

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

DELAWARE AUDUBON SOCIETY,
CENTER FOR FOOD SAFETY, and
PUBLIC EMPLOYEES FOR
ENVIRONMENTAL RESPONSIBILITY,

Plaintiffs,

vs.

KEN SALAZAR, Secretary, United States
Department of the Interior, and ROWAN
GOULD, Director of U.S. Fish and
Wildlife Service, and UNITED STATES
FISH AND WILDLIFE SERVICE, an
Administrative agency of the United States
Department of the Interior

Defendants.

Ca No. 10-162 GMS

SETTLEMENT AGREEMENT

WHEREAS, Plaintiffs Delaware Audubon Society, Center for Food Safety and Public Employees for Environmental Responsibility (collectively "Plaintiffs") commenced this action on February 25, 2010 in the United States District Court for the District of Delaware, CA No. 10-162 ("the Litigation"); and

WHEREAS, Plaintiffs allege in the Litigation that Defendants, Ken Salazar, Secretary of the U.S. Department of the Interior, Rowan Gould, Acting Director of the United States Fish and Wildlife Service ("FWS"), and FWS (collectively "Defendants") have violated the National Environmental Policy Act of 1969, 42 U.S.C. 4321-4361 ("NEPA"), and the Administrative Procedure Act, 5 U.S.C. 500-559, 701-706 in authorizing and allowing certain farming activities, including the use of genetically-modified crops ("GMCs"), at Bombay Hook National Wildlife Refuge ("the Refuge" or "Bombay Hook NWR") without ensuring that they have complied with NEPA; and

WHEREAS, the Defendants neither admit nor deny Plaintiffs' claims in the Litigation; and

WHEREAS, prior to the filing of the Litigation, the FWS has authorized GMC use for farming only at the Refuge and the following four National Wildlife Refuges ("NWRs") within its

Northeast Region, during the 2009 farming season: Eastern Shore of Virginia NWR, Montezuma NWR, Blackwater NWR, and the Rappahannock River Valley NWR; and

WHEREAS, Bombay Hook NWR's 2009 special use permits allowing the use of GMCs through cooperative farming at the Refuge expired on December 15, 2009; and

WHEREAS, prior to the filing of the Litigation, the FWS ceased the use of GMCs and cooperative farming at the Bombay Hook NWR and did not renew, reissue or issue anew special use permits allowing those practices; and

WHEREAS, prior to the filing of the Litigation, the FWS ceased all farming, including the use of GMCs at the Eastern Shore of Virginia NWR; and

WHEREAS, Plaintiffs and Defendants, through their authorized representatives, and without any admission or adjudication of issues of fact or law with respect to Plaintiffs' claims in the Litigation, wishing to avoid the costs and uncertainties of litigation, and in consideration of the mutual promises contained herein, have reached a settlement which they consider to be a just, fair, adequate, and equitable resolution of the disputes set forth in Plaintiffs' complaint, and hereby agree to the following;

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. Binding effect of agreement. The provisions of this Final Settlement Agreement shall apply to and be binding upon the parties hereto and their successors, employees, agents, elected and appointed officers, and assigns.
2. Actions regarding the Refuge. Defendants shall not authorize the use of GMCs within the Refuge unless and until an appropriate NEPA analysis is completed.
3. Actions regarding other refuges in the Northeast Region. Starting on the dates specified below, Defendants shall not authorize the use of GMCs at any of the following refuges within the Northeast Region where the FWS had authorized GMC use for farming prior to the filing of the Litigation, specifically, the Eastern Shore of Virginia Refuge and the Montezuma Refuge starting in 2010, or within the Blackwater Refuge and the Rappahannock River Valley Refuge, starting in 2011, unless and until an appropriate NEPA analysis is completed.
4. Notice of plans to resume farming GMCs. At least 60 calendar days prior to entering into any cooperative farming agreement authorizing the use of GMCs on any National Wildlife Refuge in the Northeast Region, FWS shall notify Plaintiffs of its intent to do so and shall provide Plaintiffs a copy of any such proposed agreement, once it has been drafted, but no less than 30 calendar days prior to execution.
5. Amendment. The terms of this Agreement shall not be changed, revised or modified except by written instrument signed by the parties to the Agreement, subject to approval by this Court.

6. No Precedent. It is specifically understood and agreed that this Agreement is executed for the sole purpose of settling the Litigation. Nothing in this Agreement shall be utilized for the purpose of precedent or argument on any issue in any other case.

7: Anti-Deficiency Act. Nothing in this Agreement shall be interpreted as, or shall constitute, a commitment or requirement that Defendants obligate or pay funds, or take any other action in contravention of the Anti-Deficiency Act, 31 U.S.C. 1341, or any other applicable appropriations law.

8. Effective Date. This Agreement will be effective when all originals have been signed and dated by the persons listed in the signature block.

9. Attorneys' fees and expenses. Defendants shall pay Plaintiffs \$5,000 for Plaintiffs' attorneys fees and costs within 90 days of the effective date of this Agreement. Plaintiffs shall provide instructions for the distribution of such funds within 30 days of the effective date of this Agreement.

10. Dismissal of case. The parties shall file a joint motion with the Court seeking dismissal of the Litigation based upon the terms of this Agreement. A copy of this Agreement shall accompany the motion. However, the case shall not be dismissed until such time as all of the Plaintiffs have received payment of fees and costs as delineated in this Agreement. The parties further agree that the Court shall retain jurisdiction of this matter for the sole purpose of enforcing this settlement and will not raise the dismissal as a basis to object to any motion related to the enforcement of this Agreement.

11. Counterparts. This Settlement Agreement may be executed in two or more counterparts. It shall not be necessary that the signatures of all Parties on any one counterpart and each counterpart shall constitute one and the same agreement.

SO AGREED.

Center for Food Safety:

Signature: _____

Date: _____

Paige Tomaselli
George Kimbrell
Center for Food Safety
660 Pennsylvania Avenue, S.E. #302
Washington, DC 20003

Delaware Audubon:

Signature: _____

Date: _____

Kenneth T. Kristl
Environmental and Natural Resources Law Clinic
Widener School of Law
4601 Concord Pike
Wilmington, DE 19803

Public Employees for Environmental Responsibility:

Signature: _____

Date: _____

Christine Erickson
Paula Dinerstein
Jeff Ruch
Executive Director
Public Employees for Environmental Responsibility
2000 P Street N.W., Suite 240
Washington, DC 20036

Defendants


Signature: 

Date: 12/22/10

Ruth Ann Storey
Trial Attorney
United States Department of Justice
Environment & Natural Resources Division
Natural Resources Section

SO AGREED.

Center for Food Safety:

Signature: 
Paige Tomaselli
George Kimbrell
Center for Food Safety
660 Pennsylvania Avenue, S.E. #302
Washington, DC 20003

Date: 12/23/10

Delaware Audubon:

Signature: _____
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Environmental and Natural Resources Law Clinic
Widener School of Law
4601 Concord Pike
Wilmington, DE 19803

Date: _____

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Signature: Paula Dinerstein

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Paula Dinerstein
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Washington, DC 20036

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Defendants

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