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From: **Stephen D. Anderson** <SAnderson@andersonkreiger.com>

Date: Sat, Sep 3, 2011 at 3:34 PM

Subject: Acton/Caouette - Response to Conservation Restriction Committee Request re Genetically Modified Organisms

To: Mike Gowing <mikeg.acton@gmail.com>

Cc: Steve Ledoux <sledoux@acton-ma.gov>, "Ryan D. Pace"

<rpace@andersonkreiger.com>, "Stephanie L. Banos" <sbanos@andersonkreiger.com>

Hi Mike:

I am responding to your questions as to whether the proposed Conservation Restriction for the Town-owned Caouette-Simeone Property can/should perpetually restrict the use of genetically modified organisms (GMO). The following answers are the result of brief research; let me know if you want a more comprehensive review of the issues:

Question 1:

Are there any legal precedents in dealing with GMO's in agricultural restrictions?

Answer 1:

I have done a computerized Westlaw searches for the phrases "genetically modified organisms," "genetically modified crops," and "genetically modified" in the databases for Massachusetts statutes, regulations and case law. The searches returned no statutes, regulations or cases containing any of those phrases alone or as applicable to agricultural restrictions.

I did locate the attached Massachusetts Farm Bureau Federation ("MFBF") Policy Book (version 2008-2009) reaffirming the following Biotechnology policies adopted by MFBF (reaffirmation occurs once every three years):

- 2008-6 *R (2005)

Whereas, biotechnology, in the form of genetically modified crops, is important to an increasing number of farmers, and

Whereas, there is an effort at the local level in Massachusetts to prohibit the planting of genetically modified crops,

Be it resolved, that Massachusetts Farm Bureau Federation support preemptive legislation, precluding local authorities from regulating seed and crops.

- 2007-10 *R (2001)

Whereas; Massachusetts is considered a world center for biotechnology research and development, and

Whereas; biotechnological advances are improving our capacity to produce foodstuffs and eliminate hunger, as well as providing considerable medical benefits,

Therefore, be it resolved that MFBF embraces the benefits of agro-biotech developments as positive for Massachusetts agriculture and consumers, and

Be it further resolved that MFBF oppose state regulation of agro-biotechnology, and urge that proper oversight of such research and development rests with federal agencies such as FDA, USDA and EPA.

These Policies of course are not binding on the Town. They are simply informative as to the thinking of the Farm Bureau representing a certain sector of the state's agricultural community.

I also did a search for the phrase "genetically modified organisms" for all federal and state cases nationwide. This search returned 11 cases (with some duplicates as cases wound their way from the trial level to the highest appeal level). None of the cases dealt specifically with conservation restrictions or agricultural preservation restrictions concerning genetically modified organisms, but some do deal with the regulation of agricultural practices involving genetically modified organisms, including such agricultural practices on certain public lands. The cases of most interest to your inquiry are as follows (copies attached):

- *Monsanto Co. v. Geertson Seed Farms*, 130 S.Ct. 2743 (2010), the United States Supreme Court considered challenges by conventional alfalfa growers and environmental groups against Monsanto (which had developed genetically-altered "Roundup Ready Alfalfa (RRA)" plant) and the Department of Agriculture (which through the Animal and Plant Health Inspection Service (APHIS) had deregulated the altered alfalfa plant before issuing environmental impact statement (EIS)). The Supreme Court concluded (7-1, with one Justice not participating) that the federal district court had abused its discretion in enjoining APHIS from effecting partial deregulation and in prohibiting the planting of the altered alfalfa pending agency's completion of its detailed environmental review. The case is of interest for several reasons:
 - It provides a good outline of federal law as it applies to the use of "genetically modified organisms" in agriculture.
 - It indicates the extent to which APHIS must follow environmental impact review procedures before deregulating in whole or in part a "genetically modified organism" for use in agriculture.
 - It illustrates the types of challenges that can be brought against such a deregulation order and the extent of (and limits on) a federal court's ability to enjoin such deregulation.
 - It illustrates the polarized debate over the use of "genetically modified organisms" in agriculture. As the Court stated, "The parties' experts disagreed over virtually every factual issue relating to possible environmental harm"
 - It indicates the kinds of protections that APHIS considers for allowing partial deregulation. Thus, APHIS had proposed a judgment which would have permitted the continued planting of RRA pending completion of the EIS, subject to six restrictions:
 - Mandatory isolation distances between RRA and non-genetically-engineered alfalfa fields in order to mitigate the risk of gene flow;
 - Mandatory harvesting conditions;
 - A requirement that planting and harvesting equipment that had been in contact with RRA be cleaned prior to any use with conventional or organic alfalfa;
 - Identification and handling requirements for RRA seed; and
 - A requirement that all RRA seed producers and hay growers be under contracts requiring compliance with the limitations set out in the proposed judgment.

- In *Delaware Audubon Soc., Inc. v. Secretary of U.S. Dept. of Interior*, 612 F.Supp.2d 442 (D.Del.,2009), environmental organizations sued the Secretary of the Department of Interior, the Director of the Fish and Wildlife Service, and the Fish and Wildlife Service, claiming that, in allowing cooperative farming and farming with genetically modified crops to take place at a national wildlife refuge, the defendants violated the Administrative Procedures Act (APA), the National Wildlife Refuge System Administration Act (NWRSA) and the National Environmental Policy Act (NEPA). The District Court held that the defendants violated the NWRSA, NEPA, and the Administrative Procedure Act (APA), and issued permanent injunctive relief. The case is of interest for several reasons:
 - It evaluated the applicable law and appropriate remedy as to impermissible farming of genetically modified crops at a National Wildlife Refuge – among the most protected of federal lands.
 - Among the factors considered by the Court was the fact that, in 2001, the Fish and Wildlife Service had adopted a policy that prohibited the use of genetically modified crops or organisms (the “GMO Policy”). The GMO Policy provided, “We do not allow refuge uses or management practices that result in the maintenance of non-native plant communities unless we determine there is no feasible alternative for accomplishing refuge purpose(s)... We do not use genetically modified organisms in refuge management unless we determine their use is essential to accomplishing refuge purpose(s) and the Director approves the use.” The Court found that the defendants “made repeated exceptions to their own GMO Policy, by continuing to allow genetically modified crops to be planted on Prime Hook-despite evidence that these activities posed ‘significant environmental risks’ to Prime Hook. ... The defendants’ own biologists identified several significant risks in connection with planting genetically modified crops at Prime Hook, including biological contamination, increased weed resistance, and damage to soils.”
 - The Court permanently enjoined the Department of Interior and the Director of the Fish and Wildlife Service from:
 - Allowing any cooperative farming at Prime Hook National Wildlife Refuge, until a written compatibility determination is completed; and
 - Allowing any cultivation or farming with genetically modified crops at Prime Hook National Wildlife Refuge, until an environmental assessment and/or environmental impact statement is completed.
 - The Court did not unconditionally and perpetually enjoin any cultivation or farming with genetically modified crops at the National Wildlife Refuge.

So this brief research did not uncover legal precedents in dealing with GMO’s in Massachusetts agricultural restrictions; however, it did uncover (a) the MFBF pro-biotechnology policies, (b) the kinds of restrictions that APHIS considers for allowing partial deregulation of GMOs, (c) the Fish and Wildlife Services’ GMO Policy for management of National Wildlife Refuges, and (d) federal court cases administering GMO laws and policies.

Given the complexities of this issue and the perpetual nature of the Conservation Restriction, rather than prohibiting altogether any farming with genetically modified crops, the Committee may want to consider following the lead of the federal court concerning the Prime Hook National Wildlife Refuge. The Committee would, under this approach, recommend that the restriction prohibit (after the expiration of the current Lease including all contractual extensions thereof) any cultivation or farming with genetically modified crops at the CR property unless and until an environmental assessment and/or environmental impact statement is completed to the reasonable satisfaction of the CR holder.

Question 2:

If produce is certified organic, does that automatically restrict the use of GMO seed or plants?

Answer 2:

According to the attached USDA Policy Memorandum dated July 22, 2011:

The use of genetically modified organisms (“GMOs”) is prohibited in organic production and handling. The National Organic Program (NOP) regulations prohibit the use of GMOs as “excluded methods” under 7 CFR § 205.105-Allowed and prohibited substances, methods, and ingredients in organic production and handling. Excluded methods are defined as:

A variety of methods to genetically modify organisms or influence their growth and development by means that are not possible under natural conditions or processes and are not considered compatible with organic production. Such methods include cell fusion, microencapsulation and macroencapsulation, and recombinant DNA technology (including gene deletion, gene doubling, introducing a foreign gene, and changing the positions of genes when achieved by recombinant DNA technology). Such methods do not include the use of traditional breeding, conjugation, fermentation, hybridization, in vitro fertilization, or tissue culture. (7 CFR § 205.2-Terms defined)

The policy memo “reiterates that the use of genetically modified organisms (GMOs) is prohibited under the NOP regulations and answers questions that have been raised concerning GMOs and organic production and handling.”

Question 3:

If a field is certified organic, does seed-drift from nonorganic farming areas jeopardize the certification?

Answer 3:

The attached USDA Policy Memorandum dated July 22, 2011 effectively answers this question:

Organic certification is process based. Certifying agents attest to the ability of organic operations to follow a set of production standards and practices that meet the requirements of the Organic Foods Production Act of 1990 and the NOP regulations. This regulation prohibits the use of excluded methods (i.e., “GMOs”) in organic operations.

The presence of a detectable residue from a genetically modified organism alone does not necessarily constitute a violation of this regulation. This policy was established at the promulgation of the NOP Regulation in the Preamble to the Final Rule (FR Vol. 65, No. 246, p. 80556), December 10, 2000. The Preamble stated that:

As long as an organic operation has not used excluded methods and takes reasonable steps to avoid contact with the products of excluded methods as detailed in their approved organic system plan, the unintentional presence of the products of excluded methods should not affect the status of the organic operation or its organic products.

Question 4:

If a GMO restriction is put in place, SVT and ACT, the joint CR holders, are concerned with enforcement (how?).

Answer 4:

Enforcement is of course a significant issue when dealing with a perpetual restriction that regulates matters at the genetic level. This will be a daunting task over time for the joint CR holders of the Conservation Restriction. Moreover, the CR should not incorporate any restrictions that are inconsistent with and take effect during the Term of the Town's lease of the property as now in force (including all contractual extensions thereof).

Assuming that the CR is structured and timed so as not to be inconsistent with the Lease, conceptually, the simplest, most objective and understandable way for the joint CR holders to deal with this enforcement issue would be to incorporate by reference into the CR, require compliance with, and establish the right to enforce the types of restrictions that govern organic farming as now in force or hereafter in effect (specifically as they pertain to GMOs if that is the issue of concern). As described in the attached USDA Policy Memorandum dated July 22, 2011, this system is as follows:

In order to become a certified organic operation, a producer must submit an Organic System Plan to a NOP accredited certifying agent for approval. Organic producers are required under 7 CFR § 205.202 to establish distinct, defined boundaries and buffer zones to prevent contact with prohibited substances. Under 7 CFR § 205.201, a producer's organic system plan must include a description of management practices and physical barriers established to prevent contact of organic crops with prohibited substances. Certifying agents evaluate the preventative practices and buffer zones to determine if they are adequate to avoid contact with prohibited substances, including GMOs, as specified under 7 CFR § 205.202(c). The preventative practices take into account the site-specific conditions (e.g. location and type of GMO crops, wind direction, slope, etc.) of the operation. Larger buffer zones may be needed when GMO crops are grown in land adjoining organic fields.

Question 5:

If it's not appropriate to include language about GMO usage in the body of the CR, can the wishes of the committee be submitted to the Board of Selectmen as a "preference document" that

outlines organic farming at the end of the current lease (new lease agreement)? What sway does this have on future boards or lease agreements?

Answer 5:

The Selectmen have established the Committee to provide advice and guidance to the Selectmen. The Committee is free to provide a "preference document" that recommends organic farming be implemented at the end of the current Lease. The Selectmen are free to accept or reject this recommendation.

Please let me know if you have any other questions.

Steve

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Policy Memorandum

To: Stakeholders and interested parties

From: Miles McEvoy, Deputy Administrator

Subject: Genetically modified organisms

Date: Approved on July 22, 2011

The use of genetically modified organisms (“GMOs”) is prohibited in organic production and handling. The National Organic Program (NOP) regulations prohibit the use of GMOs as “excluded methods” under 7 CFR § 205.105-Allowed and prohibited substances, methods, and ingredients in organic production and handling. Excluded methods are defined as:

A variety of methods to genetically modify organisms or influence their growth and development by means that are not possible under natural conditions or processes and are not considered compatible with organic production. Such methods include cell fusion, microencapsulation and macroencapsulation, and recombinant DNA technology (including gene deletion, gene doubling, introducing a foreign gene, and changing the positions of genes when achieved by recombinant DNA technology). Such methods do not include the use of traditional breeding, conjugation, fermentation, hybridization, in vitro fertilization, or tissue culture. (7 CFR § 205.2-Terms defined)

This policy memo reiterates that the use of genetically modified organisms (GMOs) is prohibited under the NOP regulations and answers questions that have been raised concerning GMOs and organic production and handling.

Issue: If a producer adheres to all aspects of the NOP regulations, including never utilizing genetically modified seeds, but a certifying agent tests and detects the presence of genetically modified material in the crop, is that crop's status determined to be no longer certified organic?

Reply: Organic certification is process based. Certifying agents attest to the ability of organic operations to follow a set of production standards and practices that meet the requirements of the Organic Foods Production Act of 1990 and the NOP regulations. This regulation prohibits the use of excluded methods (i.e., “GMOs”) in organic operations.

The presence of a detectable residue from a genetically modified organism alone does not necessarily constitute a violation of this regulation. This policy was established at the



promulgation of the NOP Regulation in the Preamble to the Final Rule (FR Vol. 65, No. 246, p. 80556), December 10, 2000. The Preamble stated that:

As long as an organic operation has not used excluded methods and takes reasonable steps to avoid contact with the products of excluded methods as detailed in their approved organic system plan, the unintentional presence of the products of excluded methods should not affect the status of the organic operation or its organic products.

Issue: How do organic producers avoid contact with GMOs?

Reply: Organic producers utilize a variety of methods to avoid contact or the unintentional presence of GMOs including testing seed sources for GMO presence, delayed or early planting to get different flowering times for organic and GMO crops, cooperative agreements with neighbors to avoid planting GMO crops adjacent to organic crops, cutting or mowing alfalfa prior to flowering, posting signs to notify neighboring farmers of the location of organic fields, and thorough cleaning of farm equipment that has been used in non-organic crop production.

Issue: What are organic producers required to do in order to avoid the presence of GMOs in their products?

Reply: In order to become a certified organic operation, a producer must submit an Organic System Plan to a NOP accredited certifying agent for approval. Organic producers are required under 7 CFR § 205.202 to establish distinct, defined boundaries and buffer zones to prevent contact with prohibited substances. Under 7 CFR § 205.201, a producer's organic system plan must include a description of management practices and physical barriers established to prevent contact of organic crops with prohibited substances. Certifying agents evaluate the preventative practices and buffer zones to determine if they are adequate to avoid contact with prohibited substances, including GMOs, as specified under 7 CFR § 205.202(c). The preventative practices take into account the site-specific conditions (e.g. location and type of GMO crops, wind direction, slope, etc.) of the operation. Larger buffer zones may be needed when GMO crops are grown in land adjoining organic fields.

Issue: Could a farm's organic certification status be threatened if sufficient buffers and barriers are not established and inadvertent contact with GMO material occurs?

Reply: Organic producers that implement preventive measures to avoid contact with GMOs will not have their certification threatened from the inadvertent presence of the products of excluded methods (GMOs). Crops grown on certified organic operation may be sold, labeled and represented as organic, even with the inadvertent presence of GMOs, provided that all organic requirements under 7 CFR Part 205 have been followed.

Issue: Is there a working definition of the word "contamination" within the NOP?



Reply: There is no definition in the NOP regulations for the word "contamination," even though it is mentioned frequently in the standards. All genetically modified organisms, practices or products are considered prohibited, as cited in 7 CFR § 205.105.

Issue: What actions are authorized or required when organic crops or products are found to contain unintended or inadvertent genetically modified substances?

Reply: The inadvertent presence of genetically modified material does not affect the status of the certified operation and does not result in loss of organic status for the organic product, provided it was produced in accordance with all of the organic requirements under 7 CFR Part 205. Certifying agents are responsible for working with organic producers to identify the source of the inadvertent GMOs and to implement improvements to prevent contact with GMOs in the future.

Issue: Is the inadvertent presence of GMOs in organic seeds or feed a violation of the NOP regulations? Can organic producers use seeds or feed that contain the inadvertent presence of GMOs?

Reply: 7 CFR § 205.105 of the NOP regulations prohibits the use of GMOs as excluded methods in organic production and handling. The use of excluded methods, such as planting genetically modified seeds, would require a specific intent, and would render any product ineligible for organic certification. However, the inadvertent presence of GMOs in organic seeds (or other agricultural inputs such as feed) does not constitute a use because there was no intent on the part of the certified operation to use excluded methods. The presence of detectable GMO residues alone in organic seed or other agricultural inputs does not constitute a violation of the NOP regulations.

Issue: Are organic products tested for genetically modified substances?

Reply: Under 7 CFR § 205.670(b) certifying agents may test organic products when there is reason to believe that any agricultural input used or any organic agricultural product has been in contact with prohibited substances or been produced with excluded methods. Certifying agents may test organic crops to ensure that buffer zones are adequate to prevent contact with prohibited substances. Certifying agents may also collect and test organic products from organic handlers to ensure that practices are in place to prevent commingling or contamination during handling and processing. At this time certifying agents have conducted limited GMO testing and relied on other preventative practices to minimize contact with GMOs.

Issue: Are organic products free of GMO contaminants?

Reply: Organic standards are process based. The NOP regulations prohibit genetically modified organisms, prohibit commingling or contamination during processing and handling, and require preventative practices to prevent contact with prohibited substances, including GMOs. Organic



agricultural products should have minimal if any GMO contaminants; however, organic food products do not have a zero tolerance for GMOs.

Issue: What is the Non-GMO project? Does it verify that products are free of GMO contaminants?

Reply: The Non-GMO Project website states that the Non-GMO project is a non-profit organization that is committed to preserving and building sources of non-GMO products, educating consumers, and provided verified non-GMO choices. The Non-GMO project conducts testing of ingredients and verifies that ingredients have less than 0.9% GMO presence in order to carry the “Non-GMO Project Verified” seal. The Non-GMO project does not verify that products are free of GMO contaminants. More information about the Non-GMO project can be found at www.nongmoproject.org

Issue: Is there an allowance (e.g. 5%) in organic products for the products of excluded methods (GMOs)?

Reply: The NOP regulations do not establish GMO tolerance levels. The NOP regulations do establish an organic tolerance for EPA registered pesticides. The organic tolerance level for registered pesticides is 5% of the EPA tolerance level for the specific residue detected. Tolerance levels have not been established for other prohibited substances such as antibiotics, hormones, or the products of excluded methods (GMOs).

Issue: Processed organic foods must contain at least 95% organic ingredients. Are GMOs allowed in the remaining 5% of ingredients?

Reply: GMOs are prohibited in all ingredients in “organic” and “made with organic (specified ingredients or food groups(s)).” There is no provision within the NOP regulations that allows the products of excluded methods (GMOs) as ingredients or processing aids in “organic” or “made with organic (specified ingredients or food group(s)).”

MFBF POLICY BOOK 2008-2009

MFBF policies are subject to reaffirmation every three years. Policies that have been reaffirmed are marked by *R followed by the year of origin.

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AGRICULTURAL COMMISSIONS

2008-1 *R (2005)

Whereas there are over 120 Agricultural Commissions established in the state of Massachusetts, and
Whereas these are an invaluable resource to Farm Bureau, and consequently need to be fostered,
encouraged and kept in close contact to Farm Bureau,

Be it resolved that Massachusetts Farm Bureau Federation assist in establishing Agricultural
Commissions in towns that don't have one and encouraging county members to be active on their local
town Ag Commissions;

Be it further resolved to encourage Ag Commissions to become Farm Bureau members.

AGRICULTURAL EDUCATION AND YOUTH PROGRAMS

2008-2 *R (1996)

Whereas; the Massachusetts FFA Organization is part of the National FFA Organization, and;
Whereas; the National FFA Organization's Federal Charter is established under Public Law 81-740, and;
Whereas; both organizations prepare students for a wide range of careers in agriculture, agribusiness and
other agriculturally related occupations in Massachusetts and the nation, and;
Whereas; State funding for the full time position of State FFA Advisor/ Executive Secretary and State
Supervisor of Agriculture has been deleted from the Massachusetts Department of Education, and;
Whereas; the position is now only a half time federally funded position and the funds will not be available
come July 1, 1997;

Be it resolved: that the Massachusetts Farm Bureau Federation become involved with helping the
Massachusetts FFA students in two ways:

- 1 The Massachusetts Farm Bureau Federation file legislation to establish a full time State FFA
Advisor/Executive Secretary and State Supervisor of Agriculture within the Department of Education
and/or the Department of Agriculture;
- 2 The Massachusetts Farm Bureau Federation encourage all County Farm Bureaus to support the
Massachusetts FFA Association and the Massachusetts FFA Foundation with donations to help the
state FFA program continue to run.

2008-3 *R (1996)

Whereas; Smith Vocational Agricultural School has been under pressure to drop the agricultural
vocational course, and;
Whereas; this is the only agricultural course offered in western Massachusetts, and;
Whereas; agriculture needs all of the exposure possible to keep young people educated about agriculture;

Be it resolved that Hampshire County Farm Bureau do all they can do to encourage Smith School to
continue to keep the school farm and the courses in agriculture, and;

Be it further resolved that the Massachusetts Farm Bureau Federation work on the state level to maintain
Smith Vocational School agriculture.

2007-1 *R (1998)

Whereas; our agricultural high schools in Bristol, Essex and Norfolk Counties provide attractive targets for large savings to county government in these increasingly urbanized areas;

Be it resolved that MFBF work with the Mass. DAR and other appropriate state, county and local agencies to:

- Ensure adequate funding from all sources, public and private for these institutions, and;
- Develop new programs to serve the secondary educational needs of the entire agricultural community.

2006-1 *R (2003)

Whereas; Massachusetts Legislators need to be made more intimately aware of the value of Massachusetts' agriculture,

Be it resolved that all Massachusetts Legislators be encouraged to visit farms in their counties throughout the year to become more educated about agriculture.

2006-2

Whereas Agriculture is an important part of the culture of Massachusetts;
Whereas Science, Math and Technology are necessary to keep our competitive edge;
Whereas we need strong school systems and good teachers;

Be it resolved that Massachusetts Farm Bureau work with our state government to:
Support our Agriculture Department (DAR) more fully;
Support Agriculture in the Classroom as an important partner;
Provide legislation to support the education of the next generation of students and maintain Massachusetts as a leader in agricultural innovation.

2006-3

Whereas Massachusetts Agriculture in the Classroom (MAC) previously had a line item in the State budget of \$125,000 which was subsequently cut out in the 1980's budget crunch;

Be it resolved that Mass Farm Bureau Federation work with whatever means possible to restore the line item in the State budget for this great organization.

AGRICULTURAL PRESERVATION RESTRICTIONS

2008-4 *R (2005)

Whereas land protected by an APR who's restriction are held by the Commonwealth or, subdivision thereof, are subject to the "Public Purpose" provisions of Article 97 of the Articles of Amendments to the Constitution of the Commonwealth; and

Whereas restrictions or regulations of any kind, that either further restricts the use of he APR land, that impair the continued agricultural use of the property or the agricultural enterprise conducted on the restricted land, run contrary to the declared "Public Purpose" of the APR

Be it resolved that:

1. Massachusetts Farm Bureau Federation expects that Massachusetts DAR will advocate for the land owner against any further restrictions, conditions or regulations of any kind imposed on APR land;

2. Massachusetts Farm Bureau Federation file legislation that releases the APR when further restrictions, regulations or conditions imposed impair the continued operation of the enterprise conducted thereon and that such release occurs without penalty, financial or otherwise, to the landowner; and

3. Massachusetts Farm Bureau Federation seek legislation to further protect APR landowner rights by prohibiting any rights of the landowner from being further restricted or diminished without acquiring 2/3rds vote of the Legislature and without the landowner incurring any penalty, financial or otherwise.

2007-2 *R (1998)

Whereas; MFBF acknowledges the value of and has supported the APR program since its inception, and;
Whereas; numerous members have negotiated APRs on their properties which included compensation and certain terms, and;

Whereas; DAR is attempting to change the terms of those agreements without additional compensation through a policy that has not been officially adopted as regulation, and;

Whereas; “The Commonwealth compensates the landowner for his willingness to place a permanent restriction on his land prohibiting all non-farm development and allowing only for agricultural uses. The landowner still owns the land and retains all rights of ownership such as the right to privacy, the right to sell the land, lease it, and will it to heirs.”, and;

Whereas; DAR staff is pursuing a goal of artificially restricting the growth in value of agricultural land in its quest for pursuing its definition of affordable land at the owner’s expense;

Be it resolved that MFBF opposes any and all actions of the Commonwealth of Massachusetts which force or coerce land owners to accept conditions that are contrary or additional to those agreed to at the time of the placing of the APR, and;

Be it further resolved that DAR cease all activities which derogate the value of APR farmland, and;

Be it further resolved that MFBF petition the Executive Office of Environmental Affairs to promulgate regulations and rules pertaining to c184 and c132a and that affected parties be included in the process. These should include but not be limited to definitions of agriculture, development rights, agricultural value, and derogation of agricultural use. Regulations should include an appeals process for those farmers aggrieved by DAR actions and should include agricultural impact and small business impact statements;

Be it further resolved that MFBF establish a library of APR transactions and meeting minutes of the Agricultural Land Preservation Committee.

2007-3 *R (2001)

Whereas; Massachusetts Farm Bureau Federation seeks to protect the rights of landowners with farms enrolled in the APR program, and;

Whereas; the Department of Agricultural Resources has chosen to redirect the APR program to be an “affordable farmland” program rather than a “farmland preservation” program, thereby allowing the state to establish resale prices and to qualify or exclude potential buyers, and;

Whereas; such actions by the state short-change the landowner in the long run by providing a short-term infusion of cash, while restricting the long-term viability of the farm business because of lack of interested lenders, lack of housing opportunities for a farm owner, lack of opportunity to participate in other state government programs, and lack of incentive for farm improvements;

Therefore, be it resolved that MFBF initiate legislation that clearly redirects the APR program back to its farmland preservation roots, establishes more detailed administrative procedures in the statute, and enhances the opportunities for farm businesses.

Be it further resolved that such legislation include protections therein that clearly protects the landowners of existing APR farms from the state's misinterpretations or distortions of the original legislative intent of the program.

2007-4 *R (2001)

Whereas; the equine industry comprises a large and growing segment of Massachusetts agriculture, and
Whereas; the equine industry supports the agricultural infrastructure of feed suppliers, equipment dealers, veterinarians and others, purchases hay from local farmers, and helps to preserve substantial acreage of open land, and

Whereas; equine operations are currently discriminated against by DAR relative to involvement in the Agricultural Preservation Restriction (APR) program because said program only recognizes the definitions contained in Chapter 61A, and

Whereas; the equine industry is recognized as "Agriculture" in the definition contained in Mass. General Laws, Chapter 128, Section 1A, therefore

Be it resolved that MFBF work to change the definition of "Agriculture" used in the APR program to the Chapter 128;1A definition.

2007-5 *R (2004)

Whereas; some parties have taken a very aggressive position to render APR land accessible to the public,

Be it resolved that MFBF will not support public access doctrines as a condition in APR or Farm Viability Contracts, or Chapter 61, Chapter 61-A or 61B.

