

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

NATURAL RESOURCES DEFENSE COUNCIL,
INC.; CENTER FOR BIOLOGICAL DIVERSITY;
FRIENDS OF MINNESOTA SCIENTIFIC AND
NATURAL AREAS,

Plaintiffs,

v.

UNITED STATES FISH AND WILDLIFE
SERVICE, MARTHA WILLIAMS, in her official
capacity as Director of the
U.S. Fish and Wildlife Service; UNITED STATES
DEPARTMENT OF THE INTERIOR,

Federal Defendants.

Civ. No. 1:21-cv-00770-ABJ

**STIPULATED AGREEMENT TO SET A DEADLINE FOR FINAL ACTION ON
REMAND AND ORDER**

WHEREAS, on March 24, 2021, Plaintiffs filed the instant suit against Federal Defendants, challenging the United States Fish and Wildlife Service's ("FWS") critical habitat determination for the rusty patched bumble bee, *Endangered and Threatened Wildlife and Plants; Determination That Designation of Critical Habitat is Not Prudent for the Rusty Patched Bumble Bee*, 85 Fed. Reg. 54281 (Sept. 1, 2020) ("Critical Habitat Determination").

WHEREAS, on August 11, 2023, the Court entered an Order and Memorandum Opinion granting Plaintiffs' motion for summary judgment, denying Federal Defendants' cross-motion for summary judgment, and vacating and remanding the Critical Habitat Determination to FWS for further proceedings consistent with the Court's opinion, ECF Nos. 29-30.

WHEREAS, on September 8, 2023, Plaintiffs filed a Motion to Set a Deadline for Final Action on Remand, ECF No. 33, seeking a deadline for FWS to take final action on remand.

WHEREAS, following discussions related to this issue, Plaintiffs and Federal Defendants have reached an agreement on a timeline for FWS to take final action on remand and avoid unnecessary litigation over this issue.

WHEREAS, accordingly, the parties respectfully request that the Court approve and enter this Stipulated Agreement to Set a Deadline for Final Action on Remand (“Stipulated Agreement”).

NOW, THEREFORE, THE PARTIES STIPULATE TO THE FOLLOWING TERMS:

1. By November 20, 2024, FWS shall, pursuant to 16 U.S.C. § 1533(a)(3), submit to the Office of the Federal Register either a proposed critical habitat rule for the rusty patched bumble bee or a determination that designation of critical habitat for the species is not prudent.
2. If FWS issues a proposed rule designating critical habitat for the rusty patched bumble bee pursuant to Paragraph 1, FWS shall submit a final critical habitat rule to the Office of the Federal Register for publication no later than October 31, 2025.
3. If FWS issues a proposed rule pursuant to Paragraph 1, then it shall file status reports with the Court on April 30, 2025 and September 30, 2025.
4. In the event that there is interagency review of the proposed or final critical habitat rule pursuant to Executive Order 12866, the deadline set forth in Paragraph 2 shall be automatically extended by ninety (90) days, to January 29, 2026.
5. In the event of a lapse in the appropriations that fund FWS, such as a government shutdown, or other legal barrier to FWS’s expenditure of funds, each of the deadlines in Paragraphs 1-3 of this Stipulated Agreement shall be automatically extended by one day for each day of the lapse in appropriations or other legal barrier to FWS’s expenditure of funds.

6. For each incident of a lapse in appropriations or other legal barrier to the FWS's expenditure of funds, FWS shall have the option to further extend the deadlines in Paragraphs 1-3 of this Stipulated Agreement. FWS will have the option to extend the deadlines by the number of days that any contractor(s) retained to perform work necessary to make a new determination on remand are forced to stop work for a period that extends beyond the lapse in appropriations, up to a maximum of 90 days. Within fourteen (14) days after the last day of any such lapse in appropriations, FWS shall file a notice with the Court showing cause for any extension under Paragraph 6 of this Stipulated Agreement, including any supporting declarations or other documentation, and identifying the modified deadlines under Paragraphs 1-3 of the Stipulated Agreement. FWS's extension will be automatic, but within fourteen (14) days of FWS filing its notice of extension under Paragraph 6 of this Stipulated Agreement, Plaintiffs shall have the opportunity to file a motion to vacate the extension if they believe good cause has not been shown.

