

Law Street GE Salmon Attorney Fees March 18, 2022

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# Plaintiffs Seek Attorneys' Fees in Case Challenging FDA Approval of GE Salmon

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On Wednesday, ten plaintiffs in a suit challenging the U.S. Food and Drug Administration's (FDA) approval of genetically engineered (GE) salmon [moved](#) for an award of their attorneys' fees and litigation costs under the Equal Access to Justice Act (EAJA). The motion argues that the plaintiffs are prevailing parties, the FDA "lacks substantial justification," and the hours and rates sought are reasonable, totaling just over \$1.9 million in fees.

The Northern District of California case stemmed from a 2015 FDA decision approving, for the first time, GE salmon pursuant to aquaculture company AquaBounty's application to produce fast-growing genetically modified salmon in fish farms. The plaintiffs, a collection of food, fisheries, and environmentally concerned organizations and the Quinault Indian Nation, filed suit arguing that the FDA violated the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), and the Federal Food, Drug, and Cosmetic Act (FFDCA) when it approved GE salmon without evaluating "the effects on endangered wild salmon or other aspects of the environment."

After more than four years of extensive pre-merits motions practice, and as [previously reported](#), District Judge Vince Chhabria largely sided with the plaintiffs in a November 2020 ruling on cross-motions for summary judgment. The court held the FDA's decision unlawful and remanded it and various supporting determinations.

In effect, this required the agency to satisfy its legal obligations under both NEPA and the ESA, including "renewed consideration of whether to prepare a full Environmental Impact Statement and whether to engage in consultation with the expert federal wildlife agencies under the ESA's Section 7." The FDA appealed, but nine days later dismissed its challenge voluntarily.

In this week's motion for fees, the plaintiffs explain that under the EAJA, "a court shall award fees and costs to a prevailing party unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust."

The filing says that the plaintiffs, except the Quinault Indian Nation, meet the eligibility requirements for an award as non-profit organizations or small trade associations. Further, it says

that their attorneys' hourly rates are reasonable and have been adjusted downwards to reflect "the multiple years over which this case stretched."

The plaintiffs also claim that they are entitled to an award based on their successful ESA claim filed under the law's citizen suit provision. The ESA allows a court to award fees "whenever the court determines such award is appropriate," the filing says, and urges Judge Chhabria to do so in this case in view of the plaintiffs' purportedly hard-won success.

The motion hearing is scheduled for April 21 by video conference. The plaintiffs are represented by the [Center for Food Safety](#) and [Earthjustice](#).