

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
Miami Division**

Civil Action No.: 1:22-cv-23765-SEITZ

CENTER FOR BIOLOGICAL DIVERSITY,
et al.,

Plaintiffs,

v.

DEBRA HAALAND, in her official capacity
as Secretary of the United States Department
of the Interior, *et al.*,

Defendants.

**JOINT MOTION FOR ENTRY OF AN ORDER APPROVING THE PARTIES’
STIPULATED SETTLEMENT AGREEMENT**

Pursuant to Local Rule 7.1, Plaintiffs Center for Biological Diversity, Tropical Audubon Society, and the Miami Blue Chapter of the North American Butterfly Association, (“Plaintiffs”) and Defendants Debra Haaland, in her official capacity as Secretary of the U.S. Department of the Interior; the U.S. Department of the Interior; Martha Williams, in her official capacity as Director of the U.S. Fish and Wildlife Service; and the U.S. Fish and Wildlife Service (“Federal Defendants”) (collectively, “parties”), by and through their respective undersigned counsel, jointly move for entry of an order approving the Parties’ Stipulated Settlement Agreement and [Proposed] Order (“Stipulation”) and submit the following in support:

1. Following a Status Conference, on March 16, 2023, this Court issued an Order Setting Motion for Summary Judgment Briefing Schedule and Referral to Magistrate. ECF No. 15. The Order required Federal Defendants to provide Plaintiffs with a settlement offer by March

24, 2023. The Order further required the parties to submit a Joint Statement of Material Facts Not in Dispute by March 31, 2023, ahead of the summary judgment filing schedule.

2. On March 27, 2023, the parties informed the Court that they had reached a settlement in principle and submitted a Joint Motion for a Stay of Proceedings Until April 10, 2023, to provide time to formalize the agreement and file it for the Court's approval. ECF. No. 16.

3. That same day, the Court issued a Paperless Order granting the parties' motion and resetting the summary judgment filing schedule. ECF No. 17.

4. The parties negotiated and reached an agreement to settle Plaintiffs' claims in this case, as set forth in a Stipulated Settlement Agreement and [Proposed] Order, which is filed with this motion as a proposed order.

5. The Court's approval of the Stipulation is necessary to ensure that the Stipulation can be enforced by the Court in the unlikely event it were to become necessary. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994) (holding that a settlement between parties is not enforceable by a federal court unless the court retains jurisdiction or makes the settlement an order of the court); *e.g., Rogers v. Oceana Logistics Int'l, Inc.*, No. 17-CV-80081, 2017 U.S. Dist. LEXIS 55472, at *1 (S.D. Fla. Apr. 10, 2017) (approving a consent decree upon motion of the parties and "retain[ing] jurisdiction to enforce the Consent Decree").

6. Furthermore, the parties agree that it is in the public interest for the Court to approve the Agreement and thereby avoid unnecessary litigation over the timeline within which Federal Defendants should publish a final designation of critical habitat for the Miami tiger beetle. *Ass'n for Disabled Ams., Inc. v. Amoco Oil Co.*, 211 F.R.D. 457, 466 (S.D. Fla. 2002) (recognizing "an overriding public interest in favor of settlement"); *cf. United States v. Bd. of*

Pub. Instruction, 977 F. Supp. 1202, 1206 (S.D. Fla. 1997) (explaining “[i]t is a well understood principle that settlements are favored over continued litigation” when determining whether to approve a stipulation as to findings of fact and conclusions of law in a desegregation case).

7. Based on the foregoing, the parties respectfully request that the Court sign the Stipulation, thereby adopting it as an enforceable Order of the Court. *See Kokkonen*, 511 U.S. 375.

Dated April 10, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of April 2023, I filed the foregoing using the United States District Court CM/ECF, which caused all counsel of record to be served electronically.

/s/ Ragan Edward Whitlock

Ragan Edward Whitlock

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CENTER FOR BIOLOGICAL DIVERSITY,
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DEBRA HAALAND, in her official capacity
as Secretary of the United States Department
of the Interior, *et al.*,

Defendants.

