ADAM R.F. GUSTAFSON
Principal Deputy Assistant Attorney General
United States Department of Justice
Environment & Natural Resources Division

CAITLYN F. COOK
Trial Attorney (MD Bar No. 2112140244)
United States Department of Justice
Environment & Natural Resources Division
Wildlife & Marine Resources Section
Ben Franklin Station, P.O. Box 7611
Washington, DC 20044-7611
Tel: (202) 598-7775
Fax: (202) 305-0275
Email: caitlyn.cook@usdoj.gov

Attorneys for Defendants

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

CENTER FOR BIOLOGICAL DIVERSITY, *Plaintiff,* v. DOUG BURGUM, in his official capacity as Secretary of the U.S. Department of the Interior; BRIAN NESVIK, in his official capacity as Director of the U.S. Fish and Wildlife Service; U.S. FISH AND WILDLIFE SERVICE, *Defendants.*	Case No: 1:25-CV-03596-JMC

STIPULATED SETTLEMENT AGREEMENT

This Stipulated Settlement Agreement ("Agreement") is entered into by and between Plaintiff, Center for Biological Diversity ("Center"), and Defendants, Doug Burgum, in his official capacity as Secretary of the U.S. Department of the Interior; Brian Nesvik, in his official

capacity as Director of the U.S. Fish and Wildlife Service ("Service"); and the Service (collectively, "Defendants"), who, by and through their undersigned counsel, state as follows:

WHEREAS, on December 28, 2023, the Service published a final rule designating the Black-Capped Petrel (*Pterodroma hasitata*) as an endangered species pursuant to the Endangered Species Act ("ESA"), 88 Fed. Reg. 89611 (Dec. 28, 2023);

WHEREAS, the final listing rule for the Black-Capped Petrel determined that designating critical habitat for the Black-Capped Petrel was prudent, but not determinable at that time, 88 Fed. Reg. at 89613;

WHEREAS, on July 28, 2025, the Center sent a letter to Defendants stating its intent to file suit under the ESA to compel the Service to designate critical habitat for the Black-Capped Petrel;

WHEREAS, on August 21, 2025, the Service responded to the Center's July 28, 2025, letter;

WHEREAS, on October 7, 2025, Plaintiff filed a complaint in the above-captioned action to compel the Service to designate critical habitat for the Black-Capped Petrel by a date certain; Dkt. 1;

WHEREAS, 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 Plaintiff's claims, have reached a settlement that they consider to be a just, fair, adequate, and equitable resolution of the disputes set forth in Plaintiff's Complaint;

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

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

1. On or before March 7, 2030, the Service shall submit to the Office of the Federal Register either a proposed critical habitat rule for the Black-Capped Petrel or a determination that critical habitat for the species is not prudent.
2. The deadline set forth in Paragraph 1 will be extended automatically by ninety (90) days if the Office of Information and Regulatory Affairs deems any proposed critical habitat rule to be significant under Executive Order 12866. The Service, through its counsel, shall inform counsel for Plaintiff within three (3) business days of learning that any proposed critical habitat rule has been deemed significant under Executive Order 12866. The deadline will be extended automatically by another thirty (30) days if interagency review of any proposed rule in accordance with Executive Order 12866 exceeds ninety (90) days. The Service, through its counsel, shall inform counsel for Plaintiff at least three (3) business days prior to the expiration of the ninety (90) day automatic extension if the Service expects review of any proposed rule in accordance with Executive Order 12866 to exceed ninety (90) days.
3. In the event of a lapse in appropriations during the period between the signing of this Agreement and the deadline set forth in Paragraph 1, the deadline set forth in Paragraph 1 shall be extended by the number of calendar days between the first day of the lapse in appropriations and the date the President signs into law a budget appropriation such that funding is restored to the Department of the Interior.

4. 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 filed 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.
5. In the event that Defendants fail to meet the deadlines in Paragraphs 1 and 2 and have not sought to modify this Agreement, Plaintiff's 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.
6. This Agreement requires only that Defendants take the action specified in Paragraph 1. 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 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 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.

7. To challenge any final determination issued pursuant to Paragraph 1, Plaintiff must file a separate action and otherwise comply with applicable legal requirements. Defendants reserve the right to raise any applicable claims or defenses to such challenges.
8. 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 with regard to any issue whatsoever, including what does or not constitute a reasonable time for making a determination regarding critical habitat of any listed species.
9. 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 Plaintiff's Complaint, and nothing herein shall be construed as precedent having preclusive effect in any other context.
10. 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.

11. 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 Plaintiff's 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.
12. 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.
13. The terms of this Agreement shall become effective upon entry of an order by the Court approving the Agreement.
14. Plaintiff reserves its right to request attorneys' fees and costs from Defendants, and Defendants reserve their right to contest Plaintiff's entitlement to recover fees and the amount of any such fees and do not waive any objection or defenses they may have to Plaintiff's request. The parties agree that the deadline for Plaintiff to file a potential motion for costs and attorneys' fees pursuant to Federal Rule of Civil Procedure 54(d) shall be stayed until 180 days after the dismissal of this case, so that the parties may seek

to resolve any requested attorneys' fees and costs without this Court's further involvement.

15. Upon approval of this Agreement by the Court, all courts of Plaintiff's 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: May 11, 2026

Respectfully submitted,

/s/ Catherine W. Kilduff
Catherine W. Kilduff, DC Bar No. 1026160
CENTER FOR BIOLOGICAL DIVERSITY
2100 Franklin St., Suite 375
Oakland, CA 94612
(510) 844-7109
ckilduff@biologicaldiversity.org

Attorney for Plaintiff

ADAM R.F. GUSTAFSON
Principal Deputy Assistant Attorney General
United States Department of Justice
Environment & Natural Resources Division

/s/ Caitlyn F. Cook
CAITLYN F. COOK
Trial Attorney (MD Bar No. 2112140244)
United States Department of Justice
Environment & Natural Resources Division
Wildlife & Marine Resources Section
Ben Franklin Station, P.O. Box 7611
Washington, DC 20044-7611
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Fax: (202) 305-0275
Email: caitlyn.cook@usdoj.gov

Attorneys for Defendants