2007-6

Whereas the APR purchasing cap has been set at \$10,000 per acre for a long period,

Be it Resolved that MFBF work to eliminate the cap.

2007-7

Be it resolved that, pending satisfactory progress as determined by MFBF Board of Directors towards resolution of those concerns expressed in MFBF 2007-2*R and 2007-3*R, that MFBF support those aspects of the Environmental Bond Bill that are consistent with MFBF policy.

2006-4 *R (2000)

Whereas; the APR program was initiated to protect the agricultural lands for future food and fiber production and

Whereas; controversy has erupted over the off season or multiple uses of some of these lands due to the changing nature of today's agriculture and

Whereas; the stewardship of these lands influences the number of visitors in the Berkshires and

Whereas; the economic well-being of many farmers is threatened by low agricultural prices for their products and adverse weather;

Therefore be it resolved that MFBF call for a review of the APR Program with particular emphasis on the financial well being of agriculture.

2006-5 *R (2000)

Whereas; there are several issues that have surfaced in Massachusetts on the enforcement of APR contracts, (such as the State having the right of future real estate price setting of APR farms), the intent of the legal language of the contracts and other matters. And;

Whereas; a study panel has been set up to study this and Farm Bureau is a member of that study panel.
And;

Whereas; as always, Mass. Farm Bureau is concerned with the protection of the farmer and the commonwealth's fairness in the interpretation of the contracts past, present and future.

Therefore, be it resolved that it be MFBF policy that the farm residence and/or alterations or new construction of dwellings for farm family members or farm labor, and other buildings associated with present or future operation of the farm be unimpeded by an APR contract.

2006-6 *R (2000)

Be it resolved that MFBF work to ensure that APR farms be given equal opportunity to participate in all programs of the state, such as the Farm Viability Program, and not be excluded further financial help because they are under an APR contract.

2006-7 *R (2000)

Be it resolved that MFBF work to ensure that past and present APR contracts be fairly interpreted by the Commonwealth, and that the contracts not be changed or amended without comparable considerations being mutually agreed to by all parties.

2006-8

Whereas APR contracts have many restrictions, but the open space properties are ideal for renewable energy systems,

Be it resolved that MFBF will work to secure language allowing for these systems to be installed on APR farms.

ANIMAL HEALTH & WELFARE

2007-8 *R (1998)

Whereas; the animal health programs of the Commonwealth are basic to the survival of the dairy industry and the health of the citizens;

Be it resolved that the Massachusetts Farm Bureau Federation support adequate funding of the Bureau of Animal Health.

2007-9

Whereas, Massachusetts livestock farmers and ranchers and equine facility operators are experiencing increased regulation regarding the disposal of aging or injured animals,

Be it resolved the Mass Farm Bureau work at the local, state, and federal levels to insure that burial of deceased animals be allowed as one option.

2006-9

Whereas the equine industry is dependant on the movement of animals within and out of the state and, Whereas potential health threats to the industry do exist,

Be it resolved that Mass Farm Bureau Federation supports an animal identification program that ensures privacy for both individuals and other government entities; an easy manageable system for informational

input and maintenance; and cost effectiveness with minimal expenses, for the ultimate goal of ensuring the security of the equine industry.

APIARIES

2006-10

Whereas the honeybee population in North America has been devastated by Varroa and Tracheal mites for over two decades rendering the wild honeybee all but extinct, and

Whereas the number of beekeepers (many of whom are hobbyists) has also declined during the same period due to financial loss of killed or impaired colonies, and

Whereas the honeybee is absolutely essential to the effective pollination of many Massachusetts crops and has been shown to increase yields in certain crops by up to 40 percent,

Therefore, Be it resolved that the Massachusetts Farm Bureau proposes that the Massachusetts Department of Agriculture establish and maintain a fund beginning in January 2007 with a goal of increasing the honeybee population in Massachusetts by:

- 1.) Providing a grant for the purchase of bees and equipment to new or existing Massachusetts beekeepers to increase their colonies by up to two additional hives to be located in Massachusetts, cost not to exceed \$150.00 per hive; and
- 2.) Education for new Massachusetts beekeepers, not to exceed \$100.00 per beekeeper, and training to be provided by beekeeping organizations within Massachusetts.

AQUACULTURE

2008-5 *R (1996)

Whereas; the right to farm laws apply to those who own or lease and

Whereas; aquaculture grants are licenses,

Be it resolved that the Massachusetts right-to-farm laws be amended to include farmers that are licensed or otherwise control aquaculture sites.

BIOTECHNOLOGY

2008-6 *R (2005)

Whereas, biotechnology, in the form of genetically modified crops, is important to an increasing number of farmers, and

Whereas, there is an effort at the local level in Massachusetts to prohibit the planting of genetically modified crops,

Be it resolved, that Massachusetts Farm Bureau Federation support preemptive legislation, precluding local authorities from regulating seed and crops.

2007-10 *R (2001)

Whereas; Massachusetts is considered a world center for biotechnology research and development, and

Whereas; biotechnological advances are improving our capacity to produce foodstuffs and eliminate hunger, as well as providing considerable medical benefits,

Therefore, be it resolved that MFBF embraces the benefits of agro-biotech developments as positive for Massachusetts agriculture and consumers, and

Be it further resolved that MFBF oppose state regulation of agro-biotechnology, and urge that proper oversight of such research and development rests with federal agencies such as FDA, USDA and EPA.

COMMUNICATIONS

2007-11 *R (2004)

Whereas; There are many commissions, committees, and groups purporting to speak for farmers and share what's best for farms.

And whereas; Few of these commissions and committees actually involve working farmers.

Therefore be it resolved that MFBF assemble a presentation and set of common practices that can be made available to towns and municipalities on how to support agriculture.

2007-12 *R (2004)

Whereas; There are many agricultural and commodity groups that duplicate effort within the state.

And whereas; MFBF's strengths lie with working at the legislative level.

Therefore let it be resolved that MFBF network with other agricultural associations and commodity groups to streamline operations and eliminate duplicate efforts.

2006-11 *R (2003)

Whereas; important information is slow in reaching the farmer,

And, information transfer between individual farmers and between farmers and Massachusetts Farm Bureau is too slow, by today's standards, and slows down individual responses to situations.

And Whereas; many modern communication modes, like fax and email, are widely available which are capable of disseminating this information in a timely manner for a much lower price than that of methods currently used.

Be it resolved: Massachusetts Farm Bureau will work with County Farm Boards to establish better communications with individual members and boards.

2006-12 *R (2003)

Whereas; many issues confronting Agriculture in the commonwealth are issues and confrontations with local town boards and governing bodies

Whereas; many of these issues can be resolved by informing and facilitating communication between the farming community and the local boards.

Be it resolved: That Farm Bureau encourage and support the formation of local committees on a county level to assist in the resolution of these problems and act as a local information resource on issues, to both the members of Farm Bureau and to the local boards.

And further be it resolved: That Farm Bureau encourage and support FB members to join local town/municipal boards.

2006-13

Whereas certain members are getting AFBF newsletter and others are not,

Be it resolved that all members are given equal access to Farm Bureau publications and newsletters.

CONSERVATION AND ENVIRONMENT

2007-13

Whereas several states and federal agencies have considered regulating animal manure as hazardous waste, and

Whereas manure is a valuable agricultural resource that can be properly managed,

Be it resolved that MFBF and AFBF work to maintain farm use of livestock manure, and prevent classification of animal manure as hazardous waste.

CROP AND LIVESTOCK DAMAGE

2008-7

Designated hunter on nuisance permit

Whereas; many farms suffer from extensive deer damage in particular years and often qualify for a nuisance permit from the Department of Fisheries and Wildlife allowing for hunting by immediate family and full time employees, but in many cases a particular farm will not have any qualified hunters among those permitted to hunt,

Be it resolved that Massachusetts Farm Bureau Federation work with the Department of Fisheries and Wildlife to expand this qualified list to two trained and licensed hunters available for this nuisance control under the farm owner's direction.

2008-8 *R (2002)

Whereas; the damage to crops and other agricultural goods by black bears has increased

And Whereas; the current length of the state hunting season on black bears has not adequately controlled the population numbers to limit damage to agricultural and other goods;

Be it resolved that Massachusetts Farm Bureau work with the Department of Fish and Wildlife to allow baiting and to extend the current hunting season on Black Bears as soon as possible.

2008-9 *R (2002)

Whereas; the black bear population in Massachusetts had been becoming more and more prevalent, and;

Whereas; the black bear population is reaching a point where it is a danger to livestock, crops and humans, and;

Whereas; the bear numbers are a direct result of a lack of hunting pressure;

Be it resolved that the Massachusetts Farm Bureau Federation work to reinstate the use of hounds to hunt bears in Massachusetts.

2008-10 *R (2002)

Whereas; the beaver population in Massachusetts is growing unabated, and;

Whereas; beaver activity often threatens productive farmland, as well as some suburban areas with flooding;

Be it resolved that the Massachusetts Farm Bureau Federation work to allow trappers to return to the safe use of the conibear traps to catch beaver, and thus eliminate any current restrictions on such traps.

2008-11 *R (1996)

Whereas; migratory crows are causing ever larger bird pull damage to corn during the early growing season of May and June when they are protected by law;

Be it resolved that farmers be allowed special permits during this period to allow the crows to be hunted by non-farm employees.

Be it further resolved that farmers be allowed to use chemical bird repellants.

2008-12 *R (1996)

Whereas; possession of leghold traps are illegal;

Be it resolved that Massachusetts Farm Bureau Federation work to amend the law to possession by permit only, and;

Be it further resolved that an amendment be proposed that there be a trap buy back program and that the Division of Fish and Wildlife hold these traps in trust.

2008-13 *R (1996)

Whereas; birds and animals are causing considerable damage to crops during the growing season in Massachusetts;

Be it resolved that farmers or their agents be permitted to hunt these pesky animals throughout the growing season.

2008-14 *R (1999)

Whereas; white tail deer are rapidly reproducing in all areas of Massachusetts, few hunters and a limited hunting season are not controlling the deer population, and damage to crops is a constantly increasing problem,

Be it resolved that:

1. The state establishes a fund to pay for deer damage to farms.
2. The state pay for deer fencing on farms.
3. The state pay for deer fencing installation on farms.
4. The state allow farmers to rent their land to a hunter or group of hunters to kill deer during the off season.
5. The state allow the farmer to keep the deer without having to submit a report to Massachusetts Division of Fisheries and Wildlife.

2007-14 *R (1998)

Whereas; wildlife crop damage continues to be a major problem for many Massachusetts farmers;

Be it resolved: that the Massachusetts Farm Bureau work with Massachusetts Sportsmen's Council and others to develop an effective crop insurance program to compensate Mass farmers for wildlife crop damage and to help to maintain open land for sportsmen.

2007-15

Whereas it has been two years since Mass Fisheries and Wildlife has increased the bear hunting season with virtually no increase in the harvest; and
Whereas the recommendations of the Mass Farm Bureau and Mass Sportsmen’s Council, Inc. were ignored,

Be it resolved that Mass Farm Bureau ask for a public hearing of the Fisheries and Wildlife Board to increase the bear season in 2008 to set an annual quota of harvest needed to control the bear population and to have the current September season and all other seasons open until such quota is met which would include a two (2) bear bag limit per hunter.

2006-17 *R (2003)

Whereas; many farms have encountered problems with excessive number of starlings in their barns,
And Whereas; these birds pose a serious health threat to livestock and humans as well as a persistent nuisance,
And Whereas; there is no legal and effective way of dealing with this pest,

Be it resolved that MFBF work with DAR and the DF&G to develop a permitting process to allow farmers to purchase starlicide and bait these birds at the farmer’s expense.

2006-18 *R (2003)

Whereas; a bacterial wilt disease named “Ralstonia Solanacearum” has recently been introduced to the United States from Kenya, Africa, and since this disease is listed as a bioterrorism organism that could have devastating effects on solanaceous crops such as potatoes, tomatoes, tobacco and geraniums.

Be it resolved that MFBF continue its efforts to strengthen and not weaken any restrictions to importation of agricultural commodities from other countries especially with respect to allowing material in soil to be imported.

2006-19 *R (2000)

Whereas; some rare and endangered plant species in an area of critical concern ACEC are threatened with extinction caused by habitat flooding created by beaver dams, and;
Whereas; beavers don’t file environmental impact statements. Nor are they subject to orders of conditions. Yet, the results of their activities often produce a significant negative impact, and;
Whereas; the explosion in beaver population clearly demonstrates a need for new management strategies;

Be it resolved that MFBF and others develop a strategy with two objectives:

- (1) Bring the beaver population to manageable levels.
- (2) Seek “by right” legislation establishing pre-existing “normal” water levels as a right upon the abandonment of a site by a beaver colony. Normal elevation, such as: floors of culverts, drainage ways or other structure established by the Commonwealth or other public bodies to protect the public and private interests.

DAIRY

2008-15

Whereas Massachusetts consumers wish to purchase local food from local producers; and

Whereas several New England states have definitions to define and label dairy products produced in those states.

Be it resolved that Massachusetts Farm Bureau advocate for legislation that allows for labeling Massachusetts produced milk as “Massachusetts Fresh”.

2007-16 *R (1998)

Whereas; a Massachusetts milk dealer receiving milk from non-coop milk producers must be bonded for the amount owed to said producers, which is normally a blended price;

Be it resolved that MFBF work with the Massachusetts Department of Agricultural Resources to require Massachusetts milk dealers also be bonded for the amounts due to The Producer Settlement Fund of the MA Department of Agricultural Resources.

2007-17 *R (1998)

Be it resolved that MFBF work to ensure that appropriate action be initiated to perpetuate the nutritional benefits of dairy products.

2006-20 *R (2003)

Whereas; there is a need to ensure that the food supply is safe, and that dairy products are of good quality for the consumer,

Be it resolved that AFBF work with the USDA to ensure that ALL milk marketed in the U.S. be of the same quality standards. Be it further resolved that these standards be at current Grade A levels or higher.

2006-21 *R (2003)

Whereas; the current MILC payments made to dairy farms across the U.S. is based on the class one price,

Be it resolved that any payments made to dairy farms is only made on milk that meets Grade A standards.

2006-22 *R (2000)

Whereas; the Northeast Dairy Compact has proven to be beneficial to both consumers and producers,

Be it resolved that American Farm Bureau Federation support the reauthorization and expansion of the Northeast Interstate Dairy Compact, the establishment of the Southern States Dairy Compact, and further support the concept of regional dairy compacts.

2006-23 *R (2000)

Whereas; the Northeast Interstate Dairy Compact will conclude upon completion of the Federal Farm Bill in 2001;

Be it resolved that MFBF and AFBF work to extend the Northeast Interstate Dairy Compact beyond the sunset clause.

Be it further resolved MFBF work with other state Farm Bureaus to support and enhance the Northeast Interstate Dairy Compact pricing.

2006-24

Whereas Dairy Farmers are suffering from low prices that are similar to those paid in 1981 and milk is in tight supply in the area;

Be it resolved that MFBF work together with neighboring states to develop a regional pricing structure that exceeds federal order pricing.

2006-25

Whereas dairy production in Massachusetts and the rest of New England is experiencing difficulties (1980's prices),

Be it resolved that Massachusetts Farm Bureau strive to establish relief and aid as Connecticut and Vermont have accomplished.

Be it further resolved that Massachusetts Farm Bureau take immediate action to inform its dairy members about the status of the accomplishment.

2006-26

Whereas dairy is currently not able to participate in income insurance,

Be it resolved that MFBF work to help allow dairy farmers to create an income insurance program.

DEFINITION OF AGRICULTURE

2007-18 *R (2001)

Whereas; not all statutes and state agency regulations have definitions consistent with Mass. General Laws Chapter 128, Section 1A,

Therefore, be it resolved that MFBF work to have all statutes and regulations of the Commonwealth of Massachusetts that define "Agriculture" be consistent with the statutory definition of "Agriculture" as said definition appears in MGL chapter 128, Section 1A.

ENERGY

2008-16

Be it resolved that Massachusetts Farm Bureau Federation will work with the Massachusetts Technology Collaborative and the Renewable Energy Trust to provide incentives for biomass use and fuel production (i.e. cord wood, wood pellets, corn and other biomass renewable energy options) and work to extend tax credits and incentives at the state and federal levels.

2008-17 *R (2002)

Whereas; the Electric Companies of Massachusetts lower power at different times of the year causing older refrigeration motors and other motors to burn out from overheating;

Be it resolved that the Massachusetts Farm Bureau Federation work with the Department of Public Utilities to compensate Agriculture and Industry for these burnouts.

2008-18 *R (2002)

Be it resolved that Massachusetts Farm Bureau Federation file legislation to add the practice of harvesting wind for production of energy be included in MGL 128A definition as an Agricultural use.

2008-19 *R (2005)

Whereas energy costs are currently escalating and current forecasts predict a steady long term increase in energy and fuel costs and

Whereas agricultural commodity income is not increasing proportionally with increasing costs of productions related to energy and fuel costs;

Be it resolved that Mass Farm Bureau Federation investigate alternative energy production and procurement techniques and technologies and possible abatements to help farms.

2007-19 *R (2004)

Be it resolved that MFBF pursue regulatory changes to have farms billed at the least expensive electric rate.

2007-20

Whereas the cost of electricity continues to rise, and

Whereas electricity costs continue to be a major expense for many agricultural operations;

Be it resolved that Massachusetts Farm Bureau work to increase the agricultural discount in Massachusetts from 10% to 20% and eliminate uses charges and/or transfer farms to residential.

2007-21

Whereas renewable energy will continue to become more important to agricultural operations in Massachusetts, and

Whereas, new legislation includes many new beneficial concepts regarding net metering and funding opportunities,

Be it resolved that MFBF support favorable legislation for renewable energy as determined by the MFBF Board of Directors.

2006-27 *R (2000)

Whereas; the demand for all forms of energy is exceeding existing supplies and near term needs and

Whereas; the Northeast is particularly vulnerable because of its distance from coal, oil and natural gas reserves;

Therefore, be it resolved that all segments of the Northeast economy push for a regional strategy and implementation policy under the auspices of the New England Governors Conference or a similar regional entity that will help to insure a competitive position for the goods and services of our region.

2006-28

Whereas farmers are experiencing 30% higher energy costs in 2006,

Be it resolved that MFBF seek energy rebates from the state and federal energy taxes.

Be it further resolved that alternative energy sources and saving techniques be subsidized or incentives offered by the state.

2006-29

Whereas farms provide some of the best sites for wind turbines and often have high on-site energy costs, and the town and city governments in which they are located often have no experience with interpreting the Mass General Laws exempting farm structures and equipment from local zoning bylaws,

Be it resolved that MFBF work to integrate all forms of renewable energy systems, including wind turbines, solar, hydro and Bio Mass Facilities, into the language of the Mass General Law which grants zoning exemptions to agricultural machinery and structures.

2006-30

Whereas we all agree that our dependence on petroleum fuels is not a healthy and sustainable practice,

Be it resolved that MFBF will work to promote local production and/or availability of ethanol and biodiesel.

2006-31

Whereas Massachusetts utility companies are required by law to promote the production of green energy, and where they allow for interconnection to renewable energy systems, and where they at this time only accept monthly net metering which provides inefficient use of energy produced during period of high production and low on-site demand,

Be it resolved that MFBF will petition the state utility companies to implement annual net metering for agricultural properties.

2006-32

Whereas agricultural operations are increasingly dependent on sustainable energy resources for ongoing viability, and

Whereas investment and commitment to sustainable energy represents an important and increasing source of income for many farms,

Be it resolved that MFBF work for a law at the state level preventing individual municipalities from adopting bylaws forbidding or hindering the use of sustainable energy systems in or on agricultural operations unless said operation present a clear and abiding danger to the community.

EQUINE

2008-20

Whereas; the federal bill HR 6598 “Prevention of Equine Cruelty Act of 2008” will establish criminal penalties for the transport of equines for slaughter, and

Whereas; such a law would result in horse abandonment and other horse cruelty actions,

Be it resolved that Massachusetts Farm Bureau Federation and American Farm Bureau Federation actively oppose the “Prevention of Equine Cruelty Act of 2008” and similar federal legislation.

2008-21

Whereas the equine industry has significant impact within the state,

Be it resolved that the equine committee prepares a scope of work for a technical report of the economic impact and land use of the equine industry in the state, and further that the Massachusetts Farm Bureau Federation Board of Directors at their discretion takes action to compile said report and make it available to Farm Bureau Counties. The funding to be provided by Massachusetts Farm Bureau Federation and any grant opportunities that are available.

2008-22

Whereas Massachusetts Farm Bureau Federation believes strongly in the classification of horses as livestock, and that this is already an American Farm Bureau Federation and Massachusetts Farm Bureau Federation Resolution,

Therefore be it resolved that American Farm Bureau Federation make Equine 307, (3) of the American Farm Bureau Federation Policy Book which reads in full “ (3) The classification of horses as livestock;” be made a Priority Issue for American Farm Bureau Federation.

2008-23 *R (1999)

Whereas; regulations and guidelines for testing horses for Equine Infectious Anemia (EIA), using the Coggins Test, vary from state to state within New England and the state of New York; and
Whereas; testing may be required as often as every six months to enter another state, and
Whereas; horsemen in New England travel from state to state often, thus triggering even more testing, which is expensive and time-consuming;

Be it therefore resolved that Massachusetts Farm Bureau Federation work with the state farm bureaus of New England and New York, and appropriate state agencies to write regulations which either allow for one test valid in all six New England states and the state of New York, or have a reciprocal agreement between the states allowing all New England equines to be subject to the same requirements as in-state equines.

2007-22 *R (1998)

Be it resolved that, notwithstanding any general or special law, rule, regulation or directive to the contrary, the Department of Conservation & Recreation is authorized and directed to allow horseback riding and equine driving on all lands which are otherwise open for public recreational use.

2007-23 *R (1998)

Whereas; horse farms currently amount to significant percentage of the membership of MFBF;

Be it resolved that the MFBF Equine Committee work with the insurance industry to review existing horse farm coverages and insurance programs and make recommendations to the company regarding suggested modifications.

2007-24 *R (2001)

Whereas; Massachusetts and the federal government lack a comprehensive count, census or database of horses and ponies in the state, and income and expenditures of the industry,

Be it resolved that MFBF work with USDA and compile data to be published with other commodity reports. These will aid the equine community, their suppliers and related businesses to better serve the industry and to further our legislative goal.

4-H**2006-33 *R (2003)**

Whereas; the 4H program in Massachusetts has been severely shortchanged;
And, 4H has been an exceedingly valuable resource in educating the youth of the commonwealth in agriculture and life skills,
And, the demise of such a program for 23,000 youths without public debate or notice is not in the best interest of the public;

Be it resolved: Massachusetts Farm Bureau shall investigate ALL avenues, by which other states fund and operate their 4H programs,

And further be it resolved: Massachusetts Farm Bureau attempt to find if federal funds exist that they might be used to restore the program in the Commonwealth.

2006-34 *R (2003)

Whereas; Massachusetts Extension Service is severely limited in the services it can provide due to budget cuts,

And, 4H is in jeopardy

And Whereas; we are losing ground in both education and information services, as well as in the public's perception of what we do and the issues we confront,

And, we feel that it is necessary for Farm Bureau as an organization to ensure the public has accurate information on what we do and the issues we confront,

Be it resolved: That Massachusetts Farm Bureau work with the County Boards to bring together a concerted effort to educate and inform the public on an ongoing basis.

2006-35 *R (2003)

Whereas; the University of Massachusetts has dealt severe budget cuts to the UMass extension program;

Whereas; 4-H is a part of UMass extension which provides a valuable opportunity for school children and young adults from both rural and urban communities to explore other interests outside of the classroom in an affordable manner;

Whereas; 4-H is a national program that has helped to foster leadership and life skills for young people for 100 years.

Whereas; the 4-H field program has been drastically reduced at UMass,

Be it resolved that Massachusetts Farm Bureau encourages the state legislature to earmark funds for a fully funded 4-H field program.

FAIRS

2008-24 *R (1996)

Whereas; the agricultural fairs of Massachusetts are truly the *show windows* of all production agriculture, and;

Whereas; they are very frequently the only source of information and knowledge for largely urban sections of our consuming populous, and;

Whereas; the scheduling of dates for fairs needs to be properly overseen, and;

Whereas; youth fairs and youth classes at major fairs form the best possible vehicle for education and encouraging our youth to pursue agricultural vocations, and;

Whereas; all agricultural fairs should be encouraged to conduct and/or maintain agricultural-educational exhibits via the issuance of matching funds by the Division of Fairs, and;

Whereas; the youth fairs, in particular should receive financial assistance as needed, especially in areas of premium payment, and;

Whereas; all agricultural fairs in Massachusetts should join a suitable association of such fairs toward a primary goal of the exhibition and presentation of all agricultural products produced in this state;

Be it resolved that the Massachusetts Farm Bureau Federation exert its utmost effort to fund the DAR Fairs Program, including reinstating the *Agricultural Purposes Fund* at least at its FY 1989 level and to exert every effort to prevent further disintegration of the Division;

Be it further resolved that every effort be taken to mainstream all agricultural fairs into the furtherance of an urban populace and consuming public's knowledge of the importance of Massachusetts agricultural industry in the production of safe, high-quality foodstuffs and the preservation of the land itself as well as the kind of life it represents.

FARM BUILDINGS

2008-25

Whereas; building codes require stamped lumber which put native lumber at a disadvantage;

Be it resolved that Massachusetts Farm Bureau Federation seek to remove this requirement for farm buildings and housing construction.

2008-26 *R (1999)

Whereas; the revised Massachusetts Building Code requires Greenhouses for retail to not be plastic roofed,

Be it resolved that Massachusetts Farm Bureau Federation work to amend the code to allow farms to be exempt from this requirement.

2006-36 *R (1997)

Whereas; New York State now provides farmers with a ten year tax exemption on new farm buildings, then taxing them as depreciated, ten year old buildings;

Be it resolved that MFBF sponsor similar legislation in the Massachusetts legislature.

2006-37

Whereas municipalities assess real estate taxes on greenhouses as though they are permanent structures;

Let it be resolved that Mass Farm Bureau work toward an exemption or at least a fair method of calculation.

FARM EQUIPMENT, MOTOR AND RECREATIONAL VEHICLES

2008-27

Be it resolved that Massachusetts Farm Bureau Federation lobby aggressively for laws to identify the use of all alternative energy equipment and systems as farm machinery and seek an agricultural exemption to the Department of Environmental Protection regulations governing use of biomass equipment and systems.

2008-28

Whereas; farm vehicle laws are somewhat confusing;

Be it resolved that Massachusetts Farm Bureau Federation create an effort or outreach program to educate officers on the current law (i.e. 10 mile law).

2008-29

Be it resolved that Massachusetts Farm Bureau Federation work to allow the use of pup-trailers and like vehicles for the transport of agricultural products, using a farm plate in Massachusetts.

2008-30 *R (2002)

Whereas; there is much confusion with farm plate registration and getting motor vehicle safety inspection stickers;

Therefore let it be resolved that Massachusetts Farm Bureau Federation work with the department of registry to rectify this issue.

2008-31 *R (2002)

Be it resolved that Massachusetts Farm Bureau Federation work with Mass Registry of Motor Vehicles to amend the Farm Plate regulation to include the use of Farm Plates on Agricultural buses used to transport farm labor.

2008-32 *R (1999)

Whereas; diesel fuel is the most used farm fuel, and;

Whereas; this fuel is a prime target for federal and state taxes which lead to complicated handling and usage regulations to enhance revenue collections, and;

Whereas; the farmers' main use and consumption is on his own or leased lands. This agricultural use is substantially different from public and commercial highway usage;

Be it resolved that Massachusetts Farm Bureau Federation and American Farm Bureau Federation intensify their efforts through legislation to separate agricultural uses of diesel fuel from those of other consumers;

Be it further resolved that an effort be made to simplify the transportation, storage and recordkeeping (permits, decals, revenue reports, etc.) required with the use of this fuel.

