463**  
Attorneys for Petitioners

DATED this 31<sup>st</sup> day of December, 2018.



**NINA R. ENGLANDER, OSB #106119**  
Assistant Attorney General  
**DARSEE STALEY, OSB #873511**  
Senior Assistant Attorney General  
Attorneys for Respondents

DATED this 2<sup>nd</sup> day of Jan. 2019  
~~December, 2018.~~