

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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NORTH OYSTER BAY BAYMEN’S ASSOCIATION  
and CENTER FOR FOOD SAFETY,

Plaintiffs,

- against -

Civil Action  
No. CV-23-3155  
(Block, J.) (Kuo, M.J.)

U.S. FISH AND WILDLIFE SERVICE; MARTHA  
WILLIAMS, in her official capacity as Director of the  
U.S. Fish and Wildlife Service; and DEB HAALAND,  
In her official capacity as Secretary of the U.S.  
Department of the Interior.

Defendants.

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**STIPULATION AND ORDER OF SETTLEMENT**

WHEREAS on April 26, 2023, Plaintiffs North Oyster Bay Baymen’s Association and Center for Food Safety (collectively, “Plaintiffs”) filed a Complaint (ECF 1) (“this Action”) against Defendants U.S. Fish and Wildlife Service (the “Service”); Martha Williams, in her official capacity as Director of the U.S. Fish and Wildlife Service; and Deb Haaland, in her official capacity as Secretary of the U.S. Department of the Interior (collectively, “Defendants”, or with Plaintiffs, the “Parties”), to challenge the Service’s administration of the Congressman Lester Wolff Oyster Bay National Wildlife Refuge (the “Refuge”); and

WHEREAS, Defendants filed an answer on July 24, 2023 (ECF 11) and the Parties thereafter filed joint letters on consent (ECF 13, 14, 15, 16, 17, 18, 19), advising the Court that they were exploring a joint resolution of this Action; and

WHEREAS, the Refuge was established in 1968 as habitat for migratory birds under the authority of the Migratory Bird Conservation Act, 16 U.S.C. §§ 715 *et seq.*; and

WHEREAS, the Refuge includes over 3,200 acres of submerged lands located along the

north shore of Long Island, near the Town of Oyster Bay (the “Town”) in eastern Nassau County, that are administered by the Service as the Refuge; and

WHEREAS, by a deed dated December 18, 1968, the Town donated such lands to the United States for the purposes of, inter alia, providing “an inviolate sanctuary for migratory birds,” “a refuge for fish and wildlife and their natural habitat,” and “a nature preserve for scientific, educational and aesthetic purposes” (Deed, at 2); and

WHEREAS, under the Deed, at 4, the Town made the conveyance of the lands subject to, among other things, existing leases and agreements, renewals of such leases and agreements and permits, and the right to take revenues from the “taking of shellfish or other products there from . . . provided that any leases, agreements, renewals and permits are not incompatible with the use of such lands for a migratory bird refuge, and fish and wildlife purposes”; and

WHEREAS, under 16 U.S.C.A. § 668dd(d)(1)(A), the Secretary of the Department of the Interior may permit the use of the Refuge “for any purpose . . . whenever the Secretary determines that such uses are compatible with the major purposes for which such areas were established”; and

WHEREAS, under 16 U.S.C. § 668dd(d)(3)(A)(i), the Secretary “shall not initiate or permit a new use of a refuge or expand, renew, or extend an existing use of a refuge, unless the Secretary has determined that the use is a compatible use and that the use is not inconsistent with public safety”; and

WHEREAS, under 16 U.S.C. § 668dd(d)(3)(B)(vii), the Secretary shall, in relevant part, “require, after an opportunity for public comment, reevaluation of each existing use if conditions under which the use is permitted change significantly or if there is significant new information regarding the effects of the use, but not less frequently than once every 10 years, to ensure that the use remains a compatible use . . .” and

WHEREAS, under 16 U.S.C.A. § 668ee(1), a ‘compatible use’ is “a wildlife-dependent

recreational use or any other use of a refuge that, in the sound professional judgment of the Director [of the Service] will not materially interfere with or detract from the fulfillment of the mission of the System or the purposes of the refuge” (see § 668ee (2), (3) and (10) defining, respectively, “wildlife-dependent recreational use”; “sound professional judgment”; and “purposes of the refuge”); and,

WHEREAS, under 50 C.F.R. § 27.97, “[s]oliciting business or conducting a commercial enterprise on any national wildlife refuge is prohibited except as may be authorized by special permit”; and

WHEREAS, in their complaint, Plaintiffs seek injunctive and declaratory relief, alleging that Defendants have not issued a Compatibility Determination addressing the use of the Refuge, and in particular, the use of the Refuge for shellfish harvesting, since 1994 and have not issued any Special Use Permits authorizing commercial activities conducted on the Refuge; and

WHEREAS, Defendants deny any violation of law concerning their administration of the Refuge; and

WHEREAS, the Parties believe it is in the best interest of the public, the Parties, and judicial economy to resolve the claims in this Action, and have reached agreement as to those claims and related issues as embodied in this Agreement, including claims for attorneys’ fees and costs;

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the Parties, by and through their undersigned attorneys, that this matter be settled, compromised and dismissed in accordance with the following terms and conditions set forth in this Stipulation and Order of Settlement (hereinafter, “Agreement”):

1. Subject to the availability of funds and the requirements of the Anti-Deficiency Act, no later than 2 years after the Court’s entry of this Stipulation and Order of Settlement, Defendants shall, after an opportunity for public comment as required under 16 U.S.C. § 668dd(d)(3)(B)(vii), issue a Final Compatibility Determination evaluating whether use of Refuge lands and waters for

shellfish harvesting, including via hydraulic and mechanical dredging, is compatible with the Refuge's purposes, as defined by federal law and in the Deed. In addition, within one business day of announcing or opening the opportunity for public comment described above, whichever comes earlier, Defendants shall inform Plaintiffs' counsel of that opportunity.