STIPULATED SETTLEMENT AGREEMENT AND [PROPOSED] ORDER

This Stipulated Settlement Agreement (“Agreement”) is entered into by and between Plaintiffs Center for Biological Diversity, Tropical Audubon Society, and the Miami Blue Chapter of the North American Butterfly Association, (“Plaintiffs”) and Defendants Debra Haaland, in her official capacity as Secretary of the U.S. Department of the Interior; the U.S. Department of the Interior; Martha Williams, in her official capacity as Director of the U.S. Fish and Wildlife Service; and the U.S. Fish and Wildlife Service (“Federal Defendants”) (collectively, “parties”), who, by and through their undersigned counsel, state as follows:

WHEREAS, on December 22, 2015, the U.S. Fish and Wildlife Service (“Service”) proposed to list the Miami tiger beetle as endangered under the Endangered Species Act (“ESA”). 16 U.S.C. §§ 1531–1544; 80 Fed. Reg 79,533 (Dec. 22, 2015);

WHEREAS, the Service concluded that designation of critical habitat for the species was prudent but “not determinable because the specific information sufficient to perform the required analysis of the impacts of the designation was lacking.” *Id.* at 79,553;

WHEREAS, when the Service publishes in the Federal Register notice of a proposed regulation listing a species, it has one year to either: (1) publish a final regulation that lists the species and finalize critical habitat designation concurrently; or (2) if critical habitat is prudent but not determinable, publish notice that it is extending the one-year period by no more than one additional year. 16 U.S.C. § 1533(b)(6)(A)(ii); 50 C.F.R. § 424.17(b)(2);

WHEREAS, on October 5, 2016, the Service issued a final rule listing the Miami tiger beetle as endangered. 16 U.S.C. §§ 1531–1544; 81 Fed. Reg. 68,985;

WHEREAS, the Service again concluded critical habitat for the Miami tiger beetle was not then determinable, but “anticipate[d] that a proposed rule designating critical habitat for the Miami tiger beetle w[ould] be published before the end of the fiscal year 2017.” *Id.* at 68,985–90; 69,007;

WHEREAS, following litigation, the Service published a proposed rule to designate critical habitat on September 7, 2021, in which it proposed to protect 1,977 acres as critical habitat in Miami-Dade County for the Miami tiger beetle. 86 Fed. Reg. 49,945 (Sept. 7, 2021);

WHEREAS, the Service must publish a final regulation implementing a critical habitat designation within one year of publishing the proposed regulation. 16 U.S.C. § 1533(b)(6)(A)(ii);

WHEREAS, on September 8, 2022, Plaintiffs notified Defendants by letter of their intent to file suit to compel the Service to designate critical habitat for the Miami tiger beetle by a date certain;

WHEREAS, on November 14, 2022, the Service responded to Plaintiffs' September 8, 2022 letter and provided an update that it anticipated completing the final critical habitat designation for the Miami tiger beetle during the upcoming winter;

WHEREAS, the Service has not yet designated critical habitat for the Miami tiger beetle;

WHEREAS, on November 16, 2022, Plaintiffs filed the above-captioned action to compel the Service to designate critical habitat for the Miami tiger beetle by a date certain, ECF No. 1;

WHEREAS, the parties, through their authorized representatives, and without any final adjudication of the issues of fact or law with respect to Plaintiffs' claims, have negotiated a settlement that they consider to be in the public interest and a just, fair, adequate, and equitable resolution of the disputes set forth in Plaintiffs' Complaint;

WHEREAS, the Service anticipates the final designation will become effective 30 days after publication in the Federal Register. 5 U.S.C. § 551 *et seq.*;

WHEREAS, the parties desire to resolve Plaintiffs' claims according to the terms set forth below, and thus hereby stipulate and agree as follows:

1. On or before **May 8, 2023**, the Service shall submit to the Office of the *Federal Register* for publication a final determination of critical habitat for the Miami tiger beetle.

2. The Order entering this Agreement may be modified by the Court upon good cause shown, consistent with the Federal Rules of Civil Procedure, by written stipulation between the parties filed with and approved by the Court, or upon written motion filed by one of the parties and granted by the Court. In the event that either party seeks to modify the terms of this Agreement, including the deadline specified in Paragraph 1, or in the event of a dispute arising out of or relating to this Agreement, or in the event that either party believes that the

other party has failed to comply with any term or condition of this Agreement, the party seeking the modification, raising the dispute, or seeking enforcement shall provide the other party with notice of the claim or modification. The parties agree that they will meet and confer (either telephonically or in person) at the earliest possible time in a good-faith effort to resolve the claim before seeking relief from the Court. If the parties are unable to resolve the claim themselves, either party may seek relief from the Court.

