

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 11-20808-CR-SCOLA

UNITED STATES OF AMERICA

v.

ENRIQUE GOMEZ DE MOLINA,

Defendant. /

PLEA AGREEMENT

The United States of America and ENRIQUE GOMEZ DE MOLINA (hereinafter referred to as the “defendant”) enter into the following agreement:

1. The defendant agrees to plead guilty to Count One of the Information filed against him, which count charges the defendant with transporting, possessing, and selling wildlife knowing that said wildlife was possessed or transported in violation of and in a manner unlawful under the laws of the United States, specifically, the Endangered Species Act, 16 United States Code, Section 1538(c)(1), all in violation of Title 16, United States Code, Sections 3372(a)(1) and 3373(d)(1)(B), and Title 18, United States Code, Section 2.

2. The defendant is aware that the sentence will be imposed by the court after considering the Federal Sentencing Guidelines and Policy Statements (hereinafter “Sentencing Guidelines”). The defendant acknowledges and understands that the court will compute an advisory sentence under the Sentencing Guidelines and that the applicable guidelines will be determined by the court relying in part on the results of a Pre-Sentence Investigation by the court’s probation office, which investigation

will commence after the guilty plea has been entered. The defendant is also aware that, under certain circumstances, the court may depart from the advisory sentencing guideline range that it has computed, and may raise or lower that advisory sentence under the Sentencing Guidelines. The defendant is further aware and understands that the court is required to consider the advisory guideline range determined under the Sentencing Guidelines, but is not bound to impose that sentence; the court is permitted to tailor the ultimate sentence in light of other statutory concerns, and such sentence may be either more severe or less severe than the Sentencing Guidelines' advisory sentence. Knowing these facts, the defendant understands and acknowledges that the court has the authority to impose any sentence within and up to the statutory maximum authorized by law for the offense(s) identified in paragraph 1 and that the defendant may not withdraw the plea solely as a result of the sentence imposed.

3. The defendant also understands and acknowledges that the court may impose a statutory maximum term of imprisonment of up to 5 years, followed by a term of supervised release of up to 3 years. In addition to a term of imprisonment and supervised release, the court may impose a fine of up to \$250,000, or the greater of twice the gain or loss arising under the relevant conduct, and may order restitution.

4. The defendant further understands and acknowledges that, in addition to any sentence imposed under paragraph 3 of this agreement, a special assessment in the amount of \$100.00 will be imposed on the defendant. The defendant agrees that any special assessment imposed shall be paid at the time of sentencing.

5. The United States and the defendant agree that, although not binding on the probation office or the court, they will jointly recommend that the court make the following findings and

conclusions as to the sentence to be imposed:

- a. Base Offense Level: Pursuant to Section 2Q2.1(a) of the Sentencing Guidelines, the base offense level in this matter is Level 6.
 - b. Specific Offense Characteristics: Pursuant to Section 2Q2.1(b)(1) of the Sentencing Guidelines, defendant's base offense level should be increased by 2 levels because the offense was committed for pecuniary gain and involved a commercial purpose.
 - c. Pursuant to Section 2Q2.1(b)(2) of the Sentencing Guidelines, defendant's base offense level should be increased by 2 levels because the wildlife at issue were not quarantined as required by law, or otherwise created a significant risk of infestation or disease transmissions potentially harmful to humans and wildlife.
 - d. Market Value: That defendant's relevant conduct involved more than \$200,000 but less than \$400,000 in fair market retail value. Under Sections 2Q2.1(b)(3)(A) and 2B1.1(b)(1)(G), therefore, defendant's offense level should be increased by 12 levels
 - e. Chapter Three, Part B Adjustment: Defendant should receive neither an increase nor a decrease in his offense level pursuant to the provisions of Chapter Three, Part B.
 - f. Overall guideline range: That the applicable guideline range under all of the circumstances of the offenses committed by the defendant is Level 22.
6. As part of this Plea Agreement, the defendant agrees to forfeit and abandon any and all right, title, and interest to all of the wildlife, wildlife parts, or products containing wildlife, seized from his residence, place and work studio on February 17, 2011.
7. The Office of the United States Attorney for the Southern District of Florida and the Environmental Crimes Section, U.S. Department of Justice, (hereinafter "Offices") reserve the right to inform the court and the probation office of all facts pertinent to the sentencing process, including

all relevant information concerning the offenses committed, whether charged or not, as well as concerning the defendant and the defendant's background. Subject only to the express terms of any agreed-upon sentencing recommendations contained in this agreement, the United States further reserves the right to make any recommendation as to the quality and quantity of punishment.

8. The United States agrees that it will recommend at sentencing that the court reduce the sentencing guideline level applicable to the defendant's offense, pursuant to Section 3E1.1 of the Sentencing Guidelines, based upon the defendant's recognition and affirmative and timely acceptance of personal responsibility, resulting in a total adjusted advisory offense guideline range of 19. However, the United States will not be required to make this sentencing recommendation if the defendant: (1) fails or refuses to make full, accurate and complete disclosure to the probation office of the circumstances surrounding the relevant offense conduct; (2) is found to have misrepresented facts to the government prior to entering this plea agreement; or (3) commits any misconduct after entering into this plea agreement, including but not limited to committing a state or federal offense, violating any term of release, or making false statements or misrepresentations to any governmental entity or official.

