

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA**

RED WOLF COALITION, et al.,)	
)	
Plaintiffs,)	
)	
v.)	No. 2:20-cv-00075
)	
The UNITED STATES FISH AND WILDLIFE)	
SERVICE, et al.,)	
)	
Defendants.)	
)	

STIPULATED SETTLEMENT AGREEMENT

This Stipulated Settlement Agreement (“Agreement”) is entered into by Defendants Martha Williams, in her official capacity as Director of the United States Fish and Wildlife Service (“the Service”), Mike Oetker, in his official capacity as Acting Regional Director of the Service, and the Service (collectively, “Defendants”), and Plaintiffs Red Wolf Coalition, Defenders of Wildlife, and Animal Welfare Institute (collectively, “Plaintiffs”) (collectively, “the parties”) who, by and through their undersigned counsel, state as follows:

WHEREAS, in 1967 the red wolf (*Canis rufus*) was listed as “threatened with extinction” under the Endangered Species Preservation Act, 80 Stat, 926; 16 U.S.C. § 668aa(c); 32 Fed. Reg. 4,001 (Mar. 11, 1967);

WHEREAS, in passing the Endangered Species Act (“ESA”) in 1973, 16 U.S.C. § 1533 *et seq.*, Congress provided that all species listed under the Endangered Species Preservation Act would remain listed under the ESA. *See* 39 Fed. Reg. 1,444 (Jan. 9, 1974);

WHEREAS, in 1986, the Service designated an experimental population of the red wolf in Eastern North Carolina under ESA section 10(j), 16 U.S.C. § 1539(j). 51 Fed. Reg. 41,790 (Nov. 19, 1986); as amended, 60 Fed. Reg. 18,940 (Apr. 13, 1995);

WHEREAS, on November 16, 2020, Plaintiffs filed their complaint in this case, alleging that “[f]rom 2002-2014 the population was always estimated at 100 or more individuals, peaking

at an estimated 130 wolves in the late 2000s” but “only seven known red wolves” remained in the wild at the time of filing. ECF No. 1; *see also* ECF No. 27 (Amended Complaint);

WHEREAS, Plaintiffs’ complaint alleged that the Service’s “current management of the wild red wolf population,” policy of “prohibiting the release of captive red wolves” into the wild, and “refusal to resume adaptive management to prevent hybridization with coyotes” violates the ESA and the Administrative Procedure Act (“APA”). ECF No. 1; *see also* ECF No. 27 (Amended Complaint);

WHEREAS, on November 19, 2020, Plaintiffs moved for a preliminary injunction asking the Court to “enjoin Defendants’ policy prohibiting the release of captive red wolves into the Red Wolf Recovery Area” and “order Defendants to resume the release of red wolves from the captive population into the Red Wolf Recovery Area” in accordance with Plaintiffs’ requested schedule or “[i]n the alternative . . . at a rate to be determined by a Special Master appointed by this Court,” and, finally, “order Defendants to . . . [e]very six months . . . until a final decision on the merits is issued in this matter, submit to the Court a status report.” ECF No. 12;

WHEREAS, on January 22, 2021, the Court issued a preliminary injunction order, finding that Plaintiffs were likely to succeed on the merits of their claims, and that the Service’s “reversal of the prior policy to release captive red wolves into the wild population and engage in proactive and regular adaptive management to address coyote hybridization have had significant adverse impacts and will hasten the extinction of red wolves in the wild.” ECF No. 25;

WHEREAS, the Court’s January 22, 2021 preliminary injunction ordered Defendants to “draft a plan to release captive red wolves into the Red Wolf Recovery Area in consultation with their scientists and experts in the field” and, in the “absence of any objection by the plaintiffs,” ordered Defendants to “act under the terms of its release plan.” ECF No. 25;

WHEREAS, on January 29, 2021, Plaintiffs filed an amended complaint. ECF No. 27;

WHEREAS, Defendants filed a release plan on March 1, 2021, ECF No. 32-2, and Plaintiffs filed objections on March 15, 2021, ECF No. 34;

WHEREAS, Defendants filed an amended release plan on April 20, 2021, ECF No. 40-2, and the Court ordered Defendants to implement the steps outlined in Phase I of its Amended Release Plan and revise Phase II of its release plan, ECF No. 44;

WHEREAS, Defendants filed a Phase II release plan with the Court on November 22, 2021. ECF No. 56-2;

WHEREAS, the parties “jointly move[d] the Court to issue an order requir[ing] the Service to draft and implement a Phase III plan for the release of captive red wolves into the Red Wolf Recovery Area,” ECF No. 75, and the Court granted the motion on June 29, 2022, “order[ing] that Defendants file a Phase III release plan” and “implement the Phase III release plan once it is filed.” ECF No. 76;

WHEREAS, Defendants filed a Phase III release plan with the Court on September 27, 2022. ECF No. 78;

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

WHEREAS, the parties agree that settlement of this action in this manner is in the public interest and is an appropriate way to resolve the dispute between them;

WHEREAS, the Service acknowledges the importance of the Eastern North Carolina red wolf population to red wolf conservation and recovery, and commits to manage the Eastern North Carolina red wolf population in a manner consistent with the ESA;

WHEREAS, the Service intends to continue to pursue red wolf adaptive-management techniques such as coyote sterilization, as appropriate, which includes applying for permits issued by the State of North Carolina to sterilize coyotes;

