

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

HUMANE SOCIETY INTERNATIONAL, *et al.*,

Plaintiffs,

v.

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

Defendants.

Case No. 1:21-cv-02945-CKK

STIPULATED SETTLEMENT AGREEMENT

This Stipulated Settlement Agreement (“Agreement”) is entered into by and between Plaintiffs Humane Society International, the Humane Society of the United States, and the Center for Biological Diversity (collectively, “Plaintiffs”) and Defendants the United States Fish and Wildlife Service (“Service”) and Debra Haaland, in her official capacity as Secretary of the United States Department of the Interior (“Interior”) (collectively, “Defendants”), who, by and through their undersigned counsel, state as follows:

WHEREAS, the Endangered Species Act (“ESA”), 16 U.S.C. § 1531 *et seq.*, provides that within 12 months after receiving a petition that is found to present substantial information indicating the petitioned action may be warranted, the Secretary shall make a finding as to whether the petitioned action is not warranted, warranted but precluded, or warranted (“12-month finding”), 16 U.S.C. § 1533(b)(3)(B);

WHEREAS, the ESA provides that, if the Secretary finds that the petitioned action is warranted, she “shall promptly publish in the Federal Register a general notice and the complete text of a proposed regulation to implement” the petitioned action and take other steps, including publishing a final listing determination pursuant to certain deadlines, 16 U.S.C. §§ 1533(b)(3)(B)(ii), (b)(4)–(6);

WHEREAS, the ESA provides that, if the Secretary finds that the petitioned action is not warranted or warranted but precluded, then that finding is subject to judicial review, 16 U.S.C. § 1533(b)(3)(C)(ii);

WHEREAS, when the Service makes a warranted-but-precluded finding on a petition, the ESA requires the Service to treat the petition as one that is resubmitted as of the date of the finding and that presents substantial scientific or commercial information that the petitioned action may be warranted, 16 U.S.C. § 1533(b)(3)(C)(i);

WHEREAS the leopard (*Panthera pardus*) is currently listed under the ESA as an endangered species wherever found, except the population in southern Africa that is currently listed as a threatened species, 50 C.F.R. § 17.11(h);

WHEREAS, on July 25, 2016, Plaintiffs submitted a petition requesting under the ESA that the Service reclassify the leopard to an endangered species throughout all of the species' current range, and a petition requesting under the Administrative Procedure Act ("APA") that the Service require ESA permits for the import of threatened leopard hunting trophies by rescinding the rule promulgated under Section 4(d) of the ESA that allows, under certain circumstances, for the importation of leopard hunting trophies from the threatened population in southern Africa without an ESA permit, 50 C.F.R. § 17.40(f) ("4(d) rule petition");

WHEREAS, in accordance with 16 U.S.C. § 1533(b)(3)(A), the Service issued a "90-day finding" in response to Plaintiffs' petition to reclassify the leopard, in which the Service concluded that the petition presented substantial information indicating that the reclassification of the leopard as endangered "may be warranted," *see* 81 Fed. Reg. 86,315-86,318 (November 30, 2016); *see also* 82 Fed. Reg. 60,362, 60,365 (Dec. 20, 2017) (correcting errors in prior notice);

WHEREAS, on October 28, 2020, Plaintiffs notified Defendants by letter of their intent to file suit to compel the Service to complete a 12-month finding on the petition to reclassify the leopard pursuant to 16 U.S.C. § 1533(b)(3)(B), and to substantively respond to Plaintiffs' 4(d) rule petition;

WHEREAS, on December 18, 2020, the Service responded to Plaintiffs' October 28, 2020, letter, and provided an update regarding the agency's prioritization of its existing backlog of listing petitions for foreign species including the leopard;

WHEREAS, on November 9, 2021, Plaintiffs filed a complaint in the above-captioned action to compel the Service to complete a 12-month finding on the petition to reclassify the leopard, and to substantively respond to Plaintiffs' 4(d) rule petition by dates certain, *see* ECF No. 1 ("Complaint");