7. This Stipulated Agreement may be modified by the Court upon good cause shown, consistent with the Federal Rules of Civil Procedure, by written stipulation between Plaintiffs and Federal Defendants filed with and approved by the Court, or upon written motion filed by Plaintiffs or Federal Defendants and granted by the Court. In the event that either Plaintiffs or Federal Defendants seek to modify the terms of this Stipulated Agreement outside of the automatic deadline extensions provided in Paragraphs 4-6, or in the event of a dispute arising out of or relating to this Stipulated Agreement, or in the event that either Plaintiffs or Federal Defendants believe that the other party to this Stipulated Agreement has failed to comply with any term or condition of this Stipulated Agreement, the party seeking the modification, raising the dispute, or seeking enforcement shall provide the other party with notice of the claim or modification.

Plaintiffs and Federal Defendants agree that they will meet and confer (either telephonically or in person) as soon as practicable 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.

8. In the event that FWS fails to meet a deadline in Paragraphs 1-3 of this Stipulated Agreement (after accounting for any automatic extensions under Paragraphs 4-6) and Federal Defendants have not sought to modify this Stipulated Agreement, Plaintiffs' first remedy shall be a motion to enforce the terms of this Stipulated Agreement, after following the dispute resolution procedures described above. This Stipulated Agreement shall not, in the first instance, be enforceable through a proceeding for contempt of court.

9. This Stipulated Agreement requires only that FWS take the action specified in Paragraphs 1-3. No provision of this Stipulated Agreement shall be interpreted as, or constitute, a commitment or requirement that Federal Defendants or FWS take action in contravention of the Endangered Species Act ("ESA"), the Administrative Procedure Act ("APA"), or any other law or regulation, either substantive or procedural. Nothing in this Stipulated Agreement shall be construed to limit or modify the discretion accorded to Federal Defendants or FWS 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 determination made pursuant to Paragraphs 1-2 of this Stipulated Agreement. To challenge any final determination issued pursuant to Paragraphs 1-2, Plaintiffs must file a separate action. Federal Defendants reserve the right to raise any applicable claims or defenses to such challenges.

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

Agreement shall use this Stipulated Agreement or the terms herein as evidence of what does or does not constitute a reasonable timeline for issuing a critical habitat designation or determination that the designation of critical habitat is not prudent for any species.

11. Nothing in this Stipulated 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 at issue in this Stipulated Agreement or any similar claims brought in the future by any other party to this Stipulated Agreement. Except as expressly provided in this Stipulated Agreement, no party to this Stipulated Agreement waives or relinquishes any legal rights, claims, or defenses it may have. This Stipulated Agreement is executed for the sole purpose of avoiding litigation regarding a deadline for FWS to issue a critical habitat designation or determination that the designation of critical habitat is not prudent for the rusty patched bumble bee on remand, and nothing herein shall be construed as precedent having preclusive effect in any other context.

12. Nothing in this Stipulated Agreement shall be interpreted as, or shall constitute, a requirement that Federal Defendants are obligated to incur or 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. By entering into this Stipulated Agreement, neither Plaintiffs nor Federal Defendants waive any legal rights, claims, or defenses except as expressly stated herein. This Stipulated Agreement contains all of the terms of agreement between Plaintiffs and Federal Defendants concerning Plaintiffs' demand for a deadline for FWS to issue a critical habitat designation or determination that the designation of critical habitat is not prudent for the rusty patched bumble bee on remand, and is intended to be the final and sole agreement between

Plaintiffs and Federal Defendants with respect thereto. Plaintiffs and Federal Defendants agree that any prior or contemporaneous representations or understanding not explicitly contained in this Stipulated Agreement, whether written or oral, are of no further legal or equitable force or effect.

14. The undersigned representatives of Plaintiffs and Federal Defendants certify that they are fully authorized by the party or parties they represent to agree to the terms and conditions of this Stipulated Agreement and do hereby agree to the terms herein. Further, Plaintiffs and Federal Defendants, by and through their undersigned representatives, represent and warrant that they have the legal power and authority to enter into this Stipulated Agreement and bind themselves to the terms and conditions contained in this Stipulated Agreement.

15. The terms of this Stipulated Agreement shall become effective and Plaintiffs' Motion to Set a Deadline for Final Action on Remand, ECF No. 33, is denied as moot upon entry of an Order by the Court ratifying this Stipulated Agreement.

16. Plaintiffs and Federal Defendants hereby stipulate and respectfully request that the Court retain jurisdiction to oversee compliance with the terms of this Stipulated 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 5, 2024

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SO ORDERED.

Date: February 8, 2024

By: 

THE HONORABLE AMY B. JACKSON
UNITED STATES DISTRICT JUDGE