2007-25 *R (1998)

Whereas; more and more Massachusetts residents operate two, three and four-wheeled, as well as airborne recreational vehicles which are not currently required to be registered, and;

Whereas; these vehicles cause substantial economic and aesthetic damage to crops, land, livestock and wildlife, and;

Whereas; a farmer or other landowner may be subject to suit in the event of injury to the operator and/or passengers of such vehicles, even though he/she may not have given permission to the operator to use his/her land;

Be it resolved that MFBF file legislation to require:

- That all such vehicles, including dirt bikes, three and four-wheeled RV's, balloons capable of transporting humans, ultra-light aircraft and mountain bikes be registered by the Division of Marine and Recreational Vehicles, and;
- That all such vehicles display legible registration numbers that are purchased and applied at the time of sale, and;
- That all operators of such vehicles carry appropriate insurance while operating off of their own property.

2007-26 *R (2004)

Be it resolved that: MFBF work to update the trailer weight statutes and regulations to allow agricultural trailers to be used with farm plates up to the manufacturers' weight specifications.

2007-27

Whereas Massachusetts agriculture uses plumbing to convey liquids for agriculture purposes,

Be it resolved that MFBF seek to insert into the Massachusetts Plumbing Code the recognition that agriculture needs special exemption.

2006-38 *R (2000)

Whereas; the farming community in many areas of the country have to travel the roads with their equipment to get from field to field,
and Whereas; the amount of on-road compared to off road time is relatively small,
and Whereas; the extreme hardships and impracticality of constantly changing fuels in farm equipment fuel tanks,
and Whereas; the use of off road fuel may not be enough to warrant replacement of an on-farm fuel tank and the distance to a fueling station may be a great distance causing excessive fuel consumption, time and labor losses as well as economic losses,
and Whereas; the purchase of straight on road fuel may be cost prohibitive to many small family farms,

Be it resolved, that AFBF work with the EPA and the Department of Transportation and all other necessary agencies exempting farm tractors, equipment and other farm vehicles from the use of on-road fuel.

Be it further resolved, as an alternative to the treatment proposed above for farm trucks, that AFBF work with EPA and all other necessary agencies to have all farm trucks exempt from the on-road fuel so long as they are within 50 miles of the farm.

2006-39 *R (1997)

Whereas; farm tractors are required to have inspection stickers and;
Whereas; some farmers have problems acquiring inspection stickers because of the time and distance involved in driving to an inspection station;

Be it resolved that MFBF work towards getting the Registry of Motor Vehicles to exempt farm tractors from safety inspections.

FARMERS LIVE ANIMAL MARKETING EXCHANGE (F.L.A.M.E.)

2008-33

Be it resolved, that Massachusetts Farm Bureau Federation Board of Directors investigate and institute mechanisms to insure that any new or additional debt, incurred by FLAME Inc., is subordinate to the loans and accounts receivable currently on the Massachusetts Farm Bureau Federation balance sheet.

2007-28 *R (1998)

Whereas; there has been conflict between the operations at the Farmers Live Animal Market Exchange in Littleton and the Northampton Co-op Auction in Whately, and;
Whereas; the sale of beef through these auctions are a critical part of the livelihood of dairy farmers and other agriculture in Massachusetts;

Be it resolved that Massachusetts Farm Bureau should do everything in their power to coordinate the activities between these two auctions that results in the successful operations of both auctions.

FARMING OPPORTUNITIES

2007-29 *R (2001)

Whereas; land values in Massachusetts make it extremely difficult for first-time buyers to purchase farmland and establish a farm business, and

Whereas; the average age of Massachusetts farmers continues to rise.

Therefore be it resolved that MFBF study possible ways to enhance the opportunities for new farmers, expanding farm businesses, and others, through state grants, “green payments”, or other means.

Be it further resolved that MFBF file legislation, if appropriate, establishing such programs.

2006-40

Whereas, farmers can sometimes be at odds due to specific production requirements, and

Whereas, efforts have been made by some growers and grower groups to ban certain production methods,

Be it resolved that Massachusetts Farm Bureau Federation supports the principles of Co-existence in agriculture. Co-existence has been defined as existing together (in time or place) and to exist in mutual tolerance.

FARM VIABILITY

2007-30

Whereas the Dairy Task Force was set up to provide a long term solution for increasing the viability of dairy operations within the state; and

Whereas general food production agriculture is facing a similar “crisis in the making” due to rising costs,

Be it resolved that MFBF take the experience of the Dairy Task Force and extend the work and build on its results to reach to other commodities existing within MFBF.

2007-31

Whereas ethanol production has driven up the cost of grain for livestock production,

Be it resolved that MFBF support an affordable grain effort to keep supplies for livestock farmers.

2006-41 *R (2003)

Whereas; since the Farm Viability Program does not accomplish the urgent tasks which were intended,

Whereas; since the Farm Viability Program is being modeled as APR with the same restrictions, the program does not give enough money and has too long restrictions for the farmer to be practiced;

Be it resolved MFBF will work for the granting of more money and have less time committed for farmers.

Be it resolved going back to the original intention of helping farmers modernize or diversify so that the farmers can exist economically in the present time.

FOOD SAFETY

2008-34

Whereas food safety and environmental quality are important to the public, and

Whereas, agriculture is a mainstay in helping to secure that safety and quality,

Be it resolved that Massachusetts Farm Bureau Federation support efforts of the Massachusetts Department of Agricultural Resources, UMass Extension, and commodity groups to help growers adopt Best Management Practices, Good Agricultural Practices, Commonwealth Quality and other similar voluntary programs designed to maintain or improve food safety and environmental quality.

2006-42 *R (1997)

Whereas; cider production is extremely important to the viability of apple producers;

Be it resolved that MFBF work to preserve the right for Massachusetts apple producers to make and sell unpasteurized apple cider.

2006-43 *R (1997)

Whereas; production of fresh unpasteurized cider is an important and needed product of apple producers large and small and has been since colonial times, and;

Whereas; production of fresh unpasteurized cider is a way for producers to utilize substantial portions of the apples grown on the farm, resulting in the ability to stay competitive, and;

Whereas; pressure is being put on this small and needed industry to change its product or warn consumers about E. Coli 0157:H7 concerns that very rarely exist, and;

Whereas; E. Coli 0157:H7 is responsible for 20,000 illnesses and 400 deaths annually in this country and less than 100 illnesses and 1 death have been attributed to unpasteurized cider in the last seven years, and;

Whereas; the majority of the problems associated with E. Coli 0157:H7 are from food stuffs completely unrelated to unpasteurized cider;

Be it resolved that MFBF and AFBF aggressively oppose any rule, regulation or law that would adversely affect a producer's ability to make and or sell unpasteurized cider.

2006-44 *R (1997)

Be it resolved that MFBF work with MADAR and UMass to support a literature review and analysis of scientific data and studies as to the published benefits from drinking cider.

GOVERNMENT ORGANIZATIONS AND FUNDING

2008-35

Be it resolved that Massachusetts Farm Bureau Federation and the American Farm Bureau Federation lobby to decrease 10 acre limit for USDA funding.

2008-36

Be it resolved that Massachusetts Farm Bureau Federation investigate and implement policies which could transfer forestry programs from the Department of Conservation and Recreation to the Department of Agricultural Resources.

2008-37 *R (2002)

Whereas; UMass Extension is in danger of being further reduced in budget and staff;

Be it resolved the Mass Farm Bureau Federation work with the State Legislature and UMass to support the current and future funding and staffing levels of UMass Extension.

2008-38 *R (2002)

Whereas; the Department of Agricultural Resources is in danger of being eliminated;

Be it resolved that Mass Farm Bureau Federation should vigorously work to support the continued existence of this department.

2008-39 *R (2005)

Whereas changes in the upcoming Farm Bill will likely see reduction in dollars going to Ag support and commodity programs, and

Whereas Agricultural Extension and research formula funding has been almost level for several years,

Therefore be it resolved that Massachusetts Farm Bureau Federation and American Farm Bureau Federation work for increases in extension and research formula funding in the next Farm Bill.

2008-40 *R (2005)

Whereas: Massachusetts farmers face increasing development pressures and declining infrastructure support, and whereas Massachusetts is at a critical mass as to FSA office and staff availability,

Be it resolved that Massachusetts Farm Bureau Federation be opposed to any closing or consolidation of FSA and NRCS offices.

2006-14 *R (1997)

Whereas; the University of Massachusetts was established as a land grant university to teach agriculture, and;

Whereas; the university presently is inclined to de-emphasize production agriculture, both in the classroom and in its extension services, and;

Whereas; certain administrators have displayed an insensitivity to budget expenditures;

Be it resolved MFBF encourage enhancement of agricultural offerings by the University of Massachusetts from within the university or cooperatively with other universities in the northeast university programs, and;

Be it further resolved that the university reduce its expenditures, particularly in the areas of administration and direct these monies toward either teaching or tuition reduction.

2006-15 *R (1997)

Be it resolved that MFBF support state budget funding in Executive Office of Environmental Affairs for activities of the state's conservation districts to support Massachusetts agriculture.

2006-16

Whereas the state has been mandated to have conservation districts but the conservation district funding was cut several years ago,

Therefore be it resolved Farm Bureau work to establish state funding to county conservation districts through out the state.

GRANTS AND LOANS

2008-41

Be it resolved that Massachusetts Farm Bureau Federation lobby for inclusion of biomass systems to existing tax incentives and grants for other sustainable energy alternatives.

2008-42

Be it resolved that Massachusetts Farm Bureau Federation and the American Farm Bureau Federation investigate and identify methods to buttress Farm Service and Farm Credit relative to the current and on-going financial down turn and credit crises.

2007-32 *R (2004)

Whereas; Available grants in the state are more closely aligned with conservation practices than farm diversification,

And whereas; Pursuit of state administrated grants in Massachusetts involve a multiple year process, which slows or delays the implementation of desired processes and products on farms within the state.

Therefore be it resolved that MFBF will lobby or work with the Department of Agriculture Resources to streamline the grant application process within the state.

2007-33

Whereas the '08 Federal Farm Bill includes language to support Specialty Agriculture,

Be it resolved that MFBF and AFBF continue support Specialty Agriculture and it's funding in the Federal Farm Bill.

2006-45

Whereas USDA FSA loans are untimely and insufficient for modern business lending,

Be it resolved that Mass Farm Bureau Federation work with this institution to streamline lending and FSA programs.

INSURANCE AND BANKING

2008-43 *R (1996)

Whereas; the legal test for determining whether an employer must pay unemployment tax has been a payroll of \$20,000 in any quarter for many years;

Be it resolved that Massachusetts Farm Bureau Federation take appropriate action to bring this payroll level up to \$40,000 and each year thereafter the amount be corrected for inflation.

2007-34 *R (2004)

Whereas, the current Membership List Purchase Agreement between MFBF and Farm Family Insurance no longer requires MFBF membership as a prerequisite for purchasing Farm Family Insurance past the first year; and whereas, there is the potential for loss of membership in MFBF, especially by Associate members, as a result:

Be it resolved that MFBF continue to work with Farm Family Insurance to strengthen ties and to encourage a stronger bond which either requires membership in MFBF every year or encourages membership in MFBF through insurance discounts or some other incentive for MFBF Members.

2006-46 *R (2003)

Whereas; membership in a group is necessary in order to obtain reasonable rates for health insurance
And Whereas; many MFBF members need to join an additional business group in order to provide health insurance for themselves and their employees,

Be it resolved that MFBF form a health insurance group so as to provide this valuable service to our membership.

2006-47 *R (1997)

Whereas; Farm Bureau members have had to pay increased insurance premiums as a result of employees being injured during the work day but off the job site. Such cases are subrogated against third parties;

Be it resolved that MFBF urge the Massachusetts legislature to change the law so that when full recovery of a workers claim under a workers compensation policy can be made, no experience modification or ARAP charge be made to the employer's policy.

2006-48

Whereas, agriculture and rural communities need greater, more dependable access to competitive, flexible, financial resources in order to compete in a changing global economy;

Whereas, restrictions in the Farm Credit Act prevent Farm Credit institutions from serving a number of businesses that directly impact on agriculture including certain types of farm supply businesses, agricultural processing and marketing businesses and new generation cooperatives, fishing related businesses and sawmills.

Be it resolved that Massachusetts Farm Bureau and American Farm Bureau Federation support policy changes that would provide agricultural producers, commercial fishermen, farm and fishing-related and rural businesses and communities with broader access to financing by the cooperative Farm Credit System.

LABOR

2008-44 *R (2002)

Whereas; there is much confusion on Sunday time and one-half and the Massachusetts Blue Laws seem to be a thing of the past therefore;

Be it resolved that the Massachusetts Farm Bureau Federation work to amend this outdated Blue Law on time and one-half on Sundays, to exempt farm retail operations.

2008-45 *R (2005)

Whereas, the H2A program continues to be important to many growers as their primary source of labor, and

Whereas, needed changes to the H2A program are delayed because these changes are part of larger labor and immigration reform legislation,

Be it resolved that Massachusetts Farm Bureau Federation and American Farm Bureau Federation work to secure needed changes to the H2A program even if comprehensive labor/immigration reforms are not part of the legislation.

2008-46 *R (2005)

Whereas, an important component in H2A/immigration reform deals with the limited amnesty of millions of un-documented workers working in the agricultural industry today, an important element which is necessary in developing a long term solution to this issue.

Further whereas, agriculture desperately needs comprehensive immigration and H2A reform that includes border security and access to legal foreign workers. This reform should not result in a delay in sourcing workers and causing other severe economic consequences to the agriculture industry.

Be it resolved, that American Farm Bureau Federation support Immigration and H2A reform that includes limited amnesty to the present work force and all the other reforms as outlined above.

Further resolve that in any Immigration Reform legislation passed, employers should not be put in the position of being the enforcers of immigration policy.

Further resolve that American Farm Bureau Federation seeks immediate passage of these reforms.

2008-47 *R (2005)

Whereas the legislature of the Commonwealth of Massachusetts is considering an increase in the state's minimum wage, and

Whereas Massachusetts farms are indirectly affected by the minimum wage by having to compete for labor with businesses that must pay the minimum wage,

Be it resolved that Massachusetts Farm Bureau Federation convey to the Massachusetts legislature the effect that increasing the minimum wage has on the Commonwealth's farms, and

Be it further resolved that Massachusetts Farm Bureau Federation investigate the feasibility of having a lower minimum wage for people under the age of eighteen.

2008-48 *R (2005)

Whereas: Some states do not enforce the regulations for all foreign workers.

Whereas: in Massachusetts the regulations are very strict and some regulations go beyond being reasonable for the land owner and it is difficult for the landowner to comply:

Therefore be it resolved that Massachusetts Farm Bureau Federation work with American Farm Bureau Federation to help in proper regulations. All States should be required to comply with Federal regulations. The federal law on H2A and non US citizens should be applied the same in all states.

2007-35 *R (1998)

Whereas; the AFBF is on record for change in the current H2A labor program because of its many problems that persist for Massachusetts and New England producers, and;

Whereas; there is presently activity in Washington to amend and change the current H2A labor program;

Be it resolved that MFBBF work comprehensively with the Massachusetts Congressional Delegation and the New England Apple Council to enlist their support for this change.

2007-36 *R (2004)

Whereas, an adequate supply of offshore labor is necessary for the continuance of a profitable and viable agriculture,

Be it resolved that MFBF and AFBF support the creation of a multi-sector temporary guest worker program that includes agriculture, but only if its requirements are no more stringent for one sector than another.

Be it further resolved that we oppose:

- a) Requiring employers to pay more than the prevailing wage rate for a particular occupation and region, if required to pay above the Fair Labor Standards Act minimum;
- b) Requiring housing or transportation, or the hiring of domestic workers after the contract period has begun;
- c) Placing a limit on the number of temporary worker visas that may be issued, or guaranteeing payment of any fraction of the temporary workers' pay for work that has not been performed;
- d) Expanding the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) to employers of agricultural temporary workers or otherwise providing those workers with a private right of action in state or federal court; and
- e) Applying any labor law that does not currently apply H2A visa workers.

Be it further resolved that MFBF recommend to AFBF that policy pertaining to the H2A program within the **IMMIGRATION 84** policy should be categorized in the AFBF policy book under **FARM LABOR 136**.

2007-37

Whereas the cost of agricultural labor continues to rise; and

Whereas the Massachusetts state legislature has voted to increase the minimum wage, and

Whereas the agricultural exemption for state unemployment insurance remains at \$80,000 per year or \$20,000 per quarter,

Be it resolved that Massachusetts Farm Bureau work to increase the agricultural exemption for the state unemployment insurance to \$120,000 per year, and

Be it further resolved that Massachusetts Farm Bureau work to eliminate the quarterly exemption cap, and only have a per year cap on the exemption.

2006-49 *R (2003)

Whereas; retail farm store employees who work less than 40 hours per week but who do work on Sunday are required to be paid overtime for those Sunday hours, and;

Whereas; garden centers are exempt from these provisions;

Be it resolved that MFBF work towards exempting retail farm store employees from overtime for any work week in which an employee has worked less than 40 hours, regardless of which day of the week that employee has worked.

LAND PRESERVATION & TRUSTS

2008-49

Whereas many towns have purchased land using Land Bank or CPA funding which all carry state matching funds,

Whereas the reason for purchase of these lands was to limit development; and
Whereas the language in the Articles at Town Meeting include the term “Passive Recreation” and may not specifically include “Agriculture”; and
Whereas many towns like to license these lands for agricultural use,

Be it resolved that Massachusetts Farm Bureau Federation work towards legislation to include agricultural use on lands purchased with intent of “Passive Recreation” and/or “Open Space”.

2006-50 *R (1997)

Whereas; farms are changing;

Be it resolved that MFBF work to build a bridge between land trusts and farms interested in keeping their land open and available for farming.

LOCAL ISSUES

2008-50

Whereas; outdoor wood boilers are important to rural residents and farmers for safe and affordable heat;

Be it resolved that Massachusetts Farm Bureau Federation oppose any regulation limiting seasonal use and unreasonable setback requirements.

2007-38

Whereas there is increasing interest among our state’s farmers with intent to install wind turbines; and

Whereas there is considerable confusion and delay during the permitting/application process as town and city boards and officials struggle to handle these projects,

Be it resolved that MFBF work closely with state government to develop minimum state standards for wind turbine siting and installation as a guide to town and city governments to allow for quicker processing of these applications, and

Be it further resolved that MFBF continue their efforts to provide documentation that these installations are a farmer’s right when they are used as farm equipment.

2007-39

Be it resolved that Mass Farm Bureau support H842 or any other proposal of the same intent, requiring local town boards and commissions to submit an agricultural impact statement for any regulation which might affect agriculture.

2007-40

Be it resolved that MFBF support efforts to limit or prevent local towns efforts to unduly regulate or prohibit the use of outdoor wood burning furnaces, remove local enforcement, and take into account future technical developments within the industry.

MARKETING & FARM SIGNS

2008-51

Be it resolved, that Massachusetts Farm Bureau Federation will work to have a USDA slaughter facility constructed and operated in Southeastern Massachusetts.

2008-52

Whereas Farmers Markets are increasingly important for net agricultural income, and

Whereas lawyers are paying increased attentions to farmers markets and the farmers who attend those markets,

Be it resolved that Massachusetts Farm Bureau Federation pursue legislation that limits liabilities of farmers markets and farmers who attend those markets to one of gross negligence as now exists for PYO farms.

2007-41 *R (1998)

Whereas; farm signs telling what products are for sale are a need but some towns are restricting or banning signs;

Be it resolved that Farm Bureau work for adequate signage for farms.

2007-42 *R (1998)

Be it resolved that MFBF will express to the Commissioner of Agriculture the need for him to convince the supermarket chains to support local agriculture.

2006-51 *R (1997)

Whereas; producers of small livestock, poultry and exotic species have limited access to markets and processing facilities;

Be it resolved that MFBF investigate the feasibility of developing a cooperative processing and marketing facility.

2006-52

Whereas the number of custom and USDA slaughterhouses in Massachusetts and neighboring states continues to decline,

Be it resolved that Massachusetts Farm Bureau work with County Farm Bureaus to establish Livestock Commodity Committees to work in conjunction with similar groups and associations to:

Encourage the establishment of new livestock processing facilities in parts of the state which currently need them; and

Encourage the orderly shipment of product to these facilities to ease the seasonal glut which jeopardizes their economic viability.

2006-53

Whereas: We all agree that the promotion of local agriculture through the efforts of the four “buy local” programs (Community Involved in Sustaining Agriculture (CISA), Southeast Massachusetts Agricultural Partnership (SEMAP), Berkshire Grown and Essex County Buy Local) has benefited farmers and consumers throughout the Commonwealth,

Be it resolved that Massachusetts Farm Bureau will work to secure funding and provide support to these local efforts.

2006-54

Whereas, the Massachusetts State Building at the Big E has been a venue to showcase Massachusetts agriculture, and

Whereas, the various farm commodity groups work as non-profits with volunteer labor, and

Whereas, in the case of the Massachusetts Dairy booth, much of the revenue is gifted to worthy programs, such as the Massachusetts 4-H Dairy,

Be it resolved that the Massachusetts Department of Agriculture should continue to make space available to Massachusetts farm commodity groups in the Massachusetts State Building at no charge, and

Be it further resolved that the Massachusetts State Farm Bureau works to this end.

2006-55

Whereas the number of wineries in Massachusetts has grown from seventeen to twenty seven in the last two years,

Whereas wine grapes and fruit wines represent among the highest value-added agricultural products,

Whereas almost all farm wineries are family owned businesses, and

Whereas the moderate consumption of wine in conjunction with family meals is increasingly understood to be part of a healthy and happy lifestyle,

Be it resolved that the Massachusetts Farm Bureau initiate legislation to create a Massachusetts Wine Council which will represent the interests of all Massachusetts wineries and grape and fruit growers. Among its goals will be the education of the legislature and public and to seek enlightened measures to promote this vital, rapidly growing segment of Massachusetts agriculture.

2006-56

Whereas farm gate prices are the same as in the 1970's and 80's for many agricultural commodities, and the cost of producing these goods is increasing tremendously and;

Whereas buyers are beginning to realize the advantages of buying local as opposed to subsidized long distance transport of these same commodities;

Be it resolved that Massachusetts Farm Bureau educate consumers on the true (real) price of food and its cost of production.

PEST MANAGEMENT

2008-53

Whereas; there has been a serious infestation of the Asian Longhorn Beetle in Worcester County, which can be very devastating to the maple sugaring and timber harvesting industry in Massachusetts;

Whereas; this infestation was caused by products being received from China or other Asian countries on untreated wood pallets or wood products;

Be it resolved that Massachusetts Farm Bureau Federation work on legislation to protect Massachusetts from further outbreaks of this infestation, by prohibiting the use of untreated wood pallets from other countries that we know have the Asian Longhorn Beetle.

Be it further resolved that Massachusetts Farm Bureau Federation work with American Farm Bureau Federation to strengthen inspections on wood products coming from these and other countries to protect the US forest resources.

2008-54 *R (1996)

Whereas; pesticides, herbicides and other pest controls that are no longer used or effective, and;
Whereas; the illegal disposal or dumping of such chemicals become a hazard to our environment, and;
Whereas; the cost of disposal by individual is prohibitive;

Be it resolved that Massachusetts Farm Bureau Federation work with the proper state agencies to have a general amnesty for the purpose of the proper disposal of these chemicals.

2008-55 *R (1996)

Whereas; pesticides are an essential tool of modern agriculture, and;
Whereas; farmers' use of these pesticides is regulated by a *Pesticide Board*, and;
Whereas; there being only one farmer on the Board, regulation without representation is no more acceptable than taxation without representation, and;
Whereas; converting Massachusetts into one gigantic urban sprawl, an inevitable consequence of the present Board's actions, will be a monumental environmental disaster;

Be it resolved that Massachusetts Farm Bureau Federation work for the appointment of members who shall be unbiased and objective and will include competent scientists from relevant fields and an equal number of farmers.

2008-56 *R (2005)

As the deciduous forests, mostly maple, oak, and ash, in many parts of Massachusetts have been infested with insect pests for the past few years, which could have dire economic effect on the Mass. Maple sugar industry, tourism, and the harvesting of quality forest products,

Be it resolved that the Mass Department of Conservation and Recreation and the Department of Agricultural Resources institute a spray program, (similar to the State of Vermont's) to eradicate these pests on both private and state lands.

2007-43 *R (1998)

Whereas; the use of pesticides are under attack from concerned citizens and the DEP;

Be it resolved that MFBB continue to support and increase efforts to promote IPM research and implementation.

2007-44 *R (1998)

Whereas; there is currently much confusion in pesticide labeling resulting in reduced productivity and lost time to the grower;

Be it resolved that MFBB work with AFBF to develop standardized labeling, including particularly a requirement that the EPA number and re-entry interval of each substance be printed in legible type size directly below its name.

2007-45 *R (2004)

Whereas, the Integrated Pest Management (IPM) Program at the University of Massachusetts at Amherst has achieved great success in reduction of pesticide use and development of effective alternative crop protection tools for both agricultural community and the homeowner; and whereas, funding by the state of

Massachusetts has been severely diminished resulting in insufficient funding for research, education and promotion of IPM, as well as the implementation of the Children and Families Protection Act:

Be it resolved that the Massachusetts Farm Bureau Federation support sufficient state budgetary expenditures relating to such research and that its funding be directed to the Department of Agricultural Resources with necessary IPM funding being passed through (DAR) to UMASS Amherst Cooperative Extension Service.

Be it further resolved that MFBF favor repealing the sales tax exemption for retail sales of pesticides and fertilizers as one means of generating revenue for this funding.

2007-46 *R (2004)

Whereas, the Commonwealth of Massachusetts currently has an effective structure in regulating and overseeing the registration and use of pesticides administered by the DAR and the state Pesticide Board.

Be it resolved that MFBF support the continuation of the regulatory structure in place for the administration of any and all pesticides and their sales, storage, and applications in the Commonwealth.

2006-57 *R (1997)

Be it resolved that MFBF should continue to promote affordable and economical programs for disposing of unused or outdated pesticides.

POLICY AND ORGANIZATION

2008-57 *R (1999)

Whereas; The cultivation and sale of Farm Bureau membership is essential to the survival of Farm Bureau, and;

Whereas; Interaction with Massachusetts Farm Bureau Federation staff is a benefit that current members need and deserve, and;

Whereas; Other agricultural commodity organizations have members who are not members of Farm Bureau;

Be it resolved: That in an effort to meet our memberships' needs and to generate new membership, Massachusetts Farm Bureau Federation will exhibit at least five (5) agricultural commodity trade shows or meetings.

2008-58 *R (1996)

Whereas; Farm Bureau members are representative of the farm community and are both producers and consumers of farm products;

Be it resolved that Massachusetts Farm Bureau Federation encourage the use of Massachusetts farm grown or produced products in season at all Massachusetts Farm Bureau Federation functions.

2008-59 *R (2005)

Whereas: Membership retention and growth is essential to Farm Bureau effectiveness,

And, whereas many long-time members are upset by tardy mailing of membership cards, electronic communications, incorrect inclusion on unpaid lists, unnecessarily curt wording of cover letters, and other deficiencies in the membership system,

Be it resolved that the Massachusetts Farm Bureau Federation staff and Membership Committee redouble its efforts to insure that these problems are rectified promptly and do not recur.

2008-60 *R (2005)

Whereas the availability of accounting services with an agricultural background are both expensive and of limited availability, and

Whereas the sophistication and complexity of tax and accounting laws represent an oppressive burden to the beginning farmer;

Be it resolved that Mass Farm Bureau explore the possibility of offering entry and beginning farms access to accounting and financial counseling resources.