WHEREAS, the Service intends to endeavor to meet the obligations of Paragraph 1 of this settlement agreement before June 30, 2027, should resources become available to do so;

WHEREAS, if a proposed rule is submitted to the Office of the Federal Register in accordance with Paragraph 1, the Service intends to make a final listing determination in accordance with the statutory timeframes provided in 16 U.S.C. § 1533(b)(6)(A)–(B);

WHEREAS, Plaintiffs and Defendants (collectively, "the parties"), by and through their authorized representatives, and without any admission or 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;

NOW, THEREFORE, the parties hereby stipulate and agree as follows:

1. On or before June 30, 2027, the Service shall review the status of the leopard and submit to the Office of the Federal Register a 12-month finding as to whether the reclassification of the species as endangered throughout its range is (a) not warranted; (b) warranted; or (c) warranted but precluded by other pending proposals, pursuant to 16 U.S.C. § 1533(b)(3)(B);
2. On or before June 30, 2027, the Service shall substantively respond to Plaintiffs' petition to require ESA permits for the import of threatened leopard hunting trophies by rescinding the 4(d) rule that currently allows the importation of leopard hunting trophies from the threatened population in southern Africa without an ESA permit;
3. 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 deadlines specified in Paragraphs 1 and 2, 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.

4. In the event that Defendants fail to meet either deadline specified in Paragraphs 1 or 2 and have not sought to modify it, 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.

5. This Agreement requires only that the Service take the actions specified in Paragraphs 1, 2, and 6. No provision of this Agreement shall be interpreted as, or constitute, a commitment or requirement that Defendants take action in contravention of the ESA, the 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 the Service by the ESA, the 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 Paragraphs 1 and 2. To challenge any final determinations issued pursuant to Paragraph 1 or 2, Plaintiffs will be required to file a separate action. Defendants reserve the right to raise any applicable claims or defenses to such challenges.

6. Without waiving any defenses or making any admissions, Defendants agree to

pay Plaintiffs \$30,323.19 in attorneys' fees and costs. Plaintiffs agree that all \$30,323.19 will be received by the Humane Society of the United States. Plaintiffs agree to accept the \$30,323.19 from Defendants in full satisfaction of any and all claims, demands, rights, and causes of action for any and all attorneys' fees and costs Plaintiffs reasonably incurred in connection with the above-captioned litigation through the signing of this Agreement.

7. The Humane Society of the United States agrees to furnish Defendants with the information necessary to effectuate the payment set forth by Paragraph 6. Payment will be made to the Humane Society of the United States by electronic funds transfer. Defendants agree to submit all necessary paperwork for the processing of the attorneys' fees award within fifteen (15) days from receipt of the necessary information from the Humane Society of the United States or from approval of this Agreement by the Court, whichever is later.

8. By this agreement and following the Humane Society of the United States' receipt of the payment specified in Paragraph 6, Plaintiffs Humane Society International and the Center for Biological Diversity waive and agree to forgo any claim for attorneys' fees and costs incurred in connection with the above-captioned litigation through the signing of this Agreement.

9. By this agreement, Defendants do not waive any right to contest fees and costs claimed by Plaintiffs or Plaintiffs' counsel in any future litigation or continuation of the present action.

10. 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 determinations regarding the listing of any species under the ESA or acting on petitions for rulemaking under the APA for any species.

11. 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, the parties do not

waive or relinquish any legal rights, claims, or defenses they 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.

12. Nothing in this Agreement shall be interpreted as, or shall constitute, a requirement that 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.

13. The parties agree that this Agreement was negotiated in good faith and it constitutes a settlement of claims disputed by the parties. By entering into this Agreement, the parties do not waive any legal rights, claims, or defenses, except as expressly stated herein. This Agreement contains all of the terms of agreement between the parties concerning Plaintiffs' 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.

14. 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.

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

16. Upon adoption of this Agreement by the Court, 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 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: February 13, 2023

Respectfully submitted,

/s/ Margaret Robinson
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