9. The defendant agrees that he shall cooperate fully with these Offices by:

(a) providing truthful and complete information and testimony, and producing documents, records, and other evidence, when called upon by this Office, whether in interviews, before a grand jury, or at any trial or other court proceedings; and

(b) appearing at such grand jury proceedings, hearings, trials, and other judicial proceedings, and at meetings, as may be required by these Offices.

10. These Offices reserve the right to evaluate the nature and extent of defendant's

cooperation and to make defendant's cooperation, or lack thereof, known to the court at the time of sentencing. If in the sole and unreviewable judgment of this Office the defendant's cooperation is of such quality and significance to the investigation or prosecution of other criminal matters as to warrant the court's downward departure from the advisory sentence calculated under the Sentencing Guidelines, these Offices may at or before sentencing make a motion consistent with the intent of Section 5K1.1 of the Sentencing Guidelines prior to sentencing or Rule 35 of the Federal Rules of Criminal Procedure subsequent to sentencing, reflecting that the defendant has provided substantial assistance and recommending that defendant's sentence be reduced from the advisory sentence suggested by the Sentencing Guidelines. The defendant acknowledges and agrees, however, that nothing in this Agreement may be construed to require these Offices to file such a motion and that these Offices' assessment of the nature, value, truthfulness, completeness, and accuracy of the defendant's cooperation shall be binding insofar as the appropriateness of these Offices' filing of any such motion is concerned.

11. The defendant understands and acknowledges that the Court is under no obligation to grant a government motion pursuant to Title 18, United States Code, Section 3553(e), 5K1.1 of the Sentencing Guidelines, or Rule 35 of the Federal Rules of Criminal Procedure, as referred to in paragraph 9 of this agreement, should the government exercise its discretion to file such a motion. The defendant also understands that the Court is under no obligation to reduce defendant's sentence because of defendant's cooperation.

12. The defendant is aware that the sentence has not yet been determined by the court. The defendant also is aware that any estimate of the probable sentencing range or sentence that the defendant may receive, whether that estimate comes from the defendant's attorney, the government,

or the probation office, is a prediction, not a promise, and is not binding on the government, the probation office or the court. The defendant understands further that any recommendation that the government makes to the court as to sentencing, whether pursuant to this agreement or otherwise, is not binding on the court and the court may disregard the recommendation in its entirety. The defendant understands and acknowledges, as previously acknowledged in paragraph 2 above, that the defendant may not withdraw his plea based upon the court's decision not to accept a sentencing recommendation made by the defendant, the government, or a recommendation made jointly by both the defendant and the government.

13. The defendant is aware that Title 18, United States Code, Section 3742 would normally afford the defendant the right to appeal the sentence imposed in this case. Acknowledging this, in exchange for the undertakings of the United States in this plea agreement, the defendant hereby waives all rights conferred by Section 3742 to appeal any sentence imposed, including any restitution order, or to appeal the manner in which the sentence was imposed, unless the sentence exceeds the maximum permitted by statute or is the result of an upward departure from the advisory guideline range that the court establishes at sentencing. Subject to the preceding provision, this appeal waiver includes a waiver of the right to appeal the sentence on the ground that under the advisory Sentencing Guidelines range determined by the court, the sentence imposed in this case is not a reasonable sentence. The defendant further understands that nothing in this agreement shall affect the government's right and/or duty to appeal as set forth in Title 18, United States Code, Section 3742(b). However, if the United States appeals the defendant's sentence pursuant to Section 3742(b), the defendant shall be released from the above waiver of appellate rights. By signing this agreement, the defendant acknowledges that he has discussed the appeal waiver set forth in this agreement with his attorney. The defendant further agrees, together with the United States, to

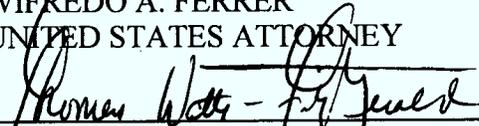
request that the district court enter a specific finding that the defendant's waiver of his right to appeal the sentence imposed in this case was knowing and voluntary.

14. This is the entire agreement and understanding between the United States and the defendant. There are no other agreements, promises, representations, or understandings.

Respectfully submitted,

WIFREDO A. FERRER
UNITED STATES ATTORNEY

Date: 12/06/11

By: 
Thomas A. Watts-FitzGerald
Assistant States Attorney

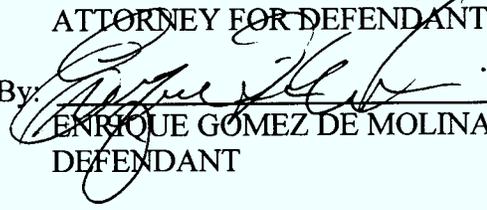
Date: 12/6/11

By: 
Shennie Patel
Trial Attorney
Environmental Crimes Section

Date: 12/6/11

By: 
BENEDICT KUEHNE, ESQ.
ATTORNEY FOR DEFENDANT

Date: 12/6/11

By: 
ENRIQUE GOMEZ DE MOLINA
DEFENDANT