



Connecticut Fund
for the Environment

Save the Sound®

FOR IMMEDIATE RELEASE
January 11, 2018

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A Plum Island victory: Federal Judge denies motion to dismiss Save the Sound's lawsuit

Feds sought dismissal of conservationists' suit; judge rules plaintiffs have standing

New Haven, Conn. – Today a [federal district court judge ruled](#) that a lawsuit brought by environmentalists over the federal government's handling of the potential sale of Plum Island, New York could go forward. Connecticut Fund for the Environment/Save the Sound and six other organizations and individuals [filed suit](#) against the Department of Homeland Security and General Services Administration (GSA) in July 2016, arguing the agencies violated provisions of the National Environmental Protection Act, Endangered Species Act, Coastal Zone Management Act, and other federal laws in their pursuit of auctioning the federally-owned island to the highest bidder by failing to adequately consider the environmental impact of such a sale.

Homeland Security and GSA served a motion to dismiss in February 2017. Judge Denis Hurley of the Eastern District of New York found that the plaintiffs have standing and rejected each of the agencies' arguments.

"This is a very well-written decision that denies the government's motion to dismiss in its entirety," **said Roger Reynolds, chief legal officer for CFE/Save the Sound.** "We'll now have the opportunity to present our full case to the court and ask that the sale of the island be halted until the agencies complete a proper environmental review in accordance with federal law."

"We're incredibly pleased with the outcome and look forward to litigating the merits of this matter to ensure that this unique pristine natural environment is properly preserved," **said attorney Cameron Tepfer on behalf of Morrison & Foerster LLP,** which is representing the plaintiffs. In addition to CFE/Save the Sound, the suit was brought by Soundkeeper, Inc., Peconic Baykeeper, Group for the East End, Ruth Ann Bramson, John Potter, and John Turner.

The decision cited the allegations in the complaint that Plum Island, an 840-acre island in the eastern end of Long Island Sound, provides habitat for several federally endangered and threatened flora and fauna including roseate Tern and Piping Plover. The waters surrounding it are home to federally listed marine species such as Atlantic hawksbill sea turtles, Kemp's Ridley sea turtles, and Atlantic Sturgeon, and it's home to the largest seal haul-out area in southern new England. For over half a decade it has been the subject of a massive conservation effort by the Preserve Plum Island Coalition—now numbering over 90 Connecticut, New York, and Rhode Island organizations—, grassroots activists, and champions in Congress on both sides of the aisle. The decision also quoted from an Environmental Protection Agency letter stating that the FEIS failed to consider an ordinance

to create a conservation area to limit development and preserve “much of the island,” and did not offer options that EPA had recommended to mitigate environmental damage.

The conservationists' suit argues that the federal agencies' final Environmental Impact Statement (FEIS) violates provisions of multiple federal environmental laws, and sought an injunction against selling the island until an adequate FEIS has been completed. In its motion to dismiss, Homeland Security and the GSA argued that (1) the claim was not ripe for review because the agency could do further studies; (2) plaintiffs were not injured; and (3) the court should not consider the claim because it could become moot.

The court rejected each one of these arguments and found (1) the case was properly ripe because the government had issued its FEIS and Record of Decision; (2) the plaintiffs and organizations would be harmed by the incomplete environmental review because of their interests in the island's environmental resources; and (3) the court would hear the matter because there was no guarantee that the government would resolve plaintiffs' complaints without the court's intervention.

“Judge Hurley's decision is an early and important victory for everyone who believes Plum Island is a critical part of our nation's natural heritage that should not be auctioned off like a piece of meat to the highest bidder,” **said Bob DeLuca, president of Group for the East End**, which protects the interests of residents of eastern Long Island. “This ruling is also a victory for due process in supporting the rights of individual citizens and conservation organizations to challenge the actions of government bureaucrats when those actions fail to follow the specific requirements of environmental law.”

Plaintiff John Potter, a fisherman and conservationist from Rhode Island, added, “This is a strong win on the first step. Now we need to keep the ball rolling till we get full protection.”

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The mission of Connecticut Fund for the Environment and its bi-state program Save the Sound is to protect and improve the land, air, and water of Connecticut and Long Island Sound. We use legal and scientific expertise and bring citizens together to achieve results that benefit our environment for current and future generations. [About CFE/Save the Sound](#)