

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION  
Case No. 1:10-cv-22300-KMM**

NATIONAL WILDLIFE FEDERATION  
and FLORIDA WILDLIFE FEDERATION

Plaintiffs,

V.

W. CRAIG FUGATE, Administrator,  
Federal Emergency Management Agency,

Defendant.

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**SETTLEMENT AGREEMENT AND STIPULATION OF DISMISSAL**

WHEREAS, Plaintiffs National Wildlife Federation and Florida Wildlife Federation commenced this lawsuit on July 13, 2010, alleging that the Federal Emergency Management Agency (“FEMA” or “Federal Defendants”) violated Section 7 of the Endangered Species Act (“ESA”) by not consulting with the U.S Fish and Wildlife Service (“FWS”) or the National Marine Fisheries Service (“NMFS”) on the impacts of the National Flood Insurance Program (“NFIP”) in Florida on the following five sea turtle species listed as threatened and endangered under the ESA in Florida: (1) loggerhead sea turtle, (2) green sea turtle, (3) hawksbill sea turtle, (4) leatherback sea turtle, and (5) Kemp’s ridley sea turtle. Specifically, Plaintiffs have alleged that FEMA has failed to consult with the FWS and NMFS under Section 7(a)(2) of the ESA to ensure that the NFIP does not jeopardize the continued existence of the above named species, and that FEMA has also failed to use its authority to carry out programs to conserve these listed species as required by Section 7(a)(1) of the ESA;

WHEREAS, Plaintiffs and Federal Defendant, through their authorized representatives and without trial or final adjudication of the issues of fact or law with respect to Plaintiffs' claims on the merits, have reached a settlement thereof and hereby consent to the dismissal of Plaintiffs' causes of action as discussed herein;

NOW, THEREFORE, PLAINTIFFS AND FEDERAL DEFENDANT HEREBY AGREE AS FOLLOWS:

1. The Parties agree that this settlement is negotiated in good faith and that it constitutes a settlement of claims that were vigorously contested, denied and disputed by the Parties.

2. The Parties understand that this Settlement Agreement and Stipulation of Dismissal will resolve all outstanding issues in this case.

3. Within fifteen (15) days of the completion of an entry of an Order on this Settlement Agreement FEMA shall provide the Directors of the FWS and NMFS a written request to initiate informal consultation with FWS and NMFS, pursuant to 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.13, on the impacts to the five ESA-listed species identified in Plaintiffs' complaint of (i) FEMA's implementation of 42 U.S.C. § 4102(c); (ii) the mapping of the floodplains and revisions thereof 42 U.S.C. § 4101(a)(1), (a)(2), and (iii) the implementation of the CRS, 42 U.S.C. § 4022(b)(1).

4. Within eleven (11) months of the completion of an entry of an Order on this Settlement Agreement FEMA will prepare and submit a biological assessment ("BA") to the FWS and the NMFS on the effects of NFIP on threatened and endangered sea turtles in coastal areas of Florida, and FEMA shall provide the Directors of the FWS and NMFS a written request to initiate formal consultation with FWS and NMFS, pursuant to 16 U.S.C. § 1536(a)(2); 50 C.F.R.

§ 402.14(c), on the impacts to the five ESA-listed species identified in Plaintiffs' complaint of (i) FEMA's implementation of 42 U.S.C. § 4102(c); (ii) the mapping of the floodplains and revisions thereof 42 U.S.C. § 4101(a)(1), (a)(2), and (iii) the implementation of the CRS, 42 U.S.C. § 4022(b)(1). FEMA will not withdraw its biological assessment or withdraw from consultation.

5. Should FWS or NMFS request additional information from FEMA pursuant to 40 C.F.R. §§ 402.14(c), (d), and/or (f), FEMA shall provide such information, if available, to NMFS within sixty (60) days, or by such time as FWS or NMFS directs.

6. Within thirty (30) days of entry of an Order on this Agreement, FEMA shall notify all participating communities in Florida in writing of their responsibilities and legal obligations under the ESA by sending them a letter materially similar to that attached hereto as Exhibit 1.

7. Pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), Plaintiffs' Complaint is hereby dismissed with prejudice, except that Count Two of Plaintiffs' complaint (Paragraphs 47-49) is dismissed without prejudice.

8. Upon entry of this Settlement Agreement and Stipulation of Dismissal, Federal Defendant agrees that Plaintiffs will be entitled to an award of costs of litigation, including reasonable attorney's fees in the amount of **\$54,060.34** pursuant to section 11(g)(4) of the Endangered Species Act, 16 U.S.C. § 1540(g)(4). Federal Defendants agree to pay such award to National Wildlife Federation c/o John Kostyack, 901 E. St., N.W., Suite 400, Washington, D.C. 20004, on behalf of Plaintiffs in this action. In consideration of payment of such award, Plaintiffs agree to accept the stated sum in full and final satisfaction of any claim for attorneys' fees and costs for litigation in the above-captioned case up to and including the date of this Settlement.

Plaintiffs agree that such award encompasses the entire amount of attorneys' fees and costs to which they are entitled from any party in the above-captioned matter, including any work or costs performed or incurred in preparing this Settlement.

9. Within 10 days of entry of this Settlement Agreement and Stipulation of Dismissal, Federal Defendants agree to submit all necessary documentation for initiation of disbursement processing by the General Accounting Office for payment of this award.

10. Within 10 days of receipt of payment of fees and costs pursuant to this Settlement Agreement and Stipulation of Dismissal, Plaintiffs will file a notice of satisfaction of judgment.