Further let it be resolved that Massachusetts Farm Bureau Federation investigates an alliance with the Farm Bureaus in other northeastern states for the purpose of instituting such a plan or service.

2007-47 *R (1998)

Be it resolved that MFBF take the lead in coordinating and unifying the promotional, educational and political goals of all agricultural groups in Massachusetts.

2007-48

Whereas, MFBF is the largest and most respected agricultural trade organization in Massachusetts,

Be it resolved that MFBF move to energize its Government Affairs Committee; and

Be it Further Resolved that MFBF look to improve membership participation in the political process.

2006-58 *R (2000)

Whereas; the problems of Agribusiness in Massachusetts can arise quickly and at any time,

Be it resolved that qualified staff person from Massachusetts Farm Bureau Federation (MFBF) be available in the MFBF office or on call during all normal MFBF business hours.

2006-59 *R (1997)

Whereas; agriculture is increasingly at odds dealing with differing regulations and definitions;

Be it resolved that MFBF work to create a uniform definition of *farms* and *farming* so that local and state statutes are compatible.

2006-60 *R (1997)

Whereas; many MFBF members have had positive legal precedent setting law cases and decisions;

Be it resolved that members be encouraged to file these crucial helpful precedents in the MFBF office where they are available to other members and their attorneys in dire need of this vital information.

2006-61 *R (1997)

Whereas; the young farmer is the next generation to continue business;

Whereas; this same farmer will have to be increasingly aware of and involved in the politics of the trade;

Be it resolved that MFBF continue to promote, support and encourage the young farmers' and ranchers' program.

2006-62 *R (1997)

Whereas; the continuing urbanization of Massachusetts has put our farmland in jeopardy, and;
Whereas; we feel strongly that public policy should be protecting our rights as farmers is of the utmost importance;

Be it resolved that MFBF work towards strengthening the right-to-farm policy of the Commonwealth.

2006-63

Whereas, We the farming community of Massachusetts have elected a new Governor and his website does include agriculture for one of his “working groups” as part of his administration transition process.

Be it resolved: that the Massachusetts Farm Bureau make a request to Deval Patrick to form a “working group” to address issues that face agriculture in Massachusetts and include this said group on his new website patrickmurrytransitions.org so individuals can make suggestions and or comments for the new administration.

Be it further resolved: that the Massachusetts Farm Bureau make every effort to educate our new governor and his staff concerning the current state of affairs of the Dairy Industry in Massachusetts. That MFBF set up a time to meet with Deval Patrick and the dairy farmers of Massachusetts to discuss urgent issues that they face.

2006-64

Whereas county farm bureaus and agricultural commissions are changing and becoming less of a nucleus for social and grassroots organizing,

Be it resolved that County Farm Bureau create yearly “Open Barn” meetings/gatherings/Information sessions/Round Tables to inform and collaborate with members and potential members in the community.

2006-65

Whereas, MFBF dues have been at the same level for several years,

Be it resolved that associate dues be increased to \$60 and regular dues be increased to \$180.

2006-66

Whereas Farm Bureau needs and desires new members,

Be it resolved that Mass Farm Bureau Federation explore and solicit grants and fund-raising possibilities for marketing, and assisting Mass Farm Bureau Federation policies and programs locally and statewide.

2006-67

Whereas numbers of farms are dropping, and every current existing and potential farm becomes more important,

Be it resolved that Massachusetts Farm Bureau create/implement marketing devices to facilitate retention and recruitment.

2006-68

Where as FB membership & Directors are increasing in years (avg. age)

Be it resolved that every MFBF County Farm Bureau seek out one/more young farmer Farm Bureau person to be placed on their board and encourage and/or entice the Young Farmer to participate locally and statewide.

PRIVATE PROPERTY RIGHTS

2008-61

Whereas; nuisance suits are becoming larger issues to farms across the Commonwealth we wish to propose protecting the rights of farmers;

Whereas; nuisance suits have no legal basis, but still must be defended against, they impose a crippling financial burden on the farmer. Presently there is no accountability for the person(s) filing illegitimate nuisance suits;

Whereas, this resolution will safeguard good agricultural practices against the misuse of nuisance suits,

Therefore be it resolved: if a finding is in the farmer's favor, the person filing the nuisance suit shall pay all legal costs and treble damages for both federal and state suits.

2008-62

Whereas there is an increase by state and local agencies to regulate agriculture,

Be it resolved that Massachusetts Farm Bureau Federation work towards the re-file of legislation of 1990, 30A Section 18.

2008-63 *R (2002)

Whereas; local boards of health are granted statutory emergency powers, not subject to review by other boards and commissions within the cities or towns;

And Whereas; many of the issues confronted by the board of health are often the result of neighborhood disputes;

And Whereas; the action taken by the board may result in negative impacts for the whole city or town while attempting to address a site-specific issue;

Therefore be it resolved that Massachusetts Farm Bureau Federation encourage its members to cultivate a relationship with local boards of health personnel, to know what's going on relevant to the activities of the board and to insure that a balanced approach may be undertaken and implemented in dealing with issues within the purview of the board of health.

Be it further resolved that Mass Farm Bureau Federation work to have Public Health Regulations fall under the review of the Attorney General.

2007-49 *R (1998)

Whereas; it is recognized that a system of independent, land-owning farmers has been a hallmark of this nation and has been enormously successful in providing all of its agricultural needs, and;

Whereas; it is recognized that land and water are fundamental to the conduct of all agricultural endeavors, and;

Whereas; it is further recognized that there is an increasing tendency today to restrict or deny farmers their historical use of these vital resources;

Be it resolved that the MFBF endorses as a fundamental right of all farmers the right of private property ownership of land and of water resources, to wit:

- The right to restrict access to private property;
- The right to protection of their herds, flocks, crops, pastures, timber, orchards and other agricultural products of the land from damage or destruction by vandals, trespassers, thieves, animal predators or pests.
- The right to unobstructed use of their land for reasonable or customary agricultural purposes;
- The rights of riparian ownership or use of groundwater for reasonable or customary agricultural needs;
- The right to sell or convey their property;
- The right to protection from unlawful seizure or taking of their property;

Be it further resolved that MFBF will pursue an active program to defend and promote these rights for all farmers, and;

Be it finally resolved that these policies become policy of AFBF.

2007-50 *R (2004)

Whereas, the Massachusetts Farm Bureau supports the protection of private property rights and land use opportunity;

Be it resolved the Massachusetts Farm Bureau Federation specifically opposes National Park Service administration and or involvement in the M & M Trail and the creation of a national forest of any sort in Massachusetts.

2006-69 *R (1997)

Whereas; many times eminent domain settlement does not reflect true losses suffered by farmers whose land has been taken;

Be it resolved that MFBF work to have “multiple damages” awarded in cases of hardship to farmers.

2006-70 *R (1997)

Whereas; there is a continuing erosion of “private property rights” by the imposition of burdensome government regulations;

Be it resolved that MFBF file state legislation that would define “taking”, under these regulations, to be a reduction or decrease in value of 25% or \$10,000 of value.

2006-71 *R (1997)

Whereas; land, its ownership and its traditional rights and privileges are the basic building blocks of all agricultural endeavors and;

Whereas; this land and the buildings thereon are the financial cornerstone and security as well as the farmer’s domain and base of operations and;

Whereas; this ownership and its rights are protected by the constitution of the United States to be invaded only if required by the public health and welfare and then only with fair restitution to the owner;

Be it resolved that MFBF and AFBF take whatever action necessary to show progress to counter the continual erosion of these rights by laws and regulations at town, county, state and federal government levels without consideration of these constitutional guarantees and particularly restitution of the financial loss to the owner by these takings. The amount of these damages to be arrived at as any other governmental annexation.

PUBLIC RELATIONS

2007-51 *R (1998)

Whereas; agriculture does not always receive positive media coverage, and;
Whereas; farmers are often placed on the defensive;

Be it resolved that MFBF do more work with public relations to give agriculture a more positive image.

RATITES

2007-52 *R (1998)

Be it resolved that *ratites* (ostrich, emu & rhea) raised for commercial purposes be included in the definition of agriculture and farming in all relevant sections of Massachusetts law and regulations;

Be it further resolved that *ratites* raised for commercial purposes be removed from the authority with the Division of Fisheries and Wildlife and placed under the authority of the Department of Agricultural Resources.

TAXES, ASSESSMENTS AND FEES

2008-64

Whereas; farms are heavily burdened with property taxes, as well as sales taxes on the many products they need to purchase for new or repairing of agricultural structures;

Be it resolved that Massachusetts Farm Bureau Federation work to have property taxes delayed for ten (10) years on new agricultural structures, at which time they then would be assessed at a ten year depreciated value.

Be it further resolved that all agricultural building materials be exempt from sales tax.

2008-65

Whereas; some neighboring states are exempting their farmers from sales tax on farm trucks;

Be it resolved that Massachusetts Farm Bureau Federation work to have the sales tax removed on farm trucks that can be registered with farm plates.

2008-66

Property taxes on agricultural buildings

Whereas; farm buildings are assessed at full commercial rates, and

Whereas; much of the square footage of many of these structures is used for unique agricultural practices for short seasonal periods of time,

Be it resolved that the Massachusetts Farm Bureau Federation will petition the state to instruct town and city assessors to not only create a reduced agricultural rate for farm buildings, but will also pro-rate the assessment according to the "time in use".

2008-67 *R (2002)

Whereas; a deficit budget is forecast and the Commonwealth will be looking to raise taxes,

Be it resolved that the Massachusetts Farm Bureau Federation recommends against an increase in all taxes and against a resumption of the inheritance tax.

2008-68 *R (1996)

Whereas; much confusion exists over the taxation of different types of horse operations;

Be it resolved that all commercial horse operations be classified as agricultural enterprises and that they enjoy the same tax exemptions as other agricultural enterprises.

2008-69 *R (2002)

Whereas; public land is for use by the public, and;

Whereas; the farm community uses this land for growing of feed and crops, and;

Whereas; public land cannot be developed or improved by the farm community, and;

Be it resolved: the Massachusetts Farm Bureau Federation work with the Department of Revenue, Inspector General's Office and cities and towns to exclude farmers from paying property taxes on public land or, as an alternative, the value of the land be based on use value.

2007-53 *R (1998)

Whereas; income tax is still levied against income on land taken by eminent domain;

Be it resolved that the income tax on land taken by the state in eminent domain proceedings be eliminated.

2007-54 *R (1998)

Whereas; the Chapter 61A program has been important to Franklin County and Massachusetts farmers, and;

Whereas; there is consistent pressure from town assessors and revenue department personnel;

Be it resolved that MFBF continue to support the per acre land value recommendations provided annually by the Farmland Evaluation Advisory Commission relative to 61A values.

2007-55 *R (1998)

Whereas; owners of land parcels of less than five acres are ineligible for tax relief under Chapter 61A, and;

Whereas; many such owners or their leasees make honest livings in agriculture by combining many such parcels into a single operation, and;

Whereas; in municipalities which have adopted property tax classification, such parcels are taxed at the *commercial* rate which exceeds even that of *residential* land;

Be it resolved that MFBF:

- Continue its efforts to have such small parcels as are actively used in productive agriculture be covered by Chapter 61A, or;
- Seek legislation stipulating an additional classification called *agriculture*;
- Seek legislation mandating the classification of land actively used for agricultural purposes as *open space*.

2007-56 *R (1998)

Whereas; the keeping of bees is an important entity to all of agriculture and provides the consuming public with a safe, wholesome, natural sweetener, and;

Whereas; the raising, keeping, stabling and breeding of horses, ponies and all members of the equine species is important to the agricultural infrastructure and the preservation of open space;

Be it resolved that MFBF take appropriate action to implement and apply the agricultural exemptions granted under M.G.L. Ch. 64H and I to all of agriculture.

2007-57 *R (2004)

Whereas, property values throughout the Commonwealth, especially in the southeastern portion, have increased dramatically in the past three years,

And whereas local assessors have in some cases, sharply increased the value of farms, often violating both the spirit and the letter of Chapter 61 and Chapter 61-A,

Be it resolved that Massachusetts Farm Bureau staff continue its excellent work, both through intervention on behalf of individuals and through seminars, in protecting our members, and sustaining existing laws which protect farmland from unfair taxation.

2007-58 *R (2004)

Be it resolved MFBF supports the implementation of a fair tax system including an exploration of the IRS present legal basis used to determine the taxable income of US citizens.

2007-59

Whereas, energy is the largest agricultural input, and

Whereas, anything we can do to promote alternative fuels will enhance profitability and help the environment;

Be it resolved that the MFBF and AFBF work to remove both the federal and state taxes from bio-fuels when used on a farm, or when used for the transportation of agricultural products by a farm.

2007-60

Whereas personal property taxes represent a substantial annual expense to agricultural businesses in Massachusetts, and

Whereas citizens of the Commonwealth have generally supported providing tax relief for agriculture,

Be it resolved that MFBF explore avenues to provide relief from personal property taxation on farm equipment and inventory.

2006-72 *R (2003)

Whereas; the finances of farms are such that attracting customers with reasonable prices is important to the continuation of the farm, and;

Whereas; the tax burden on the citizens of the Commonwealth is already high;

Be it resolved the Massachusetts Farm Bureau will work diligently to prevent the Commonwealth of Massachusetts, or any Massachusetts city, town, or village to collect any visitor impact fee for any event organized and sponsored by any Massachusetts non-profit organization or agricultural enterprise.

2006-73 *R (2003)

Whereas; a tax-exempt or non-profit status is granted to alleviate certain financial burdens, and;

Whereas; a tax-exempt or non-profit organization may sell assets that may be of high value or that may provide open space,

Be it resolved that if any church, synagogue, school, college, university, or non-profit organization sells any real estate of which they have paid no property tax, that they be subject to the tenets of chapter 61, 61A and 61B regarding repayment of back property tax and that the city, town, or village have the right of first refusal to purchase the real estate for a period of 120 days.

2006-74 *R (2003)

Whereas; the vast majority of farms and businesses in Massachusetts are family owned and operated; And State laws supporting Medicaid have made passing on of property and the family farms and businesses more difficult or impossible for those with limited insurance because of liens requiring repayment to Medicaid, And passing on of the farms and businesses is necessary to support agriculture as it is currently practiced in the commonwealth.

Be it resolved: Massachusetts Farm Bureau devote resources to ensuring through legislation or other means that the farm and businesses may be passed on to future generations, without presenting an undue financial hardship to succeeding generations.

2006-75 *R (2003)

Whereas; the State, tax exempt and non profit organizations own land and sell forest products yearly,

Be it resolved to allow the collection of an eight percent stumpage fee from the sale of forest products sold from land owned by the State of Massachusetts, and by tax exempt and non profit organizations.

2006-76 *R (2003)

Whereas; wildlife attacks on farm livestock is an increasing problem, it has become a necessity to use firearms to protect animals and people; Whereas; The State of Massachusetts has imposed a \$100 fee every four years on Firearm Identification cards to raise revenues for the commonwealth; Whereas; this is an excessive tax and farmers get no benefit from this expense,

Be it resolved that MFBB support legislation making FID fees a one-time fee.

2006-77 *R (2003)

Whereas; since farmers have been the backbone of the State of Massachusetts since colonial days. In today's world many of their farm buildings are not practical for their current purpose; Whereas; since the farm houses and building have to be renovated, change structure, or rebuilt in order for farmers to exist on their farms;

Be it resolved that MFBB, encourage a formation of a government program that farmers may secure low interest loans for buildings so that farmers can operate successfully.

2006-78 *R (2003)

Whereas; the value of farm houses has risen in the exploding real estate and building demand, and the taxes on houses, farm buildings and farm retail operations has exploded even more, and Whereas; Farmers have invested for generations of their families keeping open space while toiling on the farm, and Whereas; In many cases farmers cannot afford to live in their own farm house because of higher taxes on their house forced by the demand of the land values in our farming communities.

Be it resolved that it be a priority of MFBB to work aggressively to place farm houses and buildings at a true agricultural value as a necessity for the operation of the farm.

2006-79 *R (2003)

Whereas; there are significant legal questions with regard to the way the IRS is applying the Income Tax code,

And Whereas; the tax code is incredibly cumbersome and expensive to adhere to,

Be it resolved that MFBF supports the implementation of a Fair Tax system.

2006-80 *R (2000)

RE: Interest, Dividends, and Capital Gains.

Our family farms in Massachusetts are struggling to keep in existence. It is important for all of our Massachusetts citizens to protect this open space, environmental quality and resource and local food supply for all the people.

One way of keeping agriculture is for working farmers to be taxed fairly on their Massachusetts income tax form. Many farmers have invested money conservatively to help through times such as at present with record low commodity prices. Farmers are not allowed to offset losses from the farm with interest, dividends and capital gains. These columns are taxed separately. This is unfair for farmers and only will result in their demise as they are forced to liquidate assets.

To keep agriculture going a farmer should be able to use all sources of revenue to pay the expense of his farm losses.

2006-81 *R (1997)

Whereas; state-wide there are inconsistencies in real estate valuations;

Be it resolved that MFBF act to encourage whatever action is necessary to tax silos and feed storage units as farm machinery and equipment and;

Be it further resolved to take whatever actions necessary to have land values assessed consistently according to Chapter 61A guidelines.

2006-82 *R (1997)

Whereas; many farms have business zoned land and where farm buildings in business zones are often included with the same tax rate for commercial and industrial buildings;

Be it resolved that MFBF work to have the lowest tax classification rate for small or farm businesses in business zoned land.

2006-83 *R (1997)

Whereas; farm buildings are often assessed at valuations far above their agricultural values;

Be it resolved that MFBF work to establish a mechanism for fair valuation of farm buildings, similar to the Farmland Assessment Act.

Be it resolved that MFBF express to the Department of Revenue the necessity of educating said officials and the public about the Chapter 61A process.

2006-84

Whereas, the farm animal, machinery excise tax is implemented inconsistently across the Commonwealth and is burdensome to many agricultural producers,

Be it resolved that MFBF explore options to reduce these burdens on communities and producers.

2006-85

Whereas the M.G.L. Chapter 59, Section 5, Clause 45 grants an excise tax exemption to renewable energy systems for 20 years, and whereas many of these systems have a useful life of over 30 years,

Be it resolved that MFBF will work to change the language of the above law from “20 years”, to the “useful life of the system”.

2006-86

Whereas government grants are taxed as normal income;
Whereas this is effectively taxing taxes;

Be it resolved that Mass Farm Bureau work to eliminate state and federal tax on these funds.

2006-87

Whereas, Thru the Paperwork Reduction Act the Congress required that all official government forms are mandated to have an OMB number. There are two basic forms used by government agencies to request an OMB number. One form’s criteria is for Proposed Information Collection-the form IRS inappropriately used for their 1040 request. This application has IRS’s statement that no legal requirement exists, so how can IRS pursue taxpayers who may not file and pay taxes based on the 1040 form? IRS’s request should have used the form needed to establish the legality and mandated use of the information to generate taxes from US citizens. This form requires the listing of laws/regulations which mandate the 1040 uses. IRS, Treasury and OMB have refused to discuss this issue with individuals, so we need group action.

Therefore, be it resolved that MFBF meet with responsible decision makers to determine how IRS has been allowed to continue this apparent illegal use of the 1040 returns.

TRESPASS, VANDALISM AND DESTRUCTION OF FARM PROPERTY

2007-61 *R (1998)

Whereas; Massachusetts livestock producers and handlers have an exemplary record of providing efficient and humane care, and;

Whereas; after a 2 and 1/2 year study, the report of the Farm Animal Welfare Study Committee, which consisted of representatives of Animal Rescue League, Massachusetts Veterinary Medical Association, Massachusetts Society for the Prevention of Cruelty to Animals, Massachusetts Farm Bureau and industry representatives agree that there exists no evidence of abuse or neglect on farms in Massachusetts;

Be it resolved that MFBF continue its aggressive program of promoting agriculture’s image, and;

Be it further resolved that MFBF vigorously oppose and urge prosecution of those animal rights groups and individuals who, by criminal trespass and vandalism, seek to damage and destroy the image of livestock agriculture.

ZONING

2008-70 *R (2002)

Whereas; the Commonwealth of Massachusetts is concerned about the affordability of housing, and
Whereas; the Commonwealth of Massachusetts is also concerned about agriculture and open space,

Be it resolved that all housing proposals under MGL Chapter 40B shall require a one hundred (100) foot buffer zone from any adjoining property line of property that is used for agriculture, open space, or that has a conservation, forestry, or agricultural restriction,

Be it resolved that there shall also be a fence installed on the property line to safely keep any young children from coming into the agricultural area where they may become injured.

Also be it resolved that such buffer zones shall be planted in evergreen type shrubs to help reduce noise, dust, and or any odors from reaching the housing development.

2008-71 *R (1999)

Be it resolved that Massachusetts Farm Bureau Federation prepare a reference document examining zoning bylaw, and other regulatory issues, concerning farm related businesses. These issues include agricultural tourism, farm vacations, and recreational activities, on farm entertainment, processed products and related farm occupations.

2008-72 *R (2005)

Whereas there are efforts being made to change the way zoning and/or planning boards operate in the Commonwealth,

Be it resolved that Massachusetts Farm Bureau Federation work to fight against any legislation that would:

- Do away with “form A” applications
- Change the passage of zoning/planning by-laws from 2/3 to simple majority
- Do away with attorney general oversight on by-law and regulation passage.

2006-88 *R (2000)

Whereas; Chapter 61A provides for specific use of land for a residence for the owner or a parent, grandparent, child, grandchild, or brother or sister of the owner, or the surviving husband or wife of any deceased such relative, or for living quarters for any persons actively employed full time in the agricultural or horticultural use of such land;

Whereas; this provision of the State Law is used as an incentive to keep land in agricultural use and therefore open space;

Whereas; The Cape Cod Commission Act has been interpreted by its enforcers to usurp the section of Chapter 61A intended to allow for division of property for a residence as stated above without first meeting their demands for set-asides for open space, affordable housing, etc., and

Whereas; The threshold for mandatory referral to the Commission by the Town Planning Board is division of any land contiguous including non-developable land (wetlands) of presently 30 acres and being considered to be lowered to 10 acres;

Therefore, be it resolved, that, as with the Wetlands Protection Act, an exemption for owners of land being assessed under Chapter 61A shall be made from the Cape Cod Commission Act and similar regional planning statutes.

2006-89

Whereas there are currently significant town, county and state efforts to change local zoning regulations to decrease allowable lot densities (also known as “down-zoning”), and

Whereas there are significant changes being proposed to Massachusetts General Laws Chapter 40A that propose the elimination of ANR (approval not required) lots and increase allowable lot sizes and densities, and

Whereas these proposals will reduce the asset value of forest farmland without compensation to the owners,

Be it resolved that MFBF opposes the concept of down-zoning and will work actively to assure that any and all changes to local, regional, or state laws that reduce the value of an agricultural landowners' property or diminish his rights are only for significant and legitimate public health, safety or welfare reasons.

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H

Supreme Court of the United States
MONSANTO CO. et al.,
v.
GEERTSON SEED FARMS et al.

No. 09-475.
Argued April 27, 2010.
Decided June 21, 2010.

Background: Conventional alfalfa growers and environmental groups brought action against company that developed genetically-altered “Roundup Ready Alfalfa (RRA)” plant and Department of Agriculture, which through the Animal and Plant Health Inspection Service (APHIS), had deregulated the altered alfalfa plant before issuing environmental impact statement (EIS). The United States District Court for the Northern District of California, [Charles R. Breyer](#), J., entered injunction preventing future planting of altered alfalfa until APHIS prepared an EIS. Company appealed. Amending and superseding its prior opinion, [541 F.3d 938](#), on petition for rehearing and rehearing en banc, the United States Court of Appeals for the Ninth Circuit, [Mary Murphy Schroeder](#), Circuit Judge, [570 F.3d 1130](#), affirmed. Certiorari was granted.

Holdings: The Supreme Court, Justice [Alito](#), held that:

(1) owner and licensee of intellectual property rights to genetically-altered alfalfa had constitutional standing to seek review of lower court rulings; (2) conventional alfalfa growers and environmental groups had constitutional standing to seek injunctive relief from complete deregulation order at issue; and (3) district court abused its discretion in enjoining APHIS from effecting partial deregulation and in prohibiting the planting of the altered alfalfa pending agency’s completion of its detailed environmental review.

Reversed and remanded.

Justice [Stevens](#) filed dissenting opinion.

Justice [Breyer](#) did not participate.

West Headnotes

[1] Environmental Law 149E ↪595(1)

[149E](#) Environmental Law

[149EXII](#) Assessments and Impact Statements

[149Ek584](#) Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements

[149Ek595](#) Particular Projects

[149Ek595\(1\)](#) k. In general. [Most Cited](#)

[Cases](#)

In deciding whether to grant nonregulated status to genetically engineered plant variety, Animal and Plant Health Inspection Service (APHIS) must comply with NEPA, which requires federal agencies, to the fullest extent possible, to prepare environmental impact statement (EIS) for every recommendation or report on proposals for legislation and other major federal action significantly affecting quality of the human environment; statutory text speaks solely in terms of proposed actions and does not require agency to consider possible environmental impacts of less imminent actions when preparing impact statement on proposed actions. National Environmental Policy Act of 1969, § 102(2)(C), [42 U.S.C.A. § 4332\(2\)\(C\)](#).

[2] Environmental Law 149E ↪589

[149E](#) Environmental Law

[149EXII](#) Assessments and Impact Statements

[149Ek584](#) Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements

[149Ek589](#) k. Significance in general. [Most Cited Cases](#)

Environmental Law 149E ↪606

[149E](#) Environmental Law

[149EXII](#) Assessments and Impact Statements

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[149Ek606](#) k. Effect of statement or other requirements. [Most Cited Cases](#)

Agency need not complete environmental impact statement (EIS) for particular proposal if it finds, on basis of shorter environmental assessment (EA), that proposed action will not have significant impact on the environment; even if particular agency proposal requires EIS, applicable regulations allow agency to take at least some action in furtherance of that proposal while EIS is being prepared. National Environmental Policy Act of 1969, § 102(2)(C), [42 U.S.C.A. § 4332\(2\)\(C\)](#); [40 C.F.R. §§ 1506.1\(a\), c\), 1508.9\(a\), 1508.13](#).

[3] Federal Civil Procedure 170A **103.2**

[170A](#) Federal Civil Procedure

[170AII](#) Parties

[170AII\(A\)](#) In General

[170Ak103.1](#) Standing

[170Ak103.2](#) k. In general; injury or interest. [Most Cited Cases](#)

Federal Civil Procedure 170A **103.3**

[170A](#) Federal Civil Procedure

[170AII](#) Parties

[170AII\(A\)](#) In General

[170Ak103.1](#) Standing

[170Ak103.3](#)

k. Causation; redressability. [Most Cited Cases](#)

Standing under Article III of the United States Constitution requires that injury be concrete, particularized, and actual or imminent, fairly traceable to challenged action, and redressable by a favorable ruling. [U.S.C.A. Const. Art. 3, § 2, cl. 1](#).

[4] Environmental Law 149E **656**

[149E](#) Environmental Law

[149EXIII](#) Judicial Review or Intervention

[149Ek649](#) Persons Entitled to Sue or Seek Review; Standing

[149Ek656](#) k. Other particular parties. [Most Cited Cases](#)

Owner and licensee of intellectual property rights to genetically-altered “Roundup Ready Alfalfa

(RRA)” had constitutional standing to seek review of lower court rulings preventing future planting of altered alfalfa until Animal and Plant Health Inspection Service (APHIS) prepared environmental impact statement (EIS); they were injured by their inability to sell or license RRA to prospective customers until APHIS completed EIS, and because that injury was caused by the very remedial order challenged on appeal, it would be redressed by favorable ruling from Supreme Court. [U.S.C.A. Const. Art. 3, § 2, cl. 1](#); National Environmental Policy Act of 1969, § 102(2)(C), [42 U.S.C.A. § 4332\(2\)\(C\)](#).

