



activities that, in the opinion of the Secretary, may be cause for certification, and promptly conclude any such investigation and reach a decision with respect to that investigation. *Id.* § 1978(a)(3).

3. By letter dated September 29, 2014, “Re: Petition for Certification of Mexico pursuant to the Pelly Amendment for Trade in Violation of the Convention on International Trade in Endangered Species” (hereinafter, the “Petition”), plaintiff, the Center for Biological Diversity (the Center) requested, in relevant part, that the Secretary certify Mexico pursuant to the Pelly Amendment, asserting that Mexican nationals in the Gulf of California are engaging in “taking” and “trade” of endangered totoaba that “diminishes the effectiveness” of CITES. In the “Petition,” the Center asserted that Mexico had failed to stem the trade and export of totoaba (*Totoaba macdonaldi*), an endangered species of fish, and thereby diminished the effectiveness of CITES. The “Petition” states that illegal trade in totoaba swim bladders has led to illegal fishing that threatens the continued existence of both the totoaba and the vaquita, a critically endangered species of porpoise that is endemic only to the Upper Gulf of California, where totoaba are unlawfully harvested.

4. Both the vaquita and totoaba are listed in CITES Appendix I. *See* CITES Appendices, <https://www.cites.org/eng/app/appendices.php> (listing in Appendix I *Phocoena sinus* (vaquita) and *Totoaba macdonaldi* (totoaba) (last visited Mar. 8, 2023)). Both totoaba and vaquita are also separately listed as endangered under the Endangered Species Act, 16 U.S.C. §§ 1531-44; 50 C.F.R. § 17.11(h).

5. By letter dated January 5, 2017, the Center notified the Secretary of its intent to sue for the Secretary's failure to respond to the "Petition."

6. By letter dated April 11, 2017, the Department of the Interior (Interior) responded to the Center's January 2017 notice, stating it anticipated concluding its Pelly Amendment investigation with respect to the activities identified in the Center's "Petition" within the next four to five months.

7. To date, the Secretary has not concluded the investigation or substantively responded to the "Petition."

8. On June 11, 2020, the Center, along with plaintiff, Animal Welfare Institute (AWI), filed a complaint in the United States District Court for the District of Columbia, alleging that the failure of defendants, the Secretary and Interior, to respond to the "Petition" constituted agency action unlawfully withheld or unreasonably delayed under the Administrative Procedure Act (APA), 5 U.S.C. § 706(1).

9. On September 2, 2020, the Center and AWI filed a notice of voluntary dismissal with the district court and their complaint was subsequently dismissed without prejudice.

10. On December 14, 2022, the Center, AWI, and plaintiff, Natural Resources Defense Council (NRDC and, collectively with the Center and AWI, plaintiffs), filed a complaint in the United States Court of International Trade (Trade Court). Plaintiffs' Trade Court complaint alleged that defendants have unlawfully withheld and/or unreasonably delayed their response to the "Petition" in violation of the APA. Through the complaint, plaintiffs sought (1) a declaration that defendants unreasonably delayed and unlawfully withheld their

response to the “Petition” in violation of the APA; (2) an order enjoining further delay and requiring a response to the “Petition” within 30 days; and (3) an award of costs, including reasonable attorney fees.

11. The parties subsequently entered into negotiations designed to amicably resolve plaintiffs’ claim. 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 plaintiffs’ claims, have negotiated a settlement that they consider to be in the public interest and a just, fair, adequate, and equitable resolution of the disputes set forth in plaintiffs’ complaint. Pursuant to this negotiated settlement, defendants agree to take the following actions: (a) on or before May 19, 2023, conclude, and reach a decision with respect to, Interior’s Pelly Amendment investigation by either certifying or not certifying that nationals of Mexico are engaging in trade or taking which diminishes the effectiveness of CITES, and (b) provide, on behalf of the Secretary, a substantive response to the “Petition” in writing and conveyed via electronic mail within 15 days of the decision described in clause (a). This agreement does not contain any requirements regarding the substance of the response to the “Petition” or the outcome of the certification determination, which will be determined exclusively by the Secretary, consistent with her statutory obligations.

12. The offer to settle the case pursuant to the terms of this agreement has been accepted on behalf of the Attorney General.

13. Following the execution of this agreement, the parties will file an appropriate motion with the court, requesting that the court stay all deadlines in the above-captioned litigation and attaching this agreement thereto.

14. Upon defendants' timely performance of the commitments in Paragraph 11, plaintiffs agree to join with the United States in stipulating to the dismissal of this lawsuit with prejudice.

15. Upon satisfaction of the terms set forth in paragraph 11, plaintiffs release, waive, and abandon all claims against the United States, its political subdivisions, its officers, agents, and employees, arising out of or related to any alleged agency inaction with respect to the "Petition" or otherwise involved in the above-captioned litigation, regardless of whether any such claims were included in the complaint. This settlement embodies the entirety of the parties' commitments in this litigation and fully satisfies any and all claims, demands, rights, and causes of action in connection with the above captioned litigation. Nothing in this agreement precludes plaintiffs from filing suit challenging the Secretary's decision with respect to the Pelly Amendment investigation or substantive response to the "Petition."

16. This agreement is in no way related to or concerned with income or other taxes for which any of plaintiffs is now liable or may become liable in the future as a result of this agreement.

17. Plaintiffs warrant and represent that no other action or suit with respect to the claim advanced in this suit is pending or will be filed in or submitted to any other court, administrative agency, or legislative body by plaintiffs. Each of the Center, AWI, and NRDC

further warrants and represents that it has made no assignment or transfer of all or any part of its rights arising out of or relating to the claim advanced in this suit.

18. This agreement is for the purpose of settling this case, and for no other. 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.

Accordingly, this agreement shall not bind the parties, nor shall it be cited or otherwise referred to, in any proceedings, whether judicial or administrative in nature, in which the parties or counsel for the parties have or may acquire an interest, except as is necessary to effect the terms of this agreement.

19. Counsel for the Center represents that she has been and is authorized to enter into this settlement agreement on behalf of all plaintiffs.

20. This document constitutes a complete integration of the settlement between the parties and supersedes any and all prior oral or written representations, understandings, or agreements among or between them.

AGREED TO:

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