WHEREAS, the Service intends to develop and implement, as feasible and appropriate, an adaptive-management strategy for the Eastern North Carolina red wolf population;

WHEREAS, the Service intends to make best efforts to memorialize the annual information briefings regarding coyote management strategy by, for example, making meeting minutes and/or a videorecording of the annual information briefings publicly available;

WHEREAS, the Service intends to continue to work with its captive-breeding partners to ensure that there is an appropriate and sustainable source of captive-bred red wolves for potential release into the wild in Eastern North Carolina;

WHEREAS, the Service intends to continue community engagement to ensure that stakeholders are informed and involved, as appropriate, in the red wolf program in Eastern North Carolina;

WHEREAS, the Service intends to use best efforts to keep its website updated with the current status of the Eastern North Carolina red wolf population;

WHEREAS, the Service intends to use best efforts to reduce anthropogenic mortality in the Eastern North Carolina red wolf population;

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

1. The Service will develop and publish to its website annual red wolf release plans for a period of eight years. The Service will publish the red wolf release plans by December 1st of each year and may publish updates to the red wolf release plans as appropriate. The Service will develop the red wolf release plans in consultation with appropriate sources, including the Service's scientists and experts in the field. The red wolf release plans will include metrics that can be used to measure performance. Following consultation with appropriate sources, including the Service's scientists and experts in the field, the Service will retain sole decisionmaking authority over the contents of the red wolf release plan, including whether any captive-bred red wolves will be released into the wild in Eastern North Carolina.

2. The Service will provide an annual information briefing for a period of eight years via teleconference, or if not via teleconference then at a mutually agreed location, to Plaintiffs and any interested stakeholders regarding the efforts undertaken regarding coyote management strategy, with the opportunity for dialogue that does not infringe on the decisional and oversight duties of responsible agency offices. To the extent travel is required, each party will be responsible for its own costs and expenses.

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 to the Agreement and granted by the Court. In the event that any party to this Agreement seeks to modify the terms of this Agreement or in the event of a dispute arising out of or relating to this Agreement, or in the event that any party to this Agreement believes that any 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 parties to this Agreement with notice of the claim or modification sought. The parties to this Agreement agree that they will meet and confer (either telephonically or in person) at the earliest possible time, no later than 21 days after delivery of notice of a claim or modification request, 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 within 21 days of the meet and confer, the aggrieved party may seek relief from the Court. In the event that Defendants fail to meet the requirements of Paragraphs 1 and 2 and have not sought to modify the Agreement, 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 the Service take the actions specified in Paragraphs 1 and 2. No provision of this Agreement shall be interpreted to or constitute a commitment or requirement that the Defendants take action in contravention of the ESA, the APA, or any other law or regulation, either substantive or procedural. With respect to the procedures to be followed in developing and publishing the red wolf release plans and providing the annual information briefings, nothing in this Agreement shall be construed to limit or modify the discretion accorded to the Service by the ESA, APA, or general principles of administrative law. The Service reserves the right to end the experimental population of red wolves in Eastern North Carolina by withdrawing the 10(j) rule establishing an experimental population of red wolves in Eastern North Carolina in a final rule, issued through rulemaking pursuant to the APA, in which event this Agreement will cease to have effect.

5. Plaintiffs reserve their right to challenge any future agency actions related to the red wolf arising under any law. Plaintiffs must file a separate action for any such challenge. Defendants reserve the right to raise any applicable claims or defenses to any substantive challenge raised by any party. The parties to this Agreement agree that this paragraph shall be construed in a manner that is consistent with the provisions of Paragraph 1, 2, and 11, and not to negate the provisions of those paragraphs.

6. The obligations imposed on the Service under this Agreement can only be undertaken using appropriated funds. No provision of this Agreement shall be interpreted as, or shall constitute, a commitment or requirement that the United States is obligated to pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other provisions of law.

7. Plaintiffs reserve their right to seek reasonable fees and expenses from Defendants, and Defendants reserve their right to contest Plaintiffs' entitlement to recover fees in this case and to 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 negotiate an award of attorneys' fees and expenses, Plaintiffs will file their motion for such fees and expenses within 90 days of the Court's order approving this stipulation.

8. 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' Amended Complaint, and nothing herein shall be construed as precedent having preclusive effect in any other context.

9. The parties agree that this Agreement was negotiated in good faith and it constitutes a settlement of all 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' Amended 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.

10. The terms of this Agreement shall become effective upon entry of an order by the Court (similar in substance to the attached Proposed Order) approving the Agreement.

11. Upon approval of this Agreement by the Court, all counts of Plaintiffs' Amended Complaint shall be dismissed with prejudice. Notwithstanding this dismissal, however, the parties

to this Agreement hereby stipulate and respectfully request that the Court retain jurisdiction to oversee compliance with the terms of this Agreement until Defendants satisfy their obligations under the Agreement, to resolve any motions to modify the terms of the Agreement, and to resolve any motions for attorneys' fees and expenses if necessary. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994).

12. The undersigned representatives of each party certify that they are fully authorized by the party or parties they represent to agree to the Court's entry of the terms and conditions of the 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.

DATED: August 09, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 09, 2023, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of this filing to the attorneys of record.

/s/ Ramona H. McGee

Ramona H. McGee

Attorney for Plaintiffs