[5] Injunction 212 **114(2)**

[212](#) Injunction

[212III](#) Actions for Injunctions

[212k114](#) Parties

[212k114\(2\)](#) k. Complainants. [Most Cited Cases](#)

Conventional alfalfa growers and environmental groups had constitutional standing to seek injunctive relief from complete deregulation order relating to genetically altered “Roundup Ready Alfalfa (RRA)”; farmers had established a reasonable probability that their conventional alfalfa crops would be infected with engineered gene if RRA were completely deregulated, substantial risk of that gene flow injured them in several ways that were sufficiently concrete to constitute injury-in-fact and those harms were readily attributable to Animal and Plant Health Inspection Service (APHIS) deregulation decision, and judicial order prohibiting the planting or deregulation of some or all genetically engineered alfalfa would redress their injuries by eliminating or minimizing the risk of gene flow to their crops. [U.S.C.A. Const. Art. 3, § 2, cl. 1](#).

[6] Injunction 212 **9**

[212](#) Injunction

[212I](#) Nature and Grounds in General

[212I\(B\)](#) Grounds of Relief

[212k9](#) k. Nature and existence of right requiring protection. [Most Cited Cases](#)

Plaintiff seeking permanent injunction must satisfy four-factor test before court may grant such

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relief and must demonstrate that (1) it has suffered an irreparable injury, (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury, (3) considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted, and (4) the public interest would not be disserved by a permanent injunction.

[7] Environmental Law 149E ↪700

[149E](#) Environmental Law

[149EXIII](#) Judicial Review or Intervention

[149Ek699](#) Injunction

[149Ek700](#) k. In general. [Most Cited Cases](#)

Traditional four-factor test for granting permanent injunction, which looks at irreparable injury, available remedies, balance of hardships, and public interest, applies when plaintiff seeks permanent injunction to remedy NEPA violation. National Environmental Policy Act of 1969, § 2 et seq., [42 U.S.C.A. § 4321 et seq.](#)

[8] Environmental Law 149E ↪700

[149E](#) Environmental Law

[149EXIII](#) Judicial Review or Intervention

[149Ek699](#) Injunction

[149Ek700](#) k. In general. [Most Cited Cases](#)

District court did not properly exercise its discretion in permanently enjoining partial deregulation of any kind pending preparation by Animal and Plant Health Inspection Service (APHIS) of environmental impact statement (EIS) regarding genetically altered “Roundup Ready Alfalfa (RRA)” plant, as none of the four traditional factors for granting injunction supported district court’s action; most importantly, conventional alfalfa growers and environmental groups could not show that they would suffer irreparable injury if APHIS were allowed to proceed with any partial deregulation. National Environmental Policy Act of 1969, § 102(2)(C), [42 U.S.C.A. § 4332\(2\)\(C\)](#).

[9] Injunction 212 ↪189

[212](#) Injunction

[212V](#) Permanent Injunction and Other Relief

[212k189](#) k. Nature and scope of relief. [Most Cited Cases](#)

District court erred in entering nationwide injunction against planting genetically altered “Roundup Ready Alfalfa (RRA)” plant; because it was inappropriate for district court to foreclose even possibility of partial and temporary deregulation, it necessarily followed that it was likewise inappropriate to enjoin any and all parties from acting in accordance with terms of such a deregulation decision, and if less drastic remedy such as partial or complete vacatur of Animal and Plant Health Inspection Service (APHIS) deregulation decision was sufficient to redress injury to conventional alfalfa growers and environmental groups, no recourse to additional and extraordinary relief of injunction was warranted.

[10] Injunction 212 ↪1

[212](#) Injunction

[212I](#) Nature and Grounds in General

[212I\(A\)](#) Nature and Form of Remedy

[212k1](#) k. Nature and purpose in general.

[Most Cited Cases](#)

Injunction is drastic and extraordinary remedy, which should not be granted as matter of course.

***2746** *Syllabus* ^{FN*}

^{FN*} The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

The Plant Protection Act (PPA) provides that the Secretary of the Department of Agriculture may issue regulations “to prevent the introduction of plant pests into the United States or the dissemination of plant pests within the United States.” [7 U.S.C. § 7711\(a\)](#). Pursuant to that grant of authority, the Animal and Plant Health Inspection Service (APHIS) promulgated regulations that presume genetically engineered plants to be “plant pests”—and thus “regulated articles” under the PPA—until APHIS determines otherwise. However, any person may

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petition APHIS for a determination that a regulated article does not present a plant pest risk and therefore should not be subject to the applicable regulations. APHIS may grant such a petition in whole or in part.

In determining whether to grant nonregulated status to a genetically engineered plant variety, APHIS must comply with the National Environmental Policy Act of 1969 (NEPA), which requires federal agencies “to the fullest extent possible” to prepare a detailed environmental impact statement (EIS) for “every ... major Federal actio[n] significantly affecting the quality of the human environment.” [42 U.S.C. § 4332\(2\)\(C\)](#). The agency need not complete an EIS if it finds, based on a shorter statement known as an environmental assessment (EA), that the proposed action will not have a significant environmental impact.

This case involves a challenge to APHIS's decision to approve the unconditional deregulation of Roundup Ready Alfalfa (RRA), a variety of alfalfa that has been genetically engineered to tolerate the herbicide Roundup. Petitioners are the owner and the licensee of the intellectual property rights to RRA. In response to petitioners' deregulation request, APHIS prepared a draft EA and solicited public comments on its proposed course of action. Based on its EA and the comments submitted, the agency determined that the introduction of RRA would not have any significant adverse impact on the environment. Accordingly, APHIS decided to deregulate RRA unconditionally and without preparing an EIS. Respondents, conventional alfalfa growers and environmental groups, filed this action challenging that decision on the ground that it violated NEPA and other federal laws. The District Court held, *inter alia*, that APHIS violated NEPA when it deregulated RRA without first completing a detailed EIS. To remedy that violation, the court vacated the agency's decision completely deregulating RRA; enjoined APHIS from deregulating RRA, in whole or in part, pending completion of the EIS; and entered a nationwide permanent injunction prohibiting almost all future planting of RRA during the pendency of the EIS process. Petitioners and the Government appealed, challenging the scope of the relief granted but not disputing that APHIS's deregulation decision violated NEPA. The Ninth Circuit affirmed, concluding, among other things, that the District Court had not abused its discretion in rejecting APHIS's proposed

mitigation measures in favor of a broader injunction.

Held:

1. Respondents have standing to seek injunctive relief, and petitioners have standing to seek this Court's review of the Ninth Circuit's judgment affirming the entry of such relief. Pp. 2752 - 2756.

*2747 (a) Petitioners have constitutional standing to seek review here. [Article III](#) standing requires an injury that is (i) concrete, particularized, and actual or imminent, (ii) fairly traceable to the challenged action, and (iii) redressable by a favorable ruling. See [Horne v. Flores](#), 557 U.S. ----, ----, 129 S.Ct. 2579, 174 L.Ed.2d 406. Petitioners satisfy all three criteria. Petitioners are injured by their inability to sell or license RRA to prospective customers until APHIS completes the EIS. Because that injury is caused by the very remedial order that petitioners challenge on appeal, it would be redressed by a favorable ruling from this Court. Respondents nevertheless contend that petitioners lack standing because their complained-of injury is independently caused by a part of the District Court's order that petitioners failed to challenge, the vacatur of APHIS's deregulation decision. That argument fails for two independent reasons. First, one of the main disputes between the parties throughout this litigation has been whether the District Court should have adopted APHIS's proposed judgment, which would have replaced the vacated deregulation decision with an order expressly authorizing the continued sale and planting of RRA. Accordingly, if the District Court had adopted APHIS's proposed judgment, there would still be authority for the continued sale of RRA notwithstanding the District Court's vacatur, because there would, in effect, be a new deregulation decision. Second, petitioners in any case have standing to challenge the part of the District Court's order enjoining a partial deregulation. Respondents focus their argument on the part of the judgment that enjoins planting, but the judgment also states that before granting the deregulation petition, even in part, the agency must prepare an EIS. That part of the judgment inflicts an injury not also caused by the vacatur. Pp. 2752 - 2754.

(b) Respondents have constitutional standing to seek injunctive relief from the complete deregulation order at issue here. The Court disagrees with

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petitioners' argument that respondents have failed to show that any of them is likely to suffer a constitutionally cognizable injury absent injunctive relief. The District Court found that respondent farmers had established a reasonable probability that their conventional alfalfa crops would be infected with the engineered Roundup Ready gene if RRA were completely deregulated. A substantial risk of such gene flow injures respondents in several ways that are sufficiently concrete to satisfy the injury-in-fact prong of the constitutional standing analysis. Moreover, those harms are readily attributable to APHIS's deregulation decision, which gives rise to a significant risk of gene flow to non-genetically-engineered alfalfa varieties. Finally, a judicial order prohibiting the planting or deregulation of all or some genetically engineered alfalfa would redress respondents' injuries by eliminating or minimizing the risk of gene flow to their crops. Pp. 2754 - 2756.

2. The District Court abused its discretion in enjoining APHIS from effecting a partial deregulation and in prohibiting the planting of RRA pending the agency's completion of its detailed environmental review. Pp. 2756 - 2761.

(a) Because petitioners and the Government do not argue otherwise, the Court assumes without deciding that the District Court acted lawfully in vacating the agency's decision to completely deregulate RRA. The Court therefore addresses only the injunction prohibiting APHIS from deregulating RRA pending completion of the EIS, and the nationwide injunction prohibiting almost all RRA planting during the pendency of the EIS process. P. 2756.

(b) Before a court may grant a permanent injunction, the plaintiff must satisfy*2748 a four-factor test, demonstrating: "(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction." eBay Inc. v. MercExchange, L.L. C., 547 U.S. 388, 391, 126 S.Ct. 1837, 164 L.Ed.2d 641. This test fully applies in NEPA cases. See Winter v. Natural Resources Defense Council, Inc., 555 U.S. ----, ----, 129 S.Ct. 365, 172 L.Ed.2d

249. Thus, the existence of a NEPA violation does not create a presumption that injunctive relief is available and should be granted absent unusual circumstances. Pp. 2756 - 2757.

(c) None of the four factors supports the District Court's order enjoining APHIS from partially deregulating RRA during the pendency of the EIS process. Most importantly, respondents cannot show that they will suffer irreparable injury if APHIS is allowed to proceed with any partial deregulation, for at least two reasons. First, if and when APHIS pursues a partial deregulation that arguably runs afoul of NEPA, respondents may file a new suit challenging such action and seeking appropriate preliminary relief. Accordingly, a permanent injunction is not now needed to guard against any present or imminent risk of likely irreparable harm. Second, a partial deregulation need not cause respondents any injury at all; if its scope is sufficiently limited, the risk of gene flow could be virtually nonexistent. Indeed, the broad injunction entered below essentially pre-empts the very procedure by which APHIS could determine, independently of the pending EIS process for assessing the effects of a *complete* deregulation, that a *limited* deregulation would not pose any appreciable risk of environmental harm. Pp. 2757 - 2761.

(d) The District Court also erred in entering the nationwide injunction against planting RRA, for two independent reasons. First, because it was inappropriate for the District Court to foreclose even the possibility of a partial and temporary deregulation, it follows that it was inappropriate to enjoin planting in accordance with such a deregulation decision. Second, an injunction is a drastic and extraordinary remedy, which should not be granted as a matter of course. See, e.g., Weinberger v. Romero-Barcelo, 456 U.S. 305, 312, 102 S.Ct. 1798, 72 L.Ed.2d 91. If, as respondents now concede, a less drastic remedy (such as partial or complete vacatur of APHIS's deregulation decision) was sufficient to redress their injury, no recourse to the additional and extraordinary relief of an injunction was warranted. P. 2761.

(e) Given the District Court's errors, this Court need not address whether injunctive relief of some kind was available to respondents on the record

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below. Pp. 2761 - 2762.

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[570 F.3d 1130](#), reversed and remanded.

[ALITO](#), J., delivered the opinion of the Court, in which [ROBERTS](#), C.J., and [SCALIA](#), [KENNEDY](#), [THOMAS](#), [GINSBURG](#), and [SOTOMAYOR](#), JJ., joined. [STEVENS](#), J., filed a dissenting opinion. [BREYER](#), J., took no part in the consideration or decision of the case.

[Gregory G. Garre](#), Washington, DC, for petitioners.

[Malcolm L. Stewart](#), for federal respondents, supporting the petitioners.

[Lawrence S. Robbins](#), for respondents.

***2749** [B. Andrew Brown](#), Dorsey & Whitney LLP, Minneapolis, MN, for Forage Genetics International, LLC, Daniel Mederos and Mark Watte, [Gregory G. Garre](#), Counsel of Record, [Maureen E. Mahoney](#), [Richard P. Bress](#), [Philip J. Perry](#), [J. Scott Ballenger](#), [Drew C. Ensign](#), Latham & Watkins LLP, Washington, DC, for Monsanto Co., [Charles B. Von Feldt](#), Forage Genetics International, LLC, Shoreview, MN, for Forage Genetics International, LLC.

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For U.S. Supreme Court Briefs, See:2010 WL 723014 (Pet.Brief)2009 WL 5017538 (Resp.Brief)2010 WL 1500893 (Resp.Brief)2010 WL

Justice [ALITO](#) delivered the opinion of the Court.

This case arises out of a decision by the Animal and Plant Health Inspection Service (APHIS) to deregulate a variety of genetically engineered alfalfa. The District Court held that APHIS violated the National Environmental Policy Act of 1969 (NEPA), 83 Stat. 852, [42 U.S.C. § 4321 et seq.](#), by issuing its deregulation decision without first completing a detailed assessment of the environmental consequences of its proposed course of action. To remedy that violation, the District Court vacated the agency's decision completely deregulating the alfalfa variety in question; ordered APHIS not to act on the deregulation petition in whole or in part until it had completed a detailed environmental review; and enjoined almost all future planting of the genetically engineered alfalfa pending the completion of that review. The Court of Appeals affirmed the District Court's entry of permanent injunctive relief. The main issue now in dispute concerns the breadth of that relief. For the reasons set forth below, we reverse and remand for further proceedings.

I A

The Plant Protection Act (PPA), 114 Stat. 438, [7 U.S.C. § 7701 et seq.](#), provides that the Secretary of the Department of Agriculture (USDA) may issue regulations “to prevent the introduction of plant pests into the United States or the dissemination of plant pests within the United States.” [§ 7711\(a\)](#). The Secretary has delegated that authority to APHIS, a division of the USDA. [7 CFR §§ 2.22\(a\), 2.80\(a\)\(36\)](#) (2010). Acting pursuant to that delegation, APHIS has promulgated regulations governing “the introduction of organisms and products altered or produced through genetic engineering that are plant pests or are believed to be plant pests.” See [§ 340.0\(a\)\(2\)](#) and n. 1. Under those regulations, certain genetically engineered plants are presumed to be “plant pests”—and thus “regulated articles” under the PPA—***2750** until APHIS determines otherwise. See *ibid.*; [§§ 340.1, 340.2, 340.6](#); see also App. 183. However, any person may petition APHIS for a determination that a regulated article does not present a plant pest risk and therefore should not be subject to the applicable regulations. [7 U.S.C. § 7711\(c\)\(2\)](#); [7 CFR § 340.6](#). APHIS may grant such a petition in whole or in part. [§ 340.6\(d\)\(3\)](#).

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[1] In deciding whether to grant nonregulated status to a genetically engineered plant variety, APHIS must comply with NEPA, which requires federal agencies “to the fullest extent possible” to prepare an environmental impact statement (EIS) for “every recommendation or report on proposals for legislation and other major Federal actio[n] significantly affecting the quality of the human environment.” [42 U.S.C. § 4332\(2\)\(C\)](#). The statutory text “speaks solely in terms of *proposed* actions; it does not require an agency to consider the possible environmental impacts of less imminent actions when preparing the impact statement on proposed actions.” [Kleppe v. Sierra Club](#), [427 U.S. 390, 410, n. 20, 96 S.Ct. 2718, 49 L.Ed.2d 576 \(1976\)](#).

[2] An agency need not complete an EIS for a particular proposal if it finds, on the basis of a shorter “environmental assessment” (EA), that the proposed action will not have a significant impact on the environment. [40 CFR §§ 1508.9\(a\), 1508.13 \(2009\)](#). Even if a particular agency proposal requires an EIS, applicable regulations allow the agency to take at least some action in furtherance of that proposal while the EIS is being prepared. See [§ 1506.1\(a\)](#) (“no action concerning the proposal shall be taken which would: (1) Have an adverse environmental impact; or (2) Limit the choice of reasonable alternatives”); [§ 1506.1\(c\)](#) (“While work on a required program environmental impact statement is in progress and the action is not covered by an existing program statement, agencies shall not undertake in the interim any major Federal action covered by the program which may significantly affect the quality of the human environment unless such action” satisfies certain requirements).

B

This case involves Roundup Ready Alfalfa (RRA), a kind of alfalfa crop that has been genetically engineered to be tolerant of glyphosate, the active ingredient of the herbicide Roundup. Petitioner Monsanto Company (Monsanto) owns the intellectual property rights to RRA. Monsanto licenses those rights to co-petitioner Forage Genetics International (FGI), which is the exclusive developer of RRA seed.

APHIS initially classified RRA as a regulated article, but in 2004 petitioners sought nonregulated

status for two strains of RRA. In response, APHIS prepared a draft EA assessing the likely environmental impact of the requested deregulation. It then published a notice in the Federal Register advising the public of the deregulation petition and soliciting public comments on its draft EA. After considering the hundreds of public comments that it received, APHIS issued a Finding of No Significant Impact and decided to deregulate RRA unconditionally and without preparing an EIS. Prior to this decision, APHIS had authorized almost 300 field trials of RRA conducted over a period of eight years. App. 348.

Approximately eight months after APHIS granted RRA nonregulated status, respondents (two conventional alfalfa seed farms and environmental groups concerned with food safety) filed this action against the Secretary of Agriculture and certain other officials in Federal District Court, challenging APHIS’s decision to *2751 completely deregulate RRA. Their complaint alleged violations of NEPA, the Endangered Species Act of 1973(ESA), 87 Stat. 884, [16 U.S.C. § 1531 et seq.](#), and the PPA. Respondents did not seek preliminary injunctive relief pending resolution of those claims. Hence, RRA enjoyed nonregulated status for approximately two years. During that period, more than 3,000 farmers in 48 States planted an estimated 220,000 acres of RRA.App. 350.

In resolving respondents’ NEPA claim, the District Court accepted APHIS’s determination that RRA does not have any harmful health effects on humans or livestock. App. to Pet. for Cert. 43a; accord, *id.*, at 45a. Nevertheless, the District Court held that APHIS violated NEPA by deregulating RRA without first preparing an EIS. In particular, the court found that APHIS’s EA failed to answer substantial questions concerning two broad consequences of its proposed action: first, the extent to which complete deregulation would lead to the transmission of the gene conferring glyphosate tolerance from RRA to organic and conventional alfalfa; and, second, the extent to which the introduction of RRA would contribute to the development of Roundup-resistant weeds. *Id.*, at 52a. In light of its determination that the deregulation decision ran afoul of NEPA, the District Court dismissed without prejudice respondents’ claims under the ESA and PPA.

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After these rulings, the District Court granted petitioners permission to intervene in the remedial phase of the lawsuit. The court then asked the parties to submit proposed judgments embodying their preferred means of remedying the NEPA violation. APHIS's proposed judgment would have ordered the agency to prepare an EIS, vacated the agency's deregulation decision, and replaced that decision with the terms of the judgment itself. *Id.*, at 184a (proposed judgment providing that “[the federal] defendants’ [June 14,] 2005 Determination of Nonregulated Status for Alfalfa Genetically Engineered for Tolerance to the Herbicide Glyphosate is hereby vacated and replaced by the terms of this judgment ” (emphasis added)). The terms of the proposed judgment, in turn, would have permitted the continued planting of RRA pending completion of the EIS, subject to six restrictions. Those restrictions included, among other things, mandatory isolation distances between RRA and non-genetically-engineered alfalfa fields in order to mitigate the risk of gene flow; mandatory harvesting conditions; a requirement that planting and harvesting equipment that had been in contact with RRA be cleaned prior to any use with conventional or organic alfalfa; identification and handling requirements for RRA seed; and a requirement that all RRA seed producers and hay growers be under contract with either Monsanto or FGI and that their contracts require compliance with the other limitations set out in the proposed judgment.

The District Court rejected APHIS's proposed judgment. In its preliminary injunction, the District Court prohibited almost all future planting of RRA pending APHIS's completion of the required EIS. But in order to minimize the harm to farmers who had relied on APHIS's deregulation decision, the court expressly allowed those who had already purchased RRA to plant their seeds until March 30, 2007. *Id.*, at 58a. In its subsequently entered permanent injunction and judgment, the court (1) vacated APHIS's deregulation decision; (2) ordered APHIS to prepare an EIS before it made any decision on Monsanto's deregulation petition; (3) enjoined the planting of any RRA in the United States after March 30, 2007, pending APHIS's completion of the required EIS; and (4) imposed certain conditions*2752 (suggested by APHIS) on the handling and identification of already-planted RRA. *Id.*, at 79a, 109a. The District Court

denied petitioners' request for an evidentiary hearing.

The Government, Monsanto, and FGI appealed, challenging the scope of the relief granted but not disputing the existence of a NEPA violation. See *Geertson Seed Farms v. Johanns*, 570 F.3d 1130, 1136 (2009). A divided panel of the Court of Appeals for the Ninth Circuit affirmed. Based on its review of the record, the panel first concluded that the District Court had “recognized that an injunction does not ‘automatically issue’ when a NEPA violation is found” and had instead based its issuance of injunctive relief on the four-factor test traditionally used for that purpose. *Id.*, at 1137. The panel held that the District Court had not committed clear error in making any of the subsidiary factual findings on which its assessment of the four relevant factors was based. And the panel rejected the claim that the District Court had not given sufficient deference to APHIS's expertise concerning the likely effects of allowing continued planting of RRA on a limited basis. In the panel's view, APHIS's proposed interim measures would have perpetuated a system that had been found by the District Court to have caused environmental harm in the past. *Id.*, at 1139. Hence, the panel concluded that the District Court had not abused its discretion “in choosing to reject APHIS's proposed mitigation measures in favor of a broader injunction to prevent more irreparable harm from occurring.” *Ibid.*

The panel majority also rejected petitioners' alternative argument that the District Court had erred in declining to hold an evidentiary hearing before entering its permanent injunction. Writing in dissent, Judge N. Randy Smith disagreed with that conclusion. In his view, the District Court was required to conduct an evidentiary hearing before issuing a permanent injunction unless the facts were undisputed or the adverse party expressly waived its right to such a hearing. Neither of those two exceptions, he found, applied here.

We granted certiorari. 558 U.S. ----, 130 S.Ct. 1133, --- L.Ed.2d ---- (2010).

II
A

At the threshold, respondents contend that petitioners lack standing to seek our review of the lower court rulings at issue here. We disagree.

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[3][4] Standing under Article III of the Constitution requires that an injury be concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling. *Horne v. Flores*, 557 U.S. ----, ----, 129 S.Ct. 2579, 2591-2592, 174 L.Ed.2d 406 (2009). Petitioners here satisfy all three criteria. Petitioners are injured by their inability to sell or license RRA to prospective customers until such time as APHIS completes the required EIS. Because that injury is caused by the very remedial order that petitioners challenge on appeal, it would be redressed by a favorable ruling from this Court.

Respondents do not dispute that petitioners would have standing to contest the District Court's permanent injunction order if they had pursued a different litigation strategy. Instead, respondents argue that the injury of which petitioners complain is independently caused by a part of the District Court's order that petitioners failed to challenge, namely, the vacatur of APHIS's deregulation decision. The practical consequence of the vacatur, respondents contend, was to restore RRA to the status of a regulated article; and, subject *2753 to certain exceptions not applicable here, federal regulations ban the growth and sale of regulated articles. Because petitioners did not specifically challenge the District Court's vacatur, respondents reason, they lack standing to challenge a part of the District Court's order (*i.e.*, the injunction) that does not cause petitioners any injury not also caused by the vacatur. See Brief for Respondents 19-20.

Respondents' argument fails for two independent reasons. First, although petitioners did not challenge the vacatur directly, they adequately preserved their objection that the vacated deregulation decision should have been replaced by APHIS's proposed injunction. Throughout the remedial phase of this litigation, one of the main disputes between the parties has been whether the District Court was required to adopt APHIS's proposed judgment. See, *e.g.*, Intervenor-Appellants' Opening Brief in No. 07-16458 etc. (CA9), p. 59 (urging the Court of Appeals to "vacate the district court's judgment and remand this case to the district court with instructions to enter APHIS's proposed relief"); Opening Brief of Federal Defendants-Appellants in No. 16458 etc. (CA9), pp. 21, 46 ("The blanket injunction should be narrowed

in accordance with APHIS's proposal"); see also Tr. of Oral Arg. 6, 25-27, 53-54. That judgment would have replaced the vacated deregulation decision with an order expressly allowing continued planting of RRA subject to certain limited conditions. App. to Pet. for Cert. 184a (proposed judgment providing that "[the federal] defendants' 14 June 2005 Determination of Nonregulated Status for Alfalfa Genetically Engineered for Tolerance to the Herbicide Glyphosate is hereby vacated *and replaced by the terms of this judgment*" (emphasis added)). Accordingly, if the District Court had adopted the agency's suggested remedy, there would still be authority for the continued planting of RRA, because there would, in effect, be a new deregulation decision. ^{FN1}

^{FN1}. We need not decide whether the District Court had the authority to replace the vacated agency order with an injunction of its own making. The question whether petitioners are entitled to the relief that they seek goes to the merits, not to standing.

Second, petitioners in any case have standing to challenge the part of the District Court's order enjoining partial deregulation. Respondents focus their standing argument on the part of the judgment enjoining the planting of RRA, but the judgment also states that "[b]efore granting Monsanto's deregulation petition, *even in part*, the federal defendants shall prepare an environmental impact statement." *Id.*, at 108a (emphasis added); see also *id.*, at 79a ("The Court will enter a final judgment ... ordering the government to prepare an EIS before it makes a decision on Monsanto's deregulation petition"). As respondents concede, that part of the judgment goes beyond the vacatur of APHIS's deregulation decision. See Tr. of Oral Arg. 37, 46.

At oral argument, respondents contended that the restriction on APHIS's ability to effect a partial deregulation of RRA does not cause petitioners "an actual or an imminent harm." *Id.*, at 39-40. In order for a partial deregulation to occur, respondents argued, the case would have to be remanded to the agency, and APHIS would have to prepare an EA "that may or may not come out in favor of a partial deregulation." *Id.*, at 39. Because petitioners cannot prove that those two events would happen, respondents contended, the asserted harm caused by

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the District Court's partial deregulation ban is too speculative to satisfy the actual or imminent injury requirement.

***2754** We reject this argument. If the injunction were lifted, we do not see why the District Court would have to remand the matter to the agency in order for APHIS to effect a partial deregulation. And even if a remand were required, we perceive no basis on which the District Court could decline to remand the matter to the agency so that it could determine whether to pursue a partial deregulation during the pendency of the EIS process.