11. Either party may seek to modify the deadlines specified in Paragraphs 3, 4 and 5 for good cause shown, consistent with the Federal Rules of Civil Procedure. In that event, or in the event that either party believes the other party has failed to comply with any term or condition of this Agreement, the parties shall use the dispute resolution procedures specified in Paragraph 14 below.

12. The Order entering this Agreement may be modified by the Court upon good cause shown, consistent with the Federal Rules of Civil Procedure, by (i) written stipulation between the parties filed with and approved by the Court, or (ii) 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 3 and 4, 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. The parties agree that they will meet and confer (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. The parties agree that Plaintiffs reserve the right to seek additional fees and costs incurred subsequent to the Agreement arising from a need to enforce or defend against efforts to modify terms of this Agreement or for any other continuation of this action.

13. Except as specifically provided in Paragraph 14 above, Plaintiffs' sole remedy to challenge the merits of any actions taken by FEMA, FWS, NMFS, and/or the participating communities as a result of this Settlement Agreement shall be to file a new lawsuit.

14. Plaintiffs agree to attempt to confer with Federal Defendant, through one of the undersigned Department of Justice attorneys or agency counsel, and to discuss the possibility of mediation or informal settlement negotiations prior to the filing of further litigation concerning the impacts on sea turtles of FEMA's NFIP in Florida.

15. If Plaintiffs elect to commence further litigation concerning the impacts on sea turtles of FEMA's NFIP in Florida, the Federal Defendant reserves any objections to the sufficiency of their notice of intent to sue pursuant to the citizen suit provisions of the ESA or other law.

16. The Parties, by their duly authorized representatives, agree to this Settlement Agreement and Stipulation of Dismissal.

17. The provisions of this Settlement Agreement and Stipulation of Dismissal shall apply to and be binding upon each of the Parties including, but not limited to, their officers, directors, servants, employees, successors, and assigns.

18. This Settlement Agreement and Stipulation of Dismissal constitutes the entire agreement of the Parties concerning the rights and obligations discussed herein and subject to

dispute in this suit. No other agreement shall govern the rights of the Parties with respect to the matters resolved by this Settlement Agreement and Stipulation of Dismissal, except in accordance with the terms herein.

19. This Settlement Agreement and Stipulation of Dismissal does not constitute an admission by any Party to any fact, claim, or defense in this lawsuit.

20. The Parties recognize that notwithstanding their efforts to comply with the commitments contained herein, an "Act of God" or "force majeure," including a natural disaster, may prevent or delay such compliance. Force majeure will not continue beyond the circumstances and conditions that prevent timely performance, and will not apply if alternative means of compliance are available. The Party claiming force majeure will have the burden of proof in proceedings to enforce or modify this Settlement Agreement and Stipulation of Dismissal.

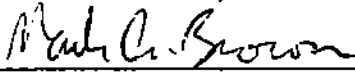
21. Nothing in this Settlement Agreement and Stipulation of Dismissal will be construed to limit FEMA's discretion as to the substance and content of its Biological Assessment. Nothing in this Settlement Agreement will be construed to deprive a federal official of the authority to revise, amend, or promulgate regulations or any discretion accorded by federal law concerning the substance of any actions taken hereunder. No provision of this Agreement shall be interpreted as or constitute a commitment or requirement that defendants obligate or pay funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other law or regulation.

RESPECTFULLY SUBMITTED,

SETTLEMENT AGREEMENT AND STIPULATION FOR DISMISSAL APPROVED FOR  
FEDERAL DEFENDANTS:

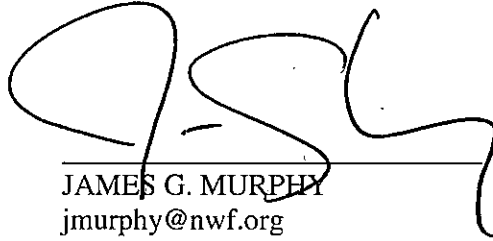
January 20, 2011

IGNACIA S. MORENO  
Assistant Attorney General  
SETH M. BARSKY, Section Chief

  
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MARK A. BROWN  
FL Bar No. 0999504  
Senior Trial Attorney  
mark.brown@usdoj.gov  
U.S. Department of Justice  
Environment and Natural Resources Division  
Wildlife and Marine Resources Section  
P.O. Box 7369  
Washington, D.C. 20044-7369  
Telephone: (202) 305-0204  
Facsimile: (202) 305-0275  
Street Address:  
U.S. Department of Justice  
601 D St., N.W.  
Room 3033  
Washington, DC 20004  
Counsel for Federal Defendants

SETTLEMENT AGREEMENT AND STIPULATION FOR DISMISSAL APPROVED FOR  
PLAINTIFFS

January 20, 2011



JAMES G. MURPHY  
jmurphy@nwf.org  
National Wildlife Federation  
Wetlands and Water Resource Counsel  
149 State Street  
Montpelier, VT 05602  
Telephone: (802) 552-4325  
Facsimile: (802) 229-4532

MARY RANDOLPH SARGENT  
M. Randolph Sargent Nepl  
FL Bar No. 0190055  
National Wildlife Federation  
5722 25th Road North  
Arlington, VA 22207  
randynepl@yahoo.com  
Telephone: (202) 302-5849  
Facsimile: (202) 797-6646



CERTIFICATE OF SERVICE

I hereby certify that on January 20, 2011 I electronically filed the foregoing with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the Mailing Information for Case No. 1:10-cv-22300-KMM. Counsel of record currently identified on the Mailing Information list to receive e-mail notices for this case are served via Notices of Electronic Filing generated by CM/ECF.

/s/ Mark Arthur Brown  
Mark Arthur Brown