3. In the event that Federal Defendants fail to meet the deadline specified in Paragraph 1 and have not sought to modify such deadline, Plaintiffs' first remedy shall be a motion to enforce the terms of this Agreement, after following the dispute resolution procedures described above. This Agreement shall not, in the first instance, be enforceable through a proceeding for contempt of court.

4. This Agreement requires only that Federal Defendants take the actions specified in Paragraph 1. No provision of this Agreement shall be interpreted as, or constitute, a commitment or requirement that Federal Defendants take action in contravention of the ESA, the Administrative Procedure Act (APA), or any other law or regulation, either substantive or procedural. Nothing in this Agreement shall be construed to limit or modify the discretion accorded to Federal Defendants by the ESA, APA, or general principles of administrative law with respect to the procedures to be followed in making any determination required herein, or as to the substance of any determinations made pursuant to Paragraph 1 of the Agreement. To challenge any final determination, Plaintiffs must file a separate action. Federal Defendants reserve the right to raise any applicable claims or defenses to such challenges.

5. No part of this Agreement shall have precedential value in any litigation or in representations before any court or forum or in any public setting. No party shall use this

Agreement or the terms herein as evidence of what does or does not constitute a reasonable timeline for making a determination regarding critical habitat for any listed species.

6. Nothing in this Agreement shall be construed or offered as evidence in any proceeding as an admission or concession of any wrongdoing, liability, or any issue of fact or law concerning the claims settled under this Agreement or any similar claims brought in the future by any other party. Except as expressly provided in this Agreement, none of the parties waives or relinquishes any legal rights, claims, or defenses it may have. This Agreement is executed for the purpose of settling Plaintiffs' Complaint, and nothing herein shall be construed as precedent having preclusive effect in any other context.

7. Nothing in this Agreement shall be interpreted as, or shall constitute, a requirement that Federal Defendants are obligated to pay any funds exceeding those available, or take any action in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable appropriations law.

8. The parties agree that this Agreement was negotiated in good faith and that it constitutes a settlement of claims that were disputed by the parties. By entering into this Agreement, the parties do not waive any claim or defense except as expressly stated herein. This Agreement contains all of the terms of agreement between the parties concerning the Complaint and is intended to be the final and sole agreement between the parties with respect thereto. The parties agree that any prior or contemporaneous representations or understanding not explicitly contained in this written Agreement, whether written or oral, are of no further legal or equitable force or effect.

9. The undersigned representatives of each party certify that they are fully authorized by the party or parties they represent to agree to the terms and conditions of this

Agreement and do hereby agree to the terms herein. Further, each party, by and through its undersigned representative, represents and warrants that it has the legal power and authority to enter into this Agreement and bind itself to the terms and conditions contained in this Agreement.

10. The terms of this Agreement shall become effective upon entry of an Order by the Court ratifying the Agreement.

11. Plaintiffs reserve their right to request reasonable fees from Federal Defendants and Federal Defendants reserve their right to contest Plaintiffs' entitlement to recover fees in this case and the amount of any such fees, and do not waive any objection or defenses they may have to Plaintiffs' fee request. If the parties are unable to settle Plaintiffs' fee claim, Plaintiffs will have 60 days from the approval of this Agreement to file a motion for fees.

12. Upon adoption of this Agreement by the Court and the final rule designating critical habitat for the Miami tiger beetle becoming effective, all counts of Plaintiffs' Complaint shall be dismissed with prejudice. Notwithstanding the dismissal of this action, however, the parties hereby stipulate and respectfully request that the Court retain jurisdiction to oversee any dispute as to fees and compliance with the terms of this Agreement, and to resolve any motions to modify such terms. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994).

Dated April 10, 2023

Respectfully submitted,

/s/ Ragan Edward Whitlock

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Attorneys for Defendants

IT IS SO ORDERED.

Dated: _____, 2023 By: _____
HON. PATRICIA A. SEITZ
UNITED STATES DISTRICT JUDGE