Nor is any doubt as to whether APHIS would issue a new EA in favor of a partial deregulation sufficient to defeat petitioners' standing. It is undisputed that petitioners have submitted a deregulation petition and that a partial deregulation of the kind embodied in the agency's proposed judgment would afford petitioners much of the relief that they seek; it is also undisputed that, absent the District Court's order, APHIS could attempt to effect such a partial deregulation pending its completion of the EIS. See *id.*, at 7-8, 25-27, 38. For purposes of resolving the particular standing question before us, we need not decide whether or to what extent a party challenging an injunction that bars an agency from granting certain relief must show that the agency would be likely to afford such relief if it were free to do so. In this case, as is clear from APHIS's proposed judgment and from its briefing throughout the remedial phase of this litigation, the agency takes the view that a partial deregulation reflecting its proposed limitations is in the public interest. Thus, there is more than a strong likelihood that APHIS would partially deregulate RRA were it not for the District Court's injunction. The District Court's elimination of that likelihood is plainly sufficient to establish a constitutionally cognizable injury. Moreover, as respondents essentially conceded at oral argument, that injury would be redressed by a favorable decision here, since "vacating the current injunction ... will allow [petitioners] to go back to the agency, [to] seek a partial deregulation," even if the District Court's vacatur of APHIS's deregulation decision is left intact. *Id.*, at 38. We therefore hold that petitioners have standing to seek this Court's review.^{FN2}

^{FN2}. We do not rest "the primary basis for

our jurisdiction on the premise that the District Court enjoined APHIS from partially deregulating RRA in any sense." See *post*, at 2765 (STEVENS, J., dissenting). Even if the District Court's order prohibiting a partial deregulation applies only to "the *particular* partial deregulation order proposed to the court by APHIS," see *post*, at 2766, petitioners would still have standing to challenge that aspect of the order.

B

^[5] We next consider petitioners' contention that respondents lack standing to seek injunctive relief. See *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352, 126 S.Ct. 1854, 164 L.Ed.2d 589 (2006) ("[A] plaintiff must demonstrate standing separately for each form of relief sought" (internal quotation marks omitted)). Petitioners argue that respondents have failed to show that any of the named respondents is likely to suffer a constitutionally cognizable injury absent injunctive relief. See Brief for Petitioners 40. We disagree.

Respondents include conventional alfalfa farmers. Emphasizing "the undisputed concentration of alfalfa seed farms," the District Court found that those farmers had "established a 'reasonable probability' that their organic and conventional alfalfa crops will be infected with the engineered gene" if RRA is completely deregulated. App. to Pet. for Cert. 50a.^{FN3} A substantial ***2755** risk of gene flow injures respondents in several ways. For example, respondents represent that, in order to continue marketing their product to consumers who wish to buy non-genetically-engineered alfalfa, respondents would have to conduct testing to find out whether and to what extent their crops have been contaminated. See, e.g., Record, Doc. 62, p. 5 (Declaration of Phillip Geertson in Support of Plaintiffs' Motion for Summary Judgment) (hereinafter Geertson Declaration) ("Due to the high potential for contamination, I will need to test my crops for the presence of genetically engineered alfalfa seed. This testing will be a new cost to my seed business and we will have to raise our seed prices to cover these costs, making our prices less competitive"); *id.*, Doc. 57, p. 4 (Declaration of Patrick Trask in Support of Plaintiff's Motion for Summary Judgment) ("To ensure that my seeds are

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pure, I will need to test my crops and obtain certification that my seeds are free of genetically engineered alfalfa”); see also Record, Doc. 55, p. 2 (“There is zero tolerance for contaminated seed in the organic market”). Respondents also allege that the risk of gene flow will cause them to take certain measures to minimize the likelihood of potential contamination and to ensure an adequate supply of non-genetically-engineered alfalfa. See, e.g., Geertson Declaration 3 (noting the “increased cost of alfalfa breeding due to potential for genetic contamination”); *id.*, at 6 (“Due to the threat of contamination, I have begun contracting with growers outside of the United States to ensure that I can supply genetically pure, conventional alfalfa seed. Finding new growers has already resulted in increased administrative costs at my seed business”).

[FN3](#). At least one of the respondents in this case specifically alleges that he owns an alfalfa farm in a prominent seed-growing region and faces a significant risk of contamination from RRA. See Record, Doc. 62, pp. 1-2; *id.*, ¶ 10, at 3-4 (Declaration of Phillip Geertson in Support of Plaintiffs' Motion for Summary Judgment) (“Since alfalfa is pollinated by honey, bumble and leafcutter bees, the genetic contamination of the Roundup Ready seed will rapidly spread through the seed growing regions. Bees have a range of at least two to ten miles, and the alfalfa seed farms are much more concentrated”). Other declarations in the record provide further support for the District Court's conclusion that the deregulation of RRA poses a significant risk of contamination to respondents' crops. See, e.g., *id.*, Doc. 53, ¶ 9, at 2 (Declaration of Jim Munsch) (alleging risk of “significant contamination ... due to the compact geographic area of the prime alfalfa seed producing areas and the fact that pollen is distributed by bees that have large natural range of activity”); App. ¶ 8, p. 401 (Declaration of Marc Asumendi) (“Roundup alfalfa seed fields are currently being planted in all the major alfalfa seed production areas with little regard to contamination to non-GMO seed production fields”).

Such harms, which respondents will suffer even if their crops are not actually infected with the Roundup ready gene, are sufficiently concrete to satisfy the injury-in-fact prong of the constitutional standing analysis. Those harms are readily attributable to APHIS's deregulation decision, which, as the District Court found, gives rise to a significant risk of gene flow to non-genetically-engineered varieties of alfalfa. Finally, a judicial order prohibiting the growth and sale of all or some genetically engineered alfalfa would remedy respondents' injuries by eliminating or minimizing the risk of gene flow to conventional and organic alfalfa crops. We therefore conclude that respondents have constitutional standing to seek injunctive relief from the complete deregulation order at issue here.

Petitioners appear to suggest that respondents fail to satisfy the “zone of interests” test we have previously articulated as a prudential standing requirement in cases challenging agency compliance with particular statutes. See Reply Brief for Petitioners 12 (arguing that protection against *2756 the risk of commercial harm “is not an interest that NEPA was enacted to address”); [Bennett v. Spear](#), [520 U.S. 154, 162-163, 117 S.Ct. 1154, 137 L.Ed.2d 281 \(1997\)](#). That argument is unpersuasive because, as the District Court found, respondents' injury has an environmental as well as an economic component. See App. to Pet. for Cert. 49a. In its ruling on the merits of respondents' NEPA claim, the District Court held that the risk that the RRA gene conferring glyphosate resistance will infect conventional and organic alfalfa is a significant environmental effect within the meaning of NEPA. Petitioners did not appeal that part of the court's ruling, and we have no occasion to revisit it here. Respondents now seek injunctive relief in order to avert the risk of gene flow to their crops—the very same effect that the District Court determined to be a significant environmental concern for purposes of NEPA. The mere fact that respondents also seek to avoid certain economic harms that are tied to the risk of gene flow does not strip them of prudential standing.

In short, respondents have standing to seek injunctive relief, and petitioners have standing to seek this Court's review of the Ninth Circuit's judgment affirming the entry of such relief. We therefore proceed to the merits of the case.

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III

A

The District Court sought to remedy APHIS's NEPA violation in three ways: First, it vacated the agency's decision completely deregulating RRA; second, it enjoined APHIS from deregulating RRA, in whole or in part, pending completion of the mandated EIS; and third, it entered a nationwide injunction prohibiting almost all future planting of RRA. *Id.*, at 108a-110a. Because petitioners and the Government do not argue otherwise, we assume without deciding that the District Court acted lawfully in vacating the deregulation decision. See Tr. of Oral Arg. 7 (“[T]he district court could have vacated the order in its entirety and sent it back to the agency”); accord, *id.*, at 15-16. We therefore address only the latter two aspects of the District Court's judgment. Before doing so, however, we provide a brief overview of the standard governing the entry of injunctive relief.

B

[6][7] “[A] plaintiff seeking a permanent injunction must satisfy a four-factor test before a court may grant such relief. A plaintiff must demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.” *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391, 126 S.Ct. 1837, 164 L.Ed.2d 641 (2006). The traditional four-factor test applies when a plaintiff seeks a permanent injunction to remedy a NEPA violation. See *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. ----, ----, 129 S.Ct. 365, 380-382, 172 L.Ed.2d 249 (2008).

Petitioners argue that the lower courts in this case proceeded on the erroneous assumption that an injunction is generally the appropriate remedy for a NEPA violation. In particular, petitioners note that the District Court cited pre- *Winter* Ninth Circuit precedent for the proposition that, in “ ‘the run of the mill NEPA case,’ ” an injunction delaying the contemplated government project is proper “ ‘until the NEPA violation is cured.’ ” App. to Pet. *2757 for Cert. 65a (quoting *Idaho Watersheds Project v. Hahn*, 307 F.3d 815, 833 (C.A.9 2002)); see also

App. to Pet. for Cert. 55a (quoting same language in preliminary injunction order). In addition, petitioners observe, the District Court and the Court of Appeals in this case both stated that, “in unusual circumstances, an injunction may be withheld, or, more likely, limited in scope” in NEPA cases. *Id.*, at 66a (quoting *National Parks & Conservation Assn. v. Babbitt*, 241 F.3d 722, 737, n. 18 (C.A.9 2001) (internal quotation marks omitted)); *570 F.3d, at 1137*.

Insofar as the statements quoted above are intended to guide the determination whether to grant injunctive relief, they invert the proper mode of analysis. An injunction should issue only if the traditional four-factor test is satisfied. See *Winter, supra*, at ----, 129 S.Ct., at 380-382. In contrast, the statements quoted above appear to presume that an injunction is the proper remedy for a NEPA violation except in unusual circumstances. No such thumb on the scales is warranted. Nor, contrary to the reasoning of the Court of Appeals, could any such error be cured by a court's perfunctory recognition that “an injunction does not automatically issue” in NEPA cases. See *570 F.3d, at 1137* (internal quotation marks omitted). It is not enough for a court considering a request for injunctive relief to ask whether there is a good reason why an injunction should *not* issue; rather, a court must determine that an injunction *should* issue under the traditional four-factor test set out above.

Notwithstanding the lower courts' apparent reliance on the incorrect standard set out in the pre- *Winter* Circuit precedents quoted above, respondents argue that the lower courts in fact applied the traditional four-factor test. In their view, the statements that injunctive relief is proper in the “run-of-the-mill” NEPA case, and that such injunctions are granted except in “unusual circumstances,” are descriptive rather than prescriptive. See Brief for Respondents 28, n. 14. We need not decide whether respondents' characterization of the lower court opinions in this case is sound. Even if it is, the injunctive relief granted here cannot stand.

C

We first consider whether the District Court erred in enjoining APHIS from partially deregulating RRA during the pendency of the EIS process.^{FN4}

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[FN4](#). Petitioners focus their challenge on the part of the District Court's order prohibiting the planting of RRA. As we explain below, however, the broad injunction against planting cannot be valid if the injunction against partial deregulation is improper. See *infra*, at 2761; see also App. to Pet. for Cert. 64a (District Court order recognizing that APHIS's proposed remedy “seek[s], *in effect*, a partial deregulation that permits the continued expansion of the Roundup Ready alfalfa market subject to certain conditions” (emphasis added)). The validity of the injunction prohibiting partial deregulation is therefore properly before us. Like the District Court, we use the term “partial deregulation” to refer to any limited or conditional deregulation. See *id.*, at 64a, 69a.

The relevant part of the District Court's judgment states that, “[b]efore granting Monsanto's deregulation petition, *even in part*, the federal defendants shall prepare an environmental impact statement.” App. to Pet. for Cert. 108a (emphasis added); see also *id.*, at 79a (“The Court will enter a final judgment ... ordering the government to prepare an EIS before it makes a decision on Monsanto's deregulation petition”). The plain text of the order prohibits *any* partial deregulation, not just the particular partial deregulation embodied in APHIS's proposed judgment. We think it is quite clear that the District *2758 Court meant just what it said. The related injunction against planting states that “*no* [RRA] ... may be planted” “[u]ntil the federal defendants prepare the EIS and decide the deregulation petition.” *Id.*, at 108a (emphasis added). That injunction, which appears in the very same judgment and directly follows the injunction against granting Monsanto's petition “*even in part*,” does not carve out an exception for planting subsequently authorized by a valid partial deregulation decision.

[\[8\]](#) In our view, none of the traditional four factors governing the entry of permanent injunctive relief supports the District Court's injunction prohibiting partial deregulation. To see why that is so, it is helpful to understand how the injunction prohibiting a partial deregulation fits into the broader dispute between the parties.

Respondents in this case brought suit under the APA to challenge a particular agency order: APHIS's decision to *completely* deregulate RRA. The District Court held that the order in question was procedurally defective, and APHIS decided not to appeal that determination. At that point, it was for the agency to decide whether and to what extent it would pursue a *partial* deregulation. **If the agency found, on the basis of a new EA, that a limited and temporary deregulation satisfied applicable statutory and regulatory requirements, it could proceed with such a deregulation even if it had not yet finished the onerous EIS required for complete deregulation.** If and when the agency were to issue a partial deregulation order, any party aggrieved by that order could bring a separate suit under the Administrative Procedure Act to challenge the particular deregulation attempted. See [5 U.S.C. § 702](#).

In this case, APHIS apparently sought to “streamline” the proceedings by asking the District Court to craft a remedy that, in effect, would have partially deregulated RRA until such time as the agency had finalized the EIS needed for a complete deregulation. See Tr. of Oral Arg. 16, 23-24; App. to Pet. for Cert. 69a. To justify that disposition, APHIS and petitioners submitted voluminous documentary submissions in which they purported to show that the risk of gene flow would be insignificant if the District Court allowed limited planting and harvesting subject to APHIS's proposed conditions. Respondents, in turn, submitted considerable evidence of their own that seemed to cut the other way. This put the District Court in an unenviable position. **“The parties' experts disagreed over virtually every factual issue relating to possible environmental harm, including the likelihood of genetic contamination and why some contamination had already occurred.”** [570 F.3d. at 1135](#).

The District Court may well have acted within its discretion in refusing to craft a judicial remedy that would have *authorized* the continued planting and harvesting of RRA while the EIS is being prepared. It does not follow, however, that the District Court was within its rights in *enjoining* APHIS from allowing such planting and harvesting pursuant to the authority **vested in the agency by law**. When the District Court entered its permanent injunction, APHIS had not yet exercised its authority to partially deregulate RRA. Until APHIS actually seeks to effect a partial

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deregulation, any judicial review of such a decision is premature.^{FN5}

^{FN5}. NEPA provides that an EIS must be “include[d] in every recommendation or report on *proposals* for legislation and other major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C) (emphasis added); see also *Kleppe v. Sierra Club*, 427 U.S. 390, 406, 96 S.Ct. 2718, 49 L.Ed.2d 576 (1976) (“A court has no authority to depart from the statutory language and ... determine a point during the germination process of a *potential proposal* at which an impact statement *should be prepared*” (first emphasis added)). When a particular agency proposal exists and requires the preparation of an EIS, NEPA regulations allow the agency to take at least some action pertaining to that proposal during the pendency of the EIS process. See 40 CFR §§ 1506.1(a), (c) (2009). We do not express any view on the Government's contention that a limited deregulation of the kind embodied in its proposed judgment would not require the prior preparation of an EIS. See Brief for Federal Respondents 21-22 (citing § 1506.1(a)); Tr. of Oral Arg. 20 (“what we were proposing for the interim, that is allowing continued planting subject to various protective measures, was fundamentally different from the action on which the EIS was being prepared”). Because APHIS has not yet invoked the procedures necessary to attempt a limited deregulation, any judicial consideration of such issues is not warranted at this time.

*2759 Nor can the District Court's injunction be justified as a prophylactic measure needed to guard against the possibility that the agency would seek to effect on its own the particular partial deregulation scheme embodied in the terms of APHIS's proposed judgment. Even if the District Court was not required to adopt that judgment, there was no need to stop the agency from effecting a partial deregulation in accordance with the procedures established by law. Moreover, the terms of the District Court's injunction do not just enjoin the *particular* partial deregulation embodied in APHIS's proposed judgment. Instead,

the District Court barred the agency from pursuing *any* deregulation—no matter how limited the geographic area in which planting of RRA would be allowed, how great the isolation distances mandated between RRA fields and fields for growing non-genetically-engineered alfalfa, how stringent the regulations governing harvesting and distribution, how robust the enforcement mechanisms available at the time of the decision, and—consequently—no matter how small the risk that the planting authorized under such conditions would adversely affect the environment in general and respondents in particular.

The order enjoining any partial deregulation was also inconsistent with other aspects of the very same judgment. In fashioning its remedy for the NEPA violation, the District Court steered a “middle course” between more extreme options on either end. See *id.*, at 1136. On the one hand, the District Court rejected APHIS's proposal (supported by petitioners) to allow continued planting and harvesting of RRA subject to the agency's proposed limitations. On the other hand, the District Court did not bar continued planting of RRA as a regulated article under permit from APHIS, see App. to Pet. for Cert. 75a, and it expressly allowed farmers to harvest and sell RRA planted before March 30, 2007, *id.*, at 76a-79a. If the District Court was right to conclude that any partial deregulation, no matter how limited, required the preparation of an EIS, it is hard to see why the limited planting and harvesting that the District Court allowed did not also require the preparation of an EIS. Conversely, if the District Court was right to conclude that the limited planting and harvesting it allowed did not require the preparation of an EIS, then an appropriately limited partial deregulation should likewise have been possible.

Based on the analysis set forth above, it is clear that the order enjoining any deregulation whatsoever does not satisfy the traditional four-factor test for granting permanent injunctive relief. Most importantly, respondents cannot show that they will suffer irreparable injury if APHIS is allowed to proceed with any partial deregulation,*2760 for at least two independent reasons.

First, if and when APHIS pursues a partial deregulation that arguably runs afoul of NEPA, respondents may file a new suit challenging such action and seeking appropriate preliminary relief. See

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[5 U.S.C. §§ 702, 705](#). Accordingly, a permanent injunction is not now needed to guard against any present or imminent risk of likely irreparable harm.

Second, a partial deregulation need not cause respondents any injury at all, much less irreparable injury; if the scope of the partial deregulation is sufficiently limited, the risk of gene flow to their crops could be virtually nonexistent. For example, suppose that APHIS deregulates RRA only in a remote part of the country in which respondents neither grow nor intend to grow non-genetically-engineered alfalfa, and in which no conventional alfalfa farms are currently located. Suppose further that APHIS issues an accompanying administrative order mandating isolation distances so great as to eliminate any appreciable risk of gene flow to the crops of conventional farmers who might someday choose to plant in the surrounding area. See, e.g., Brief in Opposition 9, n. 6 (quoting study concluding “that in order for there to be *zero* tolerance of any gene flow between a[RRA] seed field and a conventional seed field, those fields would have to have a five-mile isolation distance between them’ ”); see also Tr. of Oral Arg. 15-16 (representation from the Solicitor General that APHIS may impose conditions on the deregulation of RRA via issuance of an administrative order). Finally, suppose that APHIS concludes in a new EA that its limited deregulation would not pose a significant risk of gene flow or harmful weed development, and that the agency adopts a plan to police vigorously compliance with its administrative order in the limited geographic area in question. It is hard to see how respondents could show that such a limited deregulation would cause them likely irreparable injury. (Respondents in this case do not represent a class, so they could not seek to enjoin such an order on the ground that it might cause harm to other parties.) In any case, the District Court's order prohibiting *any* partial deregulation improperly relieves respondents of their burden to make the requisite evidentiary showing.^{FN6}

^{FN6}. The District Court itself appears to have recognized that its broad injunction may not have been necessary to avert any injury to respondents. See App. to Pet. for Cert. 191a (“It does complicate it to try to fine-tune a particular remedy. So the simpler the remedy, the more attractive it is from the Court's point of view, because it appears to

me enforcement is easier. Understanding it is easier, and it may be, while a blunt instrument, it may actually, for the short term, achieve its result, achieve its purpose, *even maybe it overachieves it. ... Maybe a lot of it is not necessary. I don't know* ” (emphasis added)); see also *ibid.* (“I don't say you have to be greater than 1.6 miles, you have to be away from the bees, you have be dah dah dah. That's the farm business. I'm not even in it”); *id.*, at 192a (“I am not going to get into the isolation distances”).

Of course, APHIS might ultimately choose not to partially deregulate RRA during the pendency of the EIS, or else to pursue the kind of partial deregulation embodied in its proposed judgment rather than the very limited deregulation envisioned in the above hypothetical. Until such time as the agency decides whether and how to exercise its regulatory authority, however, the courts have no cause to intervene. Indeed, the broad injunction entered here essentially pre-empts the very procedure by which the agency could determine, independently of the pending EIS process for assessing the effects of a *complete* deregulation, that a *limited* deregulation would not pose any appreciable *2761 risk of environmental harm. See [40 CFR §§ 1501.4, 1508.9\(a\)](#) (2009).

In sum, we do not know whether and to what extent APHIS would seek to effect a limited deregulation during the pendency of the EIS process if it were free to do so; we do know that the vacatur of APHIS's deregulation decision means that virtually no RRA can be grown or sold until such time as a new deregulation decision is in place, and we also know that any party aggrieved by a hypothetical future deregulation decision will have ample opportunity to challenge it, and to seek appropriate preliminary relief, if and when such a decision is made. In light of these particular circumstances, we hold that the District Court did not properly exercise its discretion in enjoining a partial deregulation of any kind pending APHIS's preparation of an EIS. It follows that the Court of Appeals erred in affirming that aspect of the District Court's judgment.

D

¹⁹¹ We now turn to petitioners' claim that the District Court erred in entering a nationwide

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injunction against planting RRA. Petitioners argue that the District Court did not apply the right test for determining whether to enter permanent injunctive relief; that, even if the District Court identified the operative legal standard, it erred as a matter of law in applying that standard to the facts of this case; and that the District Court was required to grant petitioners an evidentiary hearing to resolve contested issues of fact germane to the remedial dispute between the parties. **We agree that the District Court's injunction against planting went too far, but we come to that conclusion for two independent reasons.**

First, the impropriety of the District Court's broad injunction against planting flows from the impropriety of its injunction against partial deregulation. If APHIS may partially deregulate RRA before preparing a full-blown EIS—a question that we need not and do not decide here—farmers should be able to grow and sell RRA in accordance with that agency determination. Because it was inappropriate for the District Court to foreclose even the possibility of a partial and temporary deregulation, it necessarily follows that it was likewise inappropriate to enjoin any and all parties from acting in accordance with the terms of such a deregulation decision.

[10] Second, respondents have represented to this Court that the District Court's injunction against planting does not have any meaningful practical effect independent of its vacatur. See Brief for Respondents 24; see also Tr. of Oral Arg. 37 (“[T]he mistake that was made [by the District Court] was in not appreciating ... that the vacatur did have [the] effect” of independently prohibiting the growth and sale of almost all RRA). **An injunction is a drastic and extraordinary remedy, which should not be granted as a matter of course.** See, e.g., *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 311-312, 102 S.Ct. 1798, 72 L.Ed.2d 91 (1982). If a less drastic remedy (such as partial or complete vacatur of APHIS's deregulation decision) was sufficient to redress respondents' injury, no recourse to the additional and extraordinary relief of an injunction was warranted. See *ibid.*; see also *Winter*, 555 U.S., at ---, 129 S.Ct., at 380-382.

E

In sum, the District Court abused its discretion in enjoining APHIS from effecting a partial

deregulation and in prohibiting the possibility of planting in accordance with the terms of such a deregulation. Given those errors, this Court need not express any view on *2762 whether injunctive relief of some kind was available to respondents on the record before us. Nor does the Court address the question whether the District Court was required to conduct an evidentiary hearing before entering the relief at issue here. The judgment of the Ninth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Justice [STEVENS](#), dissenting.

The Court does not dispute the District Court's critical findings of fact: First, Roundup Ready Alfalfa (RRA) can contaminate other plants. See App. to Pet. for Cert. 38a, 54a, 62a. Second, even planting in a controlled setting had led to contamination in some instances. See *id.*, at 69a-70a. Third, the Animal and Plant Health Inspection Service (APHIS) has limited ability to monitor or enforce limitations on planting. See *id.*, at 70a. And fourth, genetic contamination from RRA could decimate farmers' livelihoods and the American alfalfa market for years to come. See *id.*, at 71a; see also *id.*, at 29a-30a. Instead, the majority faults the District Court for “enjoining APHIS from partially deregulating RRA.” *Ante*, at 2757.

In my view, the District Court may not have actually ordered such relief, and we should not so readily assume that it did. Regardless, the District Court did not abuse its discretion when, after considering the voluminous record and making the aforementioned findings, it issued the order now before us.

I

To understand the District Court's judgment, it is necessary to understand the background of this litigation. Petitioner Monsanto Company (Monsanto) is a large corporation that has long produced a weed killer called Roundup. After years of experimentation, Monsanto and co-petitioner Forage Genetics International (FGI) genetically engineered a mutation in the alfalfa genome that makes the plant immune to Roundup. Monsanto and FGI's new product, RRA, is “the first crop that has been engineered to resist a[n] herbicide” and that can

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transmit the genetically engineered gene to other plants. See App. to Pet. for Cert. 45a.

In 2004, in the midst of a deregulatory trend in the agricultural sector, petitioners asked APHIS to deregulate RRA, thereby allowing it to be sold and planted nationwide. App. 101a. Rather than conducting a detailed analysis and preparing an “environmental impact statement” (EIS), as required by the National Environmental Policy Act of 1969 (NEPA) for every “major Federal action [n] significantly affecting the quality of the human environment,” 42 U.S.C. § 4332(2)(C), APHIS merely conducted an abbreviated “environmental assessment” (EA). During the 6-month period in which APHIS allowed public comment on its EA, the agency received 663 comments, 520 of which opposed deregulation. App. to Pet. for Cert. 29a. Farmers and scientists opined that RRA could contaminate alfalfa that has not been genetically modified, destroying the American export market for alfalfa and, potentially, contaminating other plants and breeding a new type of pesticide-resistant weed. *Id.*, at 29a-30a.

Despite substantial evidence that RRA genes could transfer to other plants, APHIS issued a Finding of No Significant Impact and agreed to deregulate RRA “unconditionally,” *ante*, at 2750. With no EIS to wait for and no regulation blocking its path, petitioners began selling RRA. Farmers and environmental groups swiftly brought this lawsuit to challenge APHIS’s *2763 decision to deregulate, raising claims under NEPA and other statutes.

The District Court carefully reviewed a long record and found that “APHIS’s reasons for concluding” that the risks of genetic contamination are low were “not ‘convincing.’ ” App. to Pet. for Cert. 38a. A review of APHIS’s internal documents showed that individuals within the agency warned that contamination might occur. APHIS rested its decision to deregulate on its assertion that contamination risk is “not significant because it is the organic and conventional farmers’ responsibility” to protect themselves and the environment. *Ibid.* Yet the agency drew this conclusion without having investigated whether such farmers “can, in fact, protect their crops from contamination.” *Ibid.* The District Court likewise found that APHIS’s reasons for disregarding the risk of pesticide-resistant weeds

were speculative and “not convincing.” *Id.*, at 46a. The agency had merely explained that if weeds acquire roundup resistance, farmers can use “[a]lternative herbicides.” ” *Ibid.* In light of the “acknowledged” risk of RRA gene transmission and the potential “impact on the development of Roundup resistant weeds,” the court concluded that there was a significant possibility of serious environmental harm, and granted summary judgment for the plaintiffs. *Id.*, at 54a; see also *id.*, at 45a.

At this point, the question of remedy arose. The parties submitted proposed final judgments, and several corporations with an interest in RRA, including Monsanto, sought permission to intervene. The District Court granted their motion and agreed “to give them the opportunity to present evidence to assist the court in fashioning the appropriate scope of whatever relief is granted.” *Id.*, at 54a (internal quotation marks omitted).