2. With respect to, and upon completion of, the Final Compatibility Determination, Defendants will, pursuant to 50 C.F.R. § 27.97, require a special use permit for any soliciting of business or conducting of commercial activity authorized within the Refuge.

3. The date set forth in Paragraph 1 of this Stipulation and Order of Settlement may be extended by written agreement of the Parties, which shall not unreasonably be withheld, and notice to the Court. To the extent the Parties are not able to agree to an extension, Defendants may seek an extension of time by filing a motion for good cause shown pursuant to the Federal Rules of Civil Procedure.

4. All obligations by the United States under this Stipulation and Order of Settlement are subject to the availability of appropriated funds applicable for that purpose. No provision of this Consent Judgment shall be interpreted as or constitute a commitment or requirement that the United States obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. §§ 1341-44 and 1511-19, or any other applicable provision of law.

5. Payment. The United States shall pay to Plaintiffs' counsel the amount of forty-eight thousand dollars and no cents (\$48,000.00), as attorneys' fees, expenses, and costs Plaintiffs' counsel incurred in connection with this Action ("Settlement Sum"). Payment of the Settlement Sum will be made as soon as reasonably practicable after this Agreement is so-ordered by the Court by electronic funds transfer to the account specified below:

Bank Name and Street Address: PNC, 200 Broadway, New York, NY 10038

Bank Routing Number: Wire & ACH Routing: 031207607

Account Title and Type: EARTHJUSTICE NY IOLTA CLIENT TRUST, Checking Account

Account Number: 8026555705

Plaintiffs' Counsel's Tax ID#: Earthjustice TIN#: 94-1730465

6. Parties to Bear Respective Costs and Fees: It is also agreed, by and among the Parties, that, except as provided above in paragraph 5 the respective Parties will each bear their own costs, fees, and expenses incurred in connection with this Action.

7. Release: Except to the extent provided for in paragraph 8, in consideration of the agreements and undertakings set forth in this Agreement, Plaintiffs, together with its/their current or former owners, officers, directors, affiliates, and the successors, transferees, heirs, and assigns of any of them, fully and forever release the Defendants, including their departments, agencies, agents, employees and former employees, in both their official and individual capacities, from any and all claims, demands, and causes of action in this Action, including attorneys' fees, expenses, and costs.

8. The Parties respectfully request that the Court retain jurisdiction to effectuate compliance with this Agreement and to resolve any disputes thereunder. When Defendants' obligations under Paragraphs 1, 2, and 5 of this Agreement have been completed, Defendants may move to have the Agreement terminated. Plaintiffs shall have thirty (30) days in which to respond to such a motion, unless the Parties stipulate to a longer time for Plaintiffs to respond.

9. In the event of a dispute regarding the interpretation or implementation of this Agreement, the party raising the dispute shall provide the other party with written notice of the request, dispute or claim and requesting informal negotiations. The Parties agree that they will meet and confer (either telephonically or in person) in a good faith effort to resolve any requests, disputes, or claims before seeking relief from this Court. If the Parties are unable to resolve the request, dispute, or claim themselves within 60 days of the receipt of the written notice of a request, dispute or claim (or such longer time to which they agree), then either party may move the Court to resolve

the dispute.

10. Any future challenge to the Final Compatibility Determination and/or any Special Use Permits issued under and as provided in this Agreement, must take the form of a new civil action under the judicial review provisions of the Administrative Procedure Act and may not be asserted as a claim for violation of this Agreement or in a motion to enforce the terms of this Agreement.

11. This Agreement is the result of compromise and settlement, and it is based on and limited solely to the facts involved in this Action. This Agreement does not represent an admission by any party to any fact, claim, or defense concerning any issue in this Action. Further, this Agreement has no precedential value and shall not be used as evidence by any party in any other litigation except as necessary to enforce the terms of this Agreement.

12. The undersigned certify that they are fully authorized by the respective Parties whom they represent to enter into the terms and conditions of this Agreement and to legally bind such Parties to it.

13. This Agreement contains the entire agreement between the Parties hereto, and the Parties acknowledge and agree that no promise or representation not contained in this agreement has been made. This Agreement contains the entire understanding between the parties and contains all terms and conditions pertaining to the compromise and settlement of the claims asserted in this Action. This Agreement cannot be modified or amended except by an instrument in writing, agreed to and signed by all Parties.

AGREED AND CONSENTED TO:

Dated: New York, New York  
April 25, 2024

ALEXIS ANDIMAN, EARTHJUSTICE  
*Counsel for Plaintiff*  
48 Wall Street, 15<sup>th</sup> Fl.  
New York, New York 10005

By: *s/Alexis Andiman*  
ALEXIS ANDIMAN.  
(212) 845-7394

Dated: Central Islip, New York  
April 25, 2024

BREON PEACE  
United States Attorney  
*Counsel for Defendants*  
Eastern District of New York  
610 Federal Plaza  
Central Islip, New York 11722

By: *s/Vincent Lipari*  
VINCENT LIPARI  
Assistant U.S. Attorneys  
(631) 715-7864

SO ORDERED  
April 29 , 2024

/S/ Frederic Block  
Hon. Frederic Block  
United States District Judge