While the District Court considered the proposed judgments, it issued a preliminary injunction. Ordinarily, the court explained, the remedy for failure to conduct an EIS is to vacate the permit that was unlawfully given—the result of which, in this case, would be to prohibit any use of RRA. See *id.*, at 55a; see also *id.*, at 65a. But this case presented a special difficulty: Following APHIS’s unlawful deregulation order, some farmers had begun planting genetically modified RRA. *Id.*, at 55a. In its preliminary injunction, the District Court ordered that no new RRA could be planted until APHIS completed the EIS or the court determined that some other relief was appropriate. But, so as to protect these farmers, the court declined to prohibit them from “harvesting, using, or selling” any crops they had already planted. *Id.*, at 56a. And “to minimize the harm to those growers who intend to imminently plant Roundup Ready alfalfa,” the court permitted “[t]hose growers who intend to plant [RRA] in the next three weeks and have already purchased the seed” to go ahead and plant. *Id.*, at 58a (emphasis deleted). Essentially, the court grandfathered in those farmers who had relied, in good faith, on APHIS’s actions.

Before determining the scope of its final judgment, the District Court invited the parties and intervenors to submit “whatever additional evidence” they “wish [ed] to provide,” and it scheduled additional oral argument. *Id.*, at 58a-59a. The parties

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submitted “competing proposals for permanent injunctive relief.” *Id.*, at 60a. The plaintiffs requested that no one—not even the grandfathered-in farmers—be allowed to plant, grow, or harvest RRA until the full EIS had been prepared. *Id.*, at 64a. APHIS and the intervenors instead sought a remedy that would “facilitat[e] the continued and dramatic growth” of RRA: a “partial deregulation” order that would permit planting subject to certain *2764 conditions, such as specified minimum distances between RRA and conventional alfalfa and special cleaning requirements for equipment used on the genetically modified crop. See *id.*, at 60a-64a.

The court adopted a compromise. First, it declined to adopt the APHIS-Monsanto proposal. APHIS itself had acknowledged that “gene transmission could and had occurred,” and that RRA “could result in the development of Roundup-resistant weeds.” *Id.*, at 61a-62a. In light of the substantial record evidence of these risks, the court would not agree to a nationwide planting scheme “without the benefit of the development of all the relevant data,” as well as public comment about whether contamination could be controlled. *Id.*, at 68a. The “partial deregulation” proposed by petitioners, the court noted, was really “deregulation with certain conditions,” *id.*, at 69a—which, for the same reasons given in the court’s earlier order, requires an EIS, *ibid.* The court pointed out numerous problems with the APHIS-Monsanto proposal. Neither APHIS nor Monsanto had produced “evidence that suggests whether, and to what extent, the proposed interim conditions” would actually “be followed,” and comparable conditions had failed to prevent contamination in certain limited settings. *Id.*, at 69a-70a. APHIS, moreover, conceded that “it does not have the resources to inspect” the RRA that had already been planted, and so could not possibly be expected “to adequately monitor the more than one million acres of [RRA] intervenors estimate [would] be planted” under their proposal. *Ibid.* That was especially problematic because any plan to limit contamination depended on rules about harvesting, and farmers were unlikely to follow those rules. *Id.*, at 71a. “APHIS ha[d] still not made any inquiry” into numerous factual concerns raised by the court in its summary judgment order issued several months earlier. *Id.*, at 70a.

Next, the court rejected the plaintiffs’ proposed

remedy of “enjoin[ing] the harvesting and sale of already planted” RRA. *Id.*, at 76a. Although any planting or harvesting of RRA poses a contamination risk, the court reasoned that the equities were different for those farmers who had already invested time and money planting RRA in good-faith reliance on APHIS’s deregulation order. And small amounts of harvesting could be more easily monitored. Rather than force the farmers to tear up their crops, the court imposed a variety of conditions on the crops’ handling and distribution. *Id.*, at 77a.

As to all other RRA, however, the court sided with the plaintiffs and enjoined planting during the pendency of the EIS. Balancing the equities, the court explained that the risk of harm was great. “[C]ontamination cannot be undone; it will destroy the crops of those farmers who do not sell genetically modified alfalfa.” *Id.*, at 71a. And because those crops “cannot be replanted for two to four years,” that loss will be even greater. *Ibid.* On the other side of the balance, the court recognized that some farmers may wish to switch to genetically modified alfalfa immediately, and some companies like Monsanto want to start selling it to them just as fast. But, the court noted, RRA is a small percentage of those companies’ overall business; unsold seed can be stored; and the companies “‘have [no] cause to claim surprise’ ” as to any loss of anticipated revenue, as they “were aware of plaintiffs’ lawsuit” and “nonetheless chose to market” RRA. *Id.*, at 72a.

Thus, the District Court stated that it would “vacat[e] the June 2005 deregulation decision”; “enjoin the planting of [RRA] in the United States after March 30, 2007,” the date of the decision, “pending the government’s completion of the EIS and decision*2765 on the deregulation petition”; and impose “conditions on the handling and identification of already-planted [RRA].” *Id.*, at 79a. On the same day, the court issued its judgment. In relevant part, the judgment states:

“The federal defendants’ June 14, 2005 Determination of Nonregulated Status for [RRA] is VACATED. Before granting Monsanto’s deregulation petition, even in part, the federal defendants shall prepare an [EIS]. Until the federal defendants prepare the EIS and decide the deregulation petition, no [RRA] may be planted [RRA already] planted before March 30, 2007 may

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be grown, harvested and sold subject to the following conditions.” *Id.*, at 108a-109a.

II

Before proceeding to address the Court's opinion on its own terms, it is important to note that I have reservations about the validity of those terms. The Court today rests not only the bulk of its analysis but also the primary basis for our jurisdiction on the premise that the District Court enjoined APHIS from partially deregulating RRA in any sense. See *ante*, at 9-11, 16-23.^{FNI} That is a permissible, but not necessarily correct, reading of the District Court's judgment.

^{FNI}. See also *ante*, at 2759 (“[T]he District Court barred the agency from pursuing any deregulation—no matter how limited the geographic area in which planting of RRA would be allowed, how great the isolation distances mandated between RRA fields and fields for growing non-genetically-engineered alfalfa, how stringent the regulations governing harvesting and distribution, how robust the enforcement mechanisms available at the time of the decision, and—consequently—no matter how small the risk that the planting authorized under such conditions would adversely affect the environment in general and respondents in particular” (emphasis deleted)).

So far as I can tell, until petitioners' reply brief, neither petitioners nor the Government submitted to us that the District Court had exceeded its authority in this manner. And, indeed, the Government had not raised this issue in any court at all. Petitioners did not raise the issue in any of their three questions presented or in the body of their petition for a writ or certiorari. And they did not raise the issue in their opening briefs to this Court. Only after respondents alleged that Monsanto's injury would not be redressed by vacating the injunction, insofar as RRA would still be a regulated article, did petitioners bring the issue to the Court's attention. Explaining why they have a redressable injury, petitioners alleged that the District Court's order prevents APHIS from “implement[ing] an[y] interim solution allowing continued planting.” Reply Brief for Petitioners 5. APHIS, the party that the Court says was wrongly “barred ... from pursuing

any deregulation,” even “in accordance with the procedures established by law,” *ante*, at 2759, did not complain about this aspect of the District Court's order even in its reply brief.

Thus, notwithstanding that petitioners “adequately *preserved* their objection that the vacated deregulation decision should have been replaced by APHIS's proposed injunction,” *ante*, at 2753 (emphasis added), the key legal premise on which the Court decides this case was never adequately *presented*. Of course, this is not standard-or sound-judicial practice. See *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 159, 119 S.Ct. 1167, 143 L.Ed.2d 238 (1999) (STEVENS, J., concurring in part and dissenting in part). Today's decision illustrates why, for it is quite unclear whether the Court's premise is correct, and the Court has put itself in the position of deciding legal issues without the aid of briefing.

***2766** In my view, the District Court's judgment can fairly be read to address only (1) total deregulation orders of the kind that spawned this lawsuit, and (2) the *particular* partial deregulation order proposed to the court by APHIS. This interpretation of the judgment is more consistent with the District Court's accompanying opinion, which concluded by stating that the court “will enter a final judgment” “ordering the government to prepare an EIS before [the court] makes a decision on Monsanto's deregulation petition.” App. to Pet. for Cert. 79a. The language of that opinion does not appear to “ba[r] the agency from pursuing any deregulation—no matter how limited,” *ante*, at 2759 (emphasis deleted). This interpretation is also more consistent with APHIS's own decision not to contest what, according to the Court, was an unprecedented infringement on the agency's statutory authority.

To be sure, the District Court's judgment is somewhat opaque. But it is troubling that we may be asserting jurisdiction and deciding a highly factbound case based on nothing more than a misunderstanding. It is also troubling that we may be making law without adequate briefing on the critical questions we are passing upon. I would not be surprised if on remand the District Court merely clarified its order.

III

Even assuming that the majority has correctly interpreted the District Court's judgment, I do not

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agree that we should reverse the District Court.

At the outset, it is important to observe that when a district court is faced with an unlawful agency action, a set of parties who have relied on that action, and a prayer for relief to avoid irreparable harm, the court is operating under its powers of equity. In such a case, a court's function is "to do equity and to mould each decree to the necessities of the particular case." Hecht Co. v. Bowles, 321 U.S. 321, 329, 64 S.Ct. 587, 88 L.Ed. 754 (1944). "Flexibility" and "practicality" are the touchstones of these remedial determinations, as "the public interest," "private needs," and "competing private claims" must all be weighed and reconciled against the background of the court's own limitations and its particular familiarity with the case. Id., at 329-330, 64 S.Ct. 587.^{FN2}

^{FN2}. See also, e.g., Railroad Comm'n of Tex. v. Pullman Co., 312 U.S. 496, 500, 61 S.Ct. 643, 85 L.Ed. 971 (1941) ("The history of equity jurisdiction is the history of regard for public consequences There have been as many and as variegated applications of this supple principle as the situations that have brought it into play"); Seymour v. Freer, 8 Wall. 202, 218, 19 L.Ed. 306 (1869) ("[A] court of equity ha[s] unquestionable authority to apply its flexible and comprehensive jurisdiction in such manner as might be necessary to the right administration of justice between the parties"). Indeed, the very "ground of this jurisdiction" is a court's "ability to give a more complete and perfect remedy." 2 J. Story, Equity Jurisprudence § 924, p. 225 (M. Bigelow ed. 13th ed. 1886).

When a district court takes on the equitable role of adjusting legal obligations, we review the remedy it crafts for abuse of discretion. "[D]eference," we have explained, "is the hallmark of abuse-of-discretion review." General Elec. Co. v. Joiner, 522 U.S. 136, 143, 118 S.Ct. 512, 139 L.Ed.2d 508 (1997). Although equitable remedies are "not left to a trial court's 'inclination,'" they are left to the court's "judgment." Albemarle Paper Co. v. Moody, 422 U.S. 405, 416, 95 S.Ct. 2362, 45 L.Ed.2d 280 (1975) (quoting United States v. Burr, 25 F. Cas. 30, 35 (No. 14,692d) (CC Va. 1807) (Marshall, C.J.)). The principles set forth in applicable federal statutes may

inform that judgment. See *2767 United States v. Oakland Cannabis Buyers' Cooperative, 532 U.S. 483, 497, 121 S.Ct. 1711, 149 L.Ed.2d 722 (2001) ("[A] court sitting in equity cannot ignore the judgment of Congress, deliberately expressed in legislation" (internal quotation marks omitted)). And historically, courts have had particularly broad equitable power-and thus particularly broad discretion-to remedy public nuisances and other " 'purprestures upon public rights and properties,' " Mugler v. Kansas, 123 U.S. 623, 672, 8 S.Ct. 273, 31 L.Ed. 205 (1887).^{FN3} which include environmental harms.^{FN4}

^{FN3}. See Steelworkers v. United States, 361 U.S. 39, 60-61, 80 S.Ct. 1, 4 L.Ed.2d 12 (1959) (*per curiam*) (reviewing history of injunctions to prevent public nuisances).

^{FN4}. See, e.g., Georgia v. Tennessee Copper Co., 206 U.S. 230, 27 S.Ct. 618, 51 L.Ed. 1038 (1907) (air pollution); Arizona Copper Co. v. Gillespie, 230 U.S. 46, 56-57, 33 S.Ct. 1004, 57 L.Ed. 1384 (1913) (water pollution).

In my view, the District Court did not "unreasonably exercis[e]" its discretion, Bennett v. Bennett, 208 U.S. 505, 512, 28 S.Ct. 356, 52 L.Ed. 590 (1908), even if it did categorically prohibit partial deregulation pending completion of the EIS. Rather, the District Court's judgment can be understood as either of two reasonable exercises of its equitable powers.

Equitable Application of Administrative Law

First, the District Court's decision can be understood as an equitable application of administrative law. Faced with two different deregulation proposals, the District Court appears to have vacated the deregulation that had already occurred, made clear that NEPA requires an EIS for any future deregulation of RRA, and partially stayed the vacatur to the extent it affects farmers who had already planted RRA.^{FN5}

^{FN5}. See Reply Brief for Federal Respondents 3. There is an ongoing debate about the role of equitable adjustments in administrative law. See, e.g., Levin, Vacation at Sea: Judicial Remedies and

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[Equitable Discretion in Administrative Law](#), [53 Duke L.J. 291 \(2003\)](#). The parties to this appeal and the majority assume that the District Court's remedy was crafted under its equity powers, and I will do the same.

Under NEPA, an agency must prepare an EIS for “every ... major Federal actio[n] significantly affecting the quality of the human environment.” [42 U.S.C. § 4332\(2\)\(C\)](#). Recall that the District Court had found, on the basis of substantial evidence, that planting RRA can cause genetic contamination of other crops, planting in controlled settings had led to contamination, APHIS is unable to monitor or enforce limitations on planting, and genetic contamination could decimate the American alfalfa market. In light of that evidence, the court may well have concluded that any deregulation of RRA, even in a “limited ... geographic area” with “stringent ... regulations governing harvesting and distribution,” ^{FN6} *ante*, at 2759, requires *2768 an EIS under NEPA. See generally D. Mandelker, NEPA Law and Litigation §§ 8:33-8:48 (2d ed.2009) (describing when an EIS is required); cf. [Marsh v. Oregon Natural Resources Council](#), 490 U.S. 360, 371, 109 S.Ct. 1851, 104 L.Ed.2d 377 (1989) (NEPA embodies “sweeping commitment” to environmental safety and principle that “the agency will not act on incomplete information, only to regret its decision after it is too late to correct”). Indeed, it appears that any deregulation of a genetically modified, herbicide-resistant crop that can [transfer its genes](#) to other organisms and cannot effectively be monitored easily fits the criteria for when an EIS is required.^{FN7} That is especially so when, as in this case, the environmental threat is novel. See [Winter v. Natural Resources Defense Council, Inc.](#), 555 U.S. ----, ----, 129 S.Ct. 365, 376, 172 L.Ed.2d 249 (2008) (EIS is more important when party “is conducting a new type of activity with completely unknown effects on the environment”).^{FN8}

^{FN6}. One of the many matters not briefed in this case is how limited a partial deregulation can be. It is not clear whether the sort of extremely limited “partial deregulations” envisioned by the Court, see *ante*, at 2759 - 2761, in which RRA is “deregulated” in one small geographic area pursuant to stringent restrictions, could be achieved only through “partial deregulation”

actions, or whether they could also (or exclusively) be achieved through a more case-specific permit process. Under the applicable regulations, a regulated article may still be used subject to a permitting process. See [7 CFR §§ 340.0, 340.4 \(2010\)](#). These permits “prescribe confinement conditions and standard operating procedures ... to maintain confinement of the genetically engineered organism.” [Introduction of Organisms and Products Altered or Produced Through Genetic Engineering](#), 72 Fed.Reg. 39021, 39022 (2007) (hereinafter Introduction).

Ordinarily, “[o]nce an article has been deregulated, APHIS does not place any restrictions or requirements on its use.” [Id.](#), at 39023. As of 2007, APHIS had never-not once-granted partial approval of a petition for nonregulated status. USDA, Introduction of Genetically Engineered Organisms, Draft Environmental Impact Statement, July 2007, p. 11, online at http://www.aphis.usda.gov/brs/pdf/complete_eis.pdf (as visited June 18, 2010, and available in Clerk of Court's case file). In 2007, APHIS began contemplating a “new system” to allow for the release and use of **genetically modified organisms**, for “special cases” in which there are risks “that could be mitigated with conditions to ensure safe commercial use.” Introduction 39024 (emphasis added).

^{FN7}. See, e.g., [40 CFR § 1508.8 \(2009\)](#) (determination whether an EIS is required turns on both “[d]irect effects” and “[i]ndirect effects,” and “include[s] those resulting from actions which may have both beneficial and detrimental effects even if on balance the agency believes that the effect will be beneficial”); § 1508.27(b)(4) (determination whether an EIS is required turns on “[t]he degree to which the effects on the quality of the human environment are likely to be highly controversial”); § 1508.27(b)(5) (determination whether an EIS is required turns on “[t]he degree to which the possible effects on the quality of

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the human environment are highly uncertain or involve unique or unknown risks”).

FN8. The Court posits a hypothetical in which APHIS deregulates RRA limited to a remote area in which alfalfa is not grown, and issues an accompanying order “mandating isolation distances so great as to eliminate any appreciable risk of gene flow to the crops of conventional farmers who might someday choose to plant in the surrounding area.” *Ante*, at 2760. At the outset, it is important to note the difference between a plausible hypothetical and a piece of fiction. At least as of 2007, APHIS had never granted partial approval of a petition for nonregulated status. See n. 6, *supra*. And I doubt that it would choose to deregulate genetically modified alfalfa in a place where the growing conditions and sales networks for the product are so poor that no farmer already plants it. Moreover, the notion that this imagined deregulation would pose virtually no environmental risk ignores one of the District Court’s critical findings of fact: APHIS has very limited capacity to monitor its own restrictions. The agency could place all manner of constraints on its deregulation orders; they will have no effect unless they are enforced.

Moreover, given that APHIS had already been ordered to conduct an EIS on deregulation of RRA, the court could have reasonably feared that partial deregulation would undermine the agency’s eventual decision. Courts confronted with NEPA violations regularly adopt interim measures to maintain the status quo, particularly if allowing agency action to go forward risks foreclosing alternative courses of action that the agency might have adopted following completion of an EIS. See D. Mandelker, *NEPA Law and Litigation* § 4:61. The applicable regulations, to which the District Court owed deference,^{FN9} provide that during the preparation of an EIS, “no *2769 action concerning the [agency’s] proposal shall be taken which would ... [h]ave an adverse environmental impact” or “[l]imit the choice of reasonable alternatives.” [40 CFR § 1506.1\(a\)](#) (2009). As exemplified by the problem of what to do with farmers who had already purchased or planted RRA prior to the District Court’s judgment, even minimal

deregulation can limit future regulatory options. “Courts must remember that in many cases allowing an agency to proceed makes a mockery of the EIS process, converting it from analysis to rationalization.” Herrmann, [Injunctions for NEPA Violations: Balancing the Equities](#), 59 *U. Chi. L.Rev.* 1263, 1289 (1992); see also see [40 CFR § 1502.5](#) (EIS should be implemented in manner assuring it “will not be used to rationalize or justify decisions already made”).

FN9. See [Marsh v. Oregon Natural Resources Council](#), 490 U.S. 360, 372, 109 S.Ct. 1851, 104 L.Ed.2d 377 (1989).

Although the majority does not dispute that the District Court could have reasonably concluded that NEPA requires an EIS for even partial deregulation of RRA, it suggests that any such conclusion would have been incompatible with the court’s decision to permit limited harvesting by farmers who had already planted RRA. See *ante*, at 2759 - 2760.^{FN10} I do not see the “inconsisten[cy].” *Ibid.* NEPA does not apply to actions by federal courts. See [40 CFR § 1508.12](#). Exercising its equitable discretion to balance the interests of the parties and the public, the District Court would have been well within its rights to find that NEPA requires an EIS before the agency grants “Monsanto’s deregulation petition, even in part,” App. to Pet. for Cert. 108a, yet also to find that a partial stay of the vacatur was appropriate to protect the interests of those farmers who had already acted in good-faith reliance on APHIS.

FN10. The Court states that the order permitted both harvesting and planting. But the court’s final judgment permitted only sale and harvesting of RRA planted *before* March 30, 2007, more than a month before the judgment. See App. to Pet. for Cert. 109a; see also *id.*, at 79a.

Similarly, I do not agree that the District Court’s ruling was “premature” because APHIS had not yet effected any partial deregulations, *ante*, at 2759. Although it is “for the agency to decide whether and to what extent” it will pursue deregulation, *ante*, at 2757 - 2758, the court’s application of NEPA to APHIS’s regulation of RRA might have controlled any deregulation during the pendency of the EIS. Petitioners and APHIS had already come back to the

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court with a proposed partial deregulation order which, the court explained, was incompatible with its determination that there is a substantial risk of gene spreading and that APHIS lacks monitoring capacity. That same concern would apply to *any* partial deregulation order. The court therefore had good reason to make it clear, upfront, that the parties should not continue to expend resources proposing such orders, instead of just moving ahead with an EIS. Cf. [Railroad Comm'n of Tex. v. Pullman Co.](#), 312 U.S. 496, 500, 61 S.Ct. 643, 85 L.Ed. 971 (1941) (“The resources of equity are equal to an adjustment that will avoid the waste of a tentative decision”). Indeed, it was APHIS itself that “sought to ‘streamline’ ” the process. *Ante*, at 2758.

Injunctive Relief

Second, the District Court's judgment can be understood as a reasonable response to the nature of the risks posed by RRA. Separate and apart from NEPA's requirement of an EIS, these risks were sufficiently serious, in my view, that the court's injunction was a permissible exercise of its equitable authority.

*2770 The District Court found that [gene transfer](#) can and does occur, and that if it were to spread through open land the environmental and economic consequences would be devastating. Cf. [Amoco Production Co. v. Gambell](#), 480 U.S. 531, 545, 107 S.Ct. 1396, 94 L.Ed.2d 542 (1987) (“Environmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, *i.e.*, irreparable”). Although “a mere possibility of a future nuisance will not support an injunction,” courts have never required proof “that the nuisance *will* occur”; rather, “it is sufficient ... that the *risk* of its happening is greater than a reasonable man would incur.” 5 J. Pomeroy, *A Treatise on Equity Jurisprudence and Equitable Remedies*, § 1937 (§ 523), p. 4398 (2d ed.1919). Once [gene transfer](#) occurred in American fields, it “would be difficult-if not impossible-to reverse the harm.” [Hollingsworth v. Perry](#), 558 U.S. ----, ----, 130 S.Ct. 705, 712, --- L.Ed.2d ---- (2010) (*per curiam*).

Additional considerations support the District Court's judgment. It was clear to the court that APHIS had only limited capacity to monitor planted RRA, and some RRA had already been planted. The

marginal threat posed by additional planting was therefore significant. Injunctive remedies are meant to achieve a “nice adjustment and reconciliation between the competing claims” of injury by “mould[ing] each decree to the necessities of the case.” [Weinberger v. Romero-Barcelo](#), 456 U.S. 305, 312, 102 S.Ct. 1798, 72 L.Ed.2d 91 (1982) (internal quotation marks omitted). Under these circumstances, it was not unreasonable for the court to conclude that the most equitable solution was to allocate the limited amount of potentially safe RRA to the farmers who had already planted that crop.^{FN11}

^{FN11}. As explained previously, I do not see the court's broad injunction as “inconsistent,” *ante*, at 2759 - 2760, with its decision that farmers who had already planted RRA could harvest their crop. The equities are different for farmers who relied on the agency than for companies like Monstanto that developed an organism knowing it might be regulated; and APHIS could monitor only a limited amount of RRA.

The Court suggests that the injunction was nonetheless too sweeping because “a partial deregulation need not cause respondents any injury at all ... if the scope of the partial deregulation is sufficiently limited, the risk of gene flow to their crops could be virtually nonexistent.” *Ante*, at 2760. The Court appears to reach this conclusion by citing one particular study (in a voluminous record), rather than any findings of fact.^{FN12} Even assuming that this study is correct, the Court ignores the District Court's findings that gene flow is likely and that APHIS has little ability to monitor any conditions imposed on a partial*2771 deregulation. Limits on planting or harvesting may operate fine in a laboratory setting, but the District Court concluded that many limits will not be followed and cannot be enforced in the real world.^{FN13}

^{FN12}. The Court also hypothesizes a set of growing conditions that would isolate RRA from the plaintiffs in this case, even if not from other farmers. See *ante*, at 2760 - 2761. As already explained, these hypotheticals are rather unrealistic. See n. 8, *supra*. And, given that the plaintiffs include environmental organizations as well as

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farmer and consumer associations, it is hard to see how APHIS could so carefully isolate and protect their interests. In any event, because APHIS concedes that it cannot monitor such limits, rules that protect these or any other parties may be merely hortatory in practice. Moreover, although we have not squarely addressed the issue, in my view “[t]here is no general requirement that an injunction affect only the parties in the suit.” [Bresgal v. Brock](#), 843 F.2d 1163, 1169 (C.A.9 1987). To limit an injunction against a federal agency to the named plaintiffs “would only encourage numerous other” regulated entities “to file additional lawsuits in this and other federal jurisdictions.” [Livestock Marketing Assn. v. United States Dept. of Agriculture](#), 207 F.Supp.2d 992, 1007 (SD 2002), aff’d, 335 F.3d 711, 726 (C.A.8 2003).

[FN13](#). The majority notes that the District Court acknowledged, at a hearing several months before it issued the judgment, that a simple but slightly overinclusive remedy may be preferable to an elaborate set of planting conditions. See *ante*, at 2760, n. 6. Quite right. As the District Court said to APHIS’s lawyer at that hearing, if the agency issues an elaborate set of precautions, “I don’t know how you even start to enforce it.” App. to Pet. for Cert. 190a-191a.

Against that background, it was perfectly reasonable to wait for an EIS. APHIS and petitioners argued to the District Court that partial deregulation could be safely implemented, they submitted evidence intended to show that planting restrictions would prevent the spread of the newly engineered gene, and they contested “virtually every factual issue relating to possible environmental harm.” [Geertson Seed Farms v. Johanns](#), 570 F.3d 1130, 1135 (C.A.9 2009). But lacking “the benefit of the development of all the relevant data,” App. to Pet. for Cert. 68a, the District Court did not find APHIS’s and petitioners’ assertions to be convincing. I cannot say that I would have found otherwise. It was reasonable for the court to conclude that planting could not go forward until more complete study, presented in an EIS, showed that the known problem of gene flow

could, in reality, be prevented.^{[FN14](#)}

[FN14](#). I suspect that if APHIS and petitioners had come back to the court with more convincing evidence prior to completing an EIS, and moved to modify the court’s order, the court would have done so. Indeed, the District Court showed a willingness to recalibrate its order when it amended its judgment just a few months after the judgment’s issuance in light of APHIS’s submission that certain requirements were impractical. See App. to Pet. for Cert. 111a-114a.

The District Court’s decision that more study was needed to assess whether limits on deregulation could prevent environmental damage is further reinforced by the statutory context in which the issue arose. A court’s equitable discretion must be guided by “recognized, defined public policy.” [Meredith v. Winter Haven](#), 320 U.S. 228, 235, 64 S.Ct. 7, 88 L.Ed. 9 (1943); see also [Hecht Co. v. Bowles](#), 321 U.S. 321, 331, 64 S.Ct. 587, 88 L.Ed. 754 (1944) (explaining that when a court evaluates an agency’s decision against the background of a federal statute, the court’s discretion “must be exercised in light of the large objectives of the Act”). Congress recognized in NEPA that complex environmental cases often require exceptionally sophisticated scientific determinations, and that agency decisions should not be made on the basis of “incomplete information.” [Marsh v. Oregon Natural Resources Council](#), 490 U.S. 360, 371, 109 S.Ct. 1851, 104 L.Ed.2d 377 (1989). Congress also recognized that agencies cannot fully weigh the consequences of these decisions without obtaining public comments through an EIS. See [Robertson v. Methow Valley Citizens Council](#), 490 U.S. 332, 350, 109 S.Ct. 1835, 104 L.Ed.2d 351 (1989).^{[FN15](#)} While a court may not presume that a NEPA violation requires an injunction, it may take into account the principles embodied in the statute in considering whether an injunction would be appropriate. This District Court had before it strong evidence that gene transmission was likely to occur and that limits on growing could *2772 not be enforced. It also had a large amount of highly detailed evidence about whether growing restrictions, even if enforced, can prevent transmission. That evidence called into question the agency’s own claims regarding the risks posed by

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partial deregulation. In enjoining partial deregulation until it had the benefit of an EIS to help parse the evidence, the court acted with exactly the sort of caution that Congress endorsed in NEPA.

[FN15](#). Accordingly, while “NEPA itself does not mandate particular results,” it does mandate a particular process and embodies the principle that federal agencies should “carefully consid[r] detailed information” before incurring potential environmental harm. [Robertson, 490 U.S., at 350, 349, 109 S.Ct. 1835](#).

Finally, it bears mention that the District Court's experience with the case may have given it grounds for skepticism about the representations made by APHIS and petitioners. Sometimes “one judicial actor is better positioned than another to decide the issue in question.” [Miller v. Fenton, 474 U.S. 104, 114, 106 S.Ct. 445, 88 L.Ed.2d 405 \(1985\)](#). A “district court may have insights not conveyed by the record.” [Pierce v. Underwood, 487 U.S. 552, 560, 108 S.Ct. 2541, 101 L.Ed.2d 490 \(1988\)](#). In this case, the agency had attempted to deregulate RRA without an EIS in spite of ample evidence of potential environmental harms. And when the court made clear that the agency had violated NEPA, the agency responded by seeking to “ ‘streamline’ ” the process, *ante*, at 2758, submitting a deregulation proposal with Monsanto that suffered from some of the same legal and empirical holes as its initial plan to deregulate. Against that background, the court may have felt it especially prudent to wait for an EIS before concluding that APHIS could manage RRA's threat to the environment.

* * *

The District Court in this case was put in an “unenviable position.” *Ibid*. In front of it was strong evidence that RRA poses a serious threat to the environment and to American business, and that limits on RRA deregulation might not be followed or enforced-and that even if they were, the newly engineered gene might nevertheless spread to other crops. Confronted with those disconcerting submissions, with APHIS's unlawful deregulation decision, with a group of farmers who had staked their livelihoods on APHIS's decision, and with a federal statute that prizes informed decisionmaking on matters that seriously affect the environment, the

court did the best it could. In my view, the District Court was well within its discretion to order the remedy that the Court now reverses. Accordingly, I respectfully dissent.

U.S.,2010.

Monsanto Co. v. Geertson Seed Farms
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612 F.Supp.2d 442, 69 ERC 1853
(Cite as: 612 F.Supp.2d 442)

C

United States District Court,
 D. Delaware.
 DELAWARE AUDUBON SOCIETY, INC., Center
 for Food Safety, and Public Employees for
 Environmental Responsibility, Plaintiffs,
 v.
 SECRETARY OF THE U.S. DEPARTMENT OF
 INTERIOR, Dale Hall, Director of U.S. Fish and
 Wildlife Service, and U.S. Fish and Wildlife Service,
 an administrative agency of the U.S. Department of
 Interior, Defendants.

C.A. No. 06-223-GMS.
 March 24, 2009.

Background: Environmental organizations sued the Secretary of the Department of Interior, the Director of the Fish and Wildlife Service, and the Fish and Wildlife Service, claiming that, in allowing cooperative farming and farming with genetically modified crops to take place at a national wildlife refuge, the defendants violated the Administrative Procedures Act (APA), the National Wildlife Refuge System Administration Act (NWRSA) and the National Environmental Policy Act (NEPA). The environmental organizations moved for summary judgment.

Holdings: The District Court, [Gregory M. Sleet](#), Chief District Judge, held that:

- (1) environmental organizations' claims were not moot;
- (2) defendants violated the NWRSA;
- (3) defendants violated the NEPA;
- (4) defendants violated the Administrative Procedure Act (APA); and
- (5) permanent injunctive relief was warranted.

Motion granted.

West Headnotes

[1] Federal Courts 170B ↪12.1

[170B](#) Federal Courts

[170BI](#) Jurisdiction and Powers in General

[170BI\(A\)](#) In General

[170Bk12](#) Case or Controversy Requirement

[170Bk12.1](#) k. In General. [Most Cited](#)

[Cases](#)

Federal courts lack jurisdiction to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it. [U.S.C.A. Const. Art. 3, § 2, cl. 1.](#)

[2] Federal Courts 170B ↪12.1

[170B](#) Federal Courts

[170BI](#) Jurisdiction and Powers in General

[170BI\(A\)](#) In General

[170Bk12](#) Case or Controversy Requirement

[170Bk12.1](#) k. In General. [Most Cited](#)

[Cases](#)

Central question of all mootness problems is whether changes in circumstances that prevailed at the beginning of the litigation have forestalled any occasion for meaningful relief, and thus, when an actual or threatened injury from a challenged action no longer exists, or a change in circumstances deprives a court the ability to provide effective relief, the matter is moot, and must be dismissed for lack of jurisdiction. [U.S.C.A. Const. Art. 3, § 2, cl. 1.](#)

[3] Federal Courts 170B ↪12.1

[170B](#) Federal Courts

[170BI](#) Jurisdiction and Powers in General

[170BI\(A\)](#) In General

[170Bk12](#) Case or Controversy Requirement

[170Bk12.1](#) k. In General. [Most Cited](#)

[Cases](#)

When a party voluntarily ceases a challenged activity, the court should only find the action moot if it is absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur; in making this determination, a court must consider the bona fides of the expressed intent to comply, the effectiveness of the discontinuance and, in some

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cases, the character of the past violations.

[4] Federal Courts 170B ↪12.1

[170B](#) Federal Courts

[170BI](#) Jurisdiction and Powers in General

[170BI\(A\)](#) In General

[170Bk12](#) Case or Controversy Requirement

[170Bk12.1](#) k. In General. [Most Cited](#)

[Cases](#)

Burden of persuading the court that ceased conduct will not recur lies with the party asserting mootness.

[5] Federal Courts 170B ↪13.25

[170B](#) Federal Courts

[170BI](#) Jurisdiction and Powers in General

[170BI\(A\)](#) In General

[170Bk12](#) Case or Controversy Requirement

[170Bk13.25](#) k. Land, Land Use, and

Environment. [Most Cited Cases](#)

Claims of environmental violations in federal agencies' allowing farming to take place at a national wildlife refuge were not moot, despite claim that the challenged activity was not presently occurring and would not occur until the necessary compatibility determinations, environmental assessments, and environmental impact statements were completed; the agencies' decision to voluntarily cease their activities did not render the claims moot, and the facts suggested that they were motivated by purely practical reasons, i.e., an attempt to avoid litigation.

[6] Environmental Law 149E ↪536

[149E](#) Environmental Law

[149EXI](#) Plants and Wildlife

[149Ek535](#) Public Plans, Projects, and Approvals; Agency Action

[149Ek536](#) k. In General. [Most Cited Cases](#)

Federal agencies, in allowing cooperative farming and farming with genetically modified crops to take place at a national wildlife refuge without first conducting or preparing a written compatibility determination, violated the National Wildlife Refuge System Administration Act (NWRSA). National

Wildlife Refuge System Administration Act of 1966, § 4(a)(2), (d)(a)(A), [16 U.S.C.A. § 668dd\(a\)\(2\)](#), [\(d\)\(1\)\(A\)](#); [50 C.F.R. §§ 25.12, 25.21\(b\)](#).

[7] Environmental Law 149E ↪582

[149E](#) Environmental Law

[149EXII](#) Assessments and Impact Statements

[149Ek580](#) Preliminary Assessment or Report

[149Ek582](#) k. Necessity. [Most Cited Cases](#)

Environmental Law 149E ↪595(2)

[149E](#) Environmental Law

[149EXII](#) Assessments and Impact Statements

[149Ek584](#) Necessity for Preparation of Statement, Consideration of Factors, or Other Compliance with Requirements

[149Ek595](#) Particular Projects

[149Ek595\(2\)](#) k. Land Use in General.

[Most Cited Cases](#)

Federal agencies, in allowing farming with genetically modified crops to take place at a national wildlife refuge without first preparing either an environmental impact statement (EIS) or an environmental assessment (EA), violated the National Environmental Policy Act (NEPA); the agencies' own biologists determined that the permitted activities posed significant environmental risks to the refuge, including biological contamination, increased weed resistance, and damage to soils. National Environmental Policy Act of 1969, §§ 2, 102(C), [42 U.S.C.A. §§ 4321, 4332\(C\)](#); [40 C.F.R. §§ 1501.4\(a, b, e\), 1508.13](#).

[8] Environmental Law 149E ↪695

[149E](#) Environmental Law

[149EXIII](#) Judicial Review or Intervention

[149Ek694](#) Determination, Judgment, and Relief

[149Ek695](#) k. In General. [Most Cited Cases](#)

Federal agencies, in allowing farming with genetically modified crops to take place at a national wildlife refuge without first making a written compatibility determination, as required by the National Wildlife Refuge System Administration Act (NWRSA), and by allowing farmers to grow

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genetically modified crops at the refuge without first preparing either an environmental assessment (EA) or an environmental impact statement (EIS), as required by the National Environmental Policy Act (NEPA), violated the Administrative Procedure Act (APA), pursuant to which a final agency action must be set aside if it is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” [5 U.S.C.A. § 706\(2\)\(A\)](#); National Wildlife Refuge System Administration Act of 1966, § 4(a)(2), (d)(a)(A), [16 U.S.C.A. § 668dd\(a\)\(2\)](#), [\(d\)\(1\)\(A\)](#); National Environmental Policy Act of 1969, §§ 2, 102(C), [42 U.S.C.A. §§ 4321](#), [4332\(C\)](#).

[\[9\] Environmental Law 149E](#) [700](#)

[149E Environmental Law](#)

[149EXIII Judicial Review or Intervention](#)

[149Ek699 Injunction](#)

[149Ek700 k. In General. Most Cited Cases](#)

Environmental organizations were entitled to a permanent injunction prohibiting the Department of Interior and the Fish and Wildlife Service from allowing any cooperative farming at a national wildlife refuge until a written compatibility determination was completed, and from allowing any cultivation or farming with genetically modified crops at the refuge until either an environmental assessment (EA) or an environmental impact statement (EIS) was completed; defendant's actions violated environmental statutes, environmental injury could seldom be adequately remedied by money damages, defendants had already ceased the challenged farming practices, and the public had an interest in habitat preservation. [5 U.S.C.A. § 706\(2\)\(A\)](#); National Wildlife Refuge System Administration Act of 1966, § 4(a)(2), (d)(a)(A), [16 U.S.C.A. § 668dd\(a\)\(2\)](#), [\(d\)\(1\)\(A\)](#); National Environmental Policy Act of 1969, §§ 2, 102(C), [42 U.S.C.A. §§ 4321](#), [4332\(C\)](#).

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MEMORANDUM

[GREGORY M. SLEET](#), Chief Judge.

I. INTRODUCTION

On April 5, 2006, the plaintiffs [FN1](#) filed a complaint in this action seeking both declaratory and injunctive relief. (D.I. 1.) In the complaint, the plaintiffs allege that the defendants [FN2](#) violated various federal environmental and wildlife conservation laws by, among other things, allowing cooperative farming and farming with genetically modified crops to take place at the Prime Hook national wildlife refuge in Delaware. (*Id.*) Specifically, they allege that the defendants*[445](#) violated the: (1) Administrative Procedures Act, [5 U.S.C. §§ 551 et seq.](#) (the “APA”); (2) National Wildlife Refuge System Administration Act, [16 U.S.C. § 668dd et seq.](#) (the “NWRSA”); and the (3) National Environmental Policy Act, [42 U.S.C. § 4331 et seq.](#) (“NEPA”). (*Id.*) Presently before the court is the plaintiffs' motion for summary judgment. (D.I. 35.) For the reasons that follow, the court will grant the plaintiffs' motion and their request for injunctive relief.

[FN1](#). The plaintiffs in this action are: (1) Delaware Audubon Society, Inc., (2) Center for Food Safety and (3) Public Employees for Environmental Responsibility (collectively, “Delaware Audubon” or the “plaintiffs”).

[FN2](#). The defendants in this action are: (1) the Secretary of the U.S. Department of Interior, (2) Dale Hall, (3) the Director of the U.S. Fish and Wildlife Service, and (4) the U.S. Fish and Wildlife Service (collectively, “FWS” or the “defendants”).

II. BACKGROUND

The Prime Hook National Wildlife Refuge (“Prime Hook”) is part of the National Wildlife Refuge System. (D.I. 32 at 9.) This refuge consists of approximately 10,000 acres of land located in Sussex County, Delaware. (*Id.*) It was formed in 1963 for use as a sanctuary and for the management of migratory birds. (*Id.*) Prime Hook's aim and primary purposes include: (a) providing a resting and feeding habitat for migratory birds, particularly waterfowl, and (b) providing a habitat for a variety of other species, such as ducks, the endangered Delmarva squirrel, and the southern bald eagle. (*Id.*) The

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defendants are responsible for overseeing and maintaining Prime Hook in accordance with various federal habitat preservation and wildlife conservation requirements. (D.I. 32 at 10.)

Prior to 2007, a small percentage of Prime Hook's acreage was also utilized for commercial agriculture, including private farming. (D.I. 32 at 9-10.) Specifically, from 1995 to 2007, Prime Hook entered into 37 cooperative farming agreements. (*Id.*) Under these agreements, farmers were permitted to harvest commodity corn or soybean crops at Prime Hook. (*Id.* at 10.) In return for these farming rights, the farmers were required to do certain work on the land, including, among other things, tilling and planting winter crops. (*Id.* at 10.) Before entering these cooperative farming agreements, the defendants did not make any compatibility determinations or conduct any studies to assess whether these agricultural uses, including the harvesting of commodity crops, were "compatible" with Prime Hook's purposes. (D.I. 32 at 10.) In addition, in 2001, the defendants allowed 150 acres of agricultural land at Prime Hook to return to a natural vegetative state as part of a grassland breeding bird survey and an inventory of flora and fauna conducted by the State of Delaware. (*Id.* at 10.) When that study concluded, however, the defendants re-authorized the acreage for agricultural use-again, without first determining whether such use was "compatible." (*Id.* at 11.)

In 2001, FWS also adopted a policy that prohibited the use of genetically modified crops or organisms (the "GMO Policy").^{FN3} (D.I. 32 at 11.) Specifically, the GMO Policy states that:

^{FN3}. Note that "genetically modified crops" are also referred to as "**genetically modified organisms.**" (D.I. 32 at 11.)

We do not allow refuge uses or management practices that result in the maintenance of non-native plant communities unless we determine there is no feasible alternative for accomplishing refuge purpose(s)... We do not use **genetically modified organisms in refuge management unless we determine their use is essential to accomplishing refuge purpose(s)** and the Director approves the use.

(*Id.* at 11) (emphasis added). At that time, Prime Hook's stated goal in this regard was to phase out

the use of genetically engineered crops because the crops "do *446 not contribute to achieving refuge objectives." (*Id.*)

Starting in 2003, however, the defendants made repeated exceptions to their own GMO Policy, by continuing to allow genetically modified crops to be planted on Prime Hook-despite evidence that these activities posed "significant environmental risks" to Prime Hook. (D.I. 32 at 12.) The defendants' own biologists identified several significant risks in connection with planting genetically modified crops at Prime Hook, including biological contamination, increased weed resistance, and damage to soils.^{FN4} (*Id.* at 13.) Nonetheless, the defendants did not determine whether the use of genetically modified crops at Prime Hook is "essential to accomplishing refuge purpose(s)" in compliance with the GMO policy. (*Id.*) They also did not conduct any NEPA environmental assessments, make any compatibility determinations, or prepare any environmental impact statements concerning the impact of private farming at Prime Hook. (*Id.*) Likewise, the defendants did not perform any NEPA environmental assessments, or make any written compatibility determinations, or prepare an environmental impact statement to assess the impact of farming with genetically modified crops at Prime Hook. (*Id.* at 12-13.)

^{FN4}. Moreover, in response to the objections to the policy prohibiting genetically modified crops, a FWS biologist stated, "I cannot condone or justify the use of [**genetically modified organisms**] in relation to Prime Hook." (D.I. 32 at 13.)

In March 2006, the defendants entered into two additional cooperative farming agreements that once again permitted the use of genetically modified crops at Prime Hook. (D.I. 37 at 10-11.) Before entering these agreements, the defendants, again, did not make any written compatibility determinations, conduct any NEPA environmental assessments, or prepare any environmental impact statements. (*Id.*) These two cooperative farming agreements expired on December 1, 2006. (*Id.* at 11.) According to the defendants, there has been no farming at Prime Hook since that time. (*Id.*)

On April 5, 2006, the plaintiffs filed this action seeking to: (1) enjoin the defendants from allowing

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any further cooperative farming at Prime Hook, until a written compatibility determination is completed; and (2) enjoin the defendants from allowing any further cultivation or farming with genetically modified crops at Prime Hook until an environmental assessment and/or environmental impact statement is completed. (D.I. 1.) After this suit was filed, the defendants stated that “there will be no more farming agreements” until the completion and final consideration of, among other things, an “environmental analysis under NEPA, ... compatibility determinations available for public review and comment, ... and other required determinations.” ^{FN5} (D.I. 37 at 11.)

^{FN5}. This includes the completion of a comprehensive conservation plan (the “CCP”). (See D.I. 37 at 1-2.) The CCP is a Congressionally-mandated conservation and land management plan that requires, among other things, that an appropriate environmental analysis under NEPA be conducted and that a written compatibility determination be completed.

III. THE PARTIES' CONTENTIONS

The plaintiffs contend that there are no issues of material fact as to the defendants' conduct, and they are entitled to judgment on their claims as a matter of law. Specifically, they contend that there is no dispute that the defendants: (a) failed to make written compatibility determinations before entering into any of the cooperative farming agreements and allowing agricultural activity at Prime Hook, in violation of the NWRSA; (b) failed to *447 make a written compatibility determination before allowing the resumption of farming on 150 acres of Prime Hook, in violation of the NWRSA; and (c) failed to prepare an environmental impact statement or an environmental assessment before allowing the farming of genetically modified crops at Prime Hook, in violation of the NEPA. (D.I. 1.) In addition, the plaintiffs contend that, in so doing, the defendants' conduct was “arbitrary, capricious, and not in accordance with existing law,” in violation of the APA. (*Id.*)

The defendants contend that the plaintiffs' motion should be denied, and that this action should be dismissed on mootness grounds. (D.I. 37 at 2.) Specifically, they contend that the claims alleged in

this case are “moot” because cooperative farming and farming with genetically modified crops are not presently occurring at Prime Hook, and will not recur, until the necessary compatibility determinations, environmental assessments, and environmental impact statements are completed. (*Id.* at 1-2.) They maintain that this case should be dismissed because there exists no “live” case or controversy. (*Id.* at 13.)

IV. DISCUSSION

After having considered the record in this case, the parties' briefing, and the applicable law, the court concludes that: (A) the plaintiffs' claims are not moot; (B) the plaintiffs are entitled to summary judgment; and (C) the plaintiffs are entitled to injunctive relief. Specifically, the court finds that there are no issues of material fact, and that the plaintiffs are entitled to judgment on their claims that the defendants violated the NWRSA, the NEPA, and the APA; and the defendants' conduct was arbitrary, capricious, and not in accordance with existing law. The court further finds that injunctive relief is warranted. The court will, therefore, grant the plaintiffs' motion for summary judgment and their request for injunctive relief.

A. Whether the Plaintiffs' Claims are Moot

^[1] It is well-settled that the “exercise of judicial power under Article III of the Constitution depends on the existence of a case or controversy.” *Preiser v. Newkirk*, 422 U.S. 395, 401, 95 S.Ct. 2330, 45 L.Ed.2d 272 (1975); see also *Am. Bird Conservancy v. Kempthorne*, 559 F.3d 184, 188, (3d Cir.2009) (“The mootness doctrine derives from Article III of the Constitution, which limits the ‘judicial Power’ of the United States to the adjudication of ‘Cases’ or ‘Controversies.’”) (citing U.S. Const. art. III, § 2). Therefore, federal courts lack jurisdiction “to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.” *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12, 113 S.Ct. 447, 121 L.Ed.2d 313 (1992); see also *Princeton Univ. v. Schmid*, 455 U.S. 100, 102, 102 S.Ct. 867, 70 L.Ed.2d 855 (1982) (holding that the court does “not sit to decide hypothetical issues or to give advisory opinions about issues as to which there are not adverse parties”).

^[2] Moreover, the “central question of all

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mootness problems is whether changes in circumstances that prevailed at the beginning of the litigation have forestalled any occasion for meaningful relief.” Am. Bird Conservancy, 559 F.3d at 188 (quoting In re Surrick, 338 F.3d 224, 230 (3d Cir.2003)). Thus, when an actual or threatened injury from a challenged action no longer exists, or a change in circumstances deprives a court the ability to provide effective relief, the matter is moot, and must be dismissed for lack of jurisdiction. See Mills v. Green, 159 U.S. 651, 653, 16 S.Ct. 132, 40 L.Ed. 293 (1985).

*448 [3][4] It is equally well-settled that “a defendant’s voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of [that] practice.” Friends of the Earth v. Laidlaw Envtl. Services, Inc., 528 U.S. 167, 189, 120 S.Ct. 693, 145 L.Ed.2d 610 (2000) (quoting City of Mesquite v. Aladdin’s Castle, Inc., 455 U.S. 283, 289 n. 10, 102 S.Ct. 1070, 71 L.Ed.2d 152 (1982)). When a party voluntarily ceases a challenged activity, the court should only find the action moot if it is “absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.” Friends of the Earth, 528 U.S. at 191, 120 S.Ct. 693. In making this determination, a court must consider “the bona fides of the expressed intent to comply, the effectiveness of the discontinuance and, in some cases, the character of the past violations.” United States v. W.T. Grant Co., 345 U.S. 629, 633, 73 S.Ct. 894, 97 L.Ed. 1303 (1953); see also People Against Police Violence v. City of Pittsburgh, 520 F.3d 226, 232 (3d Cir.2008) (holding that a defendant’s representation that it would no longer enforce a challenged activity does not deprive a court of jurisdiction). The burden of persuading the court that the ceased conduct will not recur lies with the party asserting mootness. See United States v. Concentrated Phosphate Exp. Ass’n, 393 U.S. 199, 203, 89 S.Ct. 361, 21 L.Ed.2d 344 (1968).

[5] Here, the defendants contend that the plaintiffs’ claims are moot because there is currently no cooperative farming or farming with genetically modified crops at Prime Hook, and there will be no cooperative farming or farming with genetically modified crops at Prime Hook in the foreseeable future, until the necessary compatibility determinations, environmental assessments, and environmental impact statements are completed.

They contend that the challenged activities have ceased and will not recur. The court does not agree.

First, as the plaintiffs correctly point out, the defendants’ decision to voluntarily cease cooperative farming and farming with genetically modified crops at Prime Hook does not render the plaintiffs’ claims moot. Indeed, the Third Circuit has concluded as much. Specifically, in United States v. Gov’t of Virgin Islands, the Third Circuit held that a defendant’s voluntary cessation of a challenged activity does not result in mootness, where the defendant ceases to engage in the challenged activity for “purely practical” or strategic reasons, such as avoiding litigation. Cf. United States v. Gov’t of Virgin Islands, 363 F.3d 276, 285 (3d Cir.2004) (holding that a defendant’s “voluntary termination” was not enough to “render the case moot”). In that case, the Third Circuit noted that the timing of the defendant’s “voluntary termination”-occurring “with litigation lurking a couple of days away”-was insufficient to render the plaintiff’s claims moot. Id. at 285.

Here, like the defendants in United States v. Gov’t of Virgin Islands, the facts of this case also suggest that the defendants’ decision to voluntarily cease the cooperative farming and farming with genetically modified crops at Prime Hook is motivated by “purely practical” reasons, *i.e.*, an attempt to avoid litigation. In reviewing the administrative record, it strikes the court that the defendants did not indicate their willingness to cease allowing those farming practices at issue to take place at Prime Hook until *after* this suit was filed. The record reflects that, prior to that time, the defendants did not take any steps to cease or otherwise limit cooperative farming practices or farming with genetically modified crops at Prime Hook. Indeed, in January and February 2006, approximately eight months after receiving*449 “divergent public comments” opposing further cooperative farming at Prime Hook, the defendants entered into two new, additional cooperative farming agreements-once again permitting the use of genetically modified crops at Prime Hook. The court is not persuaded that the defendants’ decision now, to “voluntarily” cease allowing the farming at issue at Prime Hook, necessarily renders the plaintiffs’ claims moot.

The court is, likewise, not convinced that the

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defendants' practices will not necessarily resume in the future. Specifically, the defendants' decision to voluntarily cease cooperative farming and farming with genetically modified crops at Prime Hook provides no legally-binding assurances that the defendants will not resume these same practices again in the future. Without more, the mere fact that, while in litigation, the defendants proclaim that "there will be no cooperative farming or farming with genetically modified crops at Prime Hook until the necessary compatibility determinations and environmental assessments are completed" is not enough. Cf. *Pennsylvania v. Porter*, 659 F.2d 306, 313 (3d Cir.1981) (*en banc*) (holding that a case was not moot where city failed to provide assurance that the challenged conduct would not be resumed); *People Against Police Violence*, 520 F.3d at 232 (same). The court finds that the plaintiffs' claims are not moot.

B. Whether Summary Judgment Is Appropriate

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c). Thus, the court may grant summary judgment only if the moving party shows that there are no genuine issues of material fact that would permit a reasonable jury to find for the non-moving party. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). A fact is "material" if it might affect the outcome of the suit. *Id.* at 247-48, 106 S.Ct. 2505. An issue is "genuine" if a reasonable jury could possibly find in favor of the non-moving party with regard to that issue. *Id.* at 249, 106 S.Ct. 2505.

The moving party bears the initial burden of demonstrating that there are no genuine issues of material fact. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). In addition, the court views the evidence in the light most favorable to the nonmoving party, with all doubts resolved against entry of summary judgment. See *Blackburn v. United Parcel Serv., Inc.*, 179 F.3d 81, 91 (3d Cir.1999). Summary judgment is particularly appropriate where the nonmoving party has presented no evidence or inferences that would allow a reasonable mind to rule in its favor. See

Donald M. Durkin Contracting, Inc. v. City of Newark, No. 04-163-GMS, 2006 U.S. Dist. LEXIS 68221, 2006 WL 2724882, at *12 (D.Del. Sept. 22, 2006).

In this case, the court finds that there are no genuine issues of material fact, and that the plaintiffs are entitled to judgment as a matter of law on their claims that the defendants violated: (1) the NWRSA, (2) the NEPA, and (3) the APA; and their claim that the defendants' conduct was arbitrary, capricious, and not in accordance with existing law.

1. Whether the Defendants Violated the NWRSA

[6] According to the NWRSA, the mission of the National Wildlife Refuge System "is to administer a national network of lands and waters for the conservation, management, and where appropriate, *450 restoration of the fish wildlife, and plant resources and their habitats within the United States." 16 U.S.C. § 668dd(a)(2). In addition, the NWRSA empowers the Secretary of the Interior to "permit the use of any area within the System for any purpose ... whenever [he or she] determines that such uses are compatible with the major purposes for which such areas were established." *Id.* at § 668dd(d)(1)(A).

Under NWRSA regulations, a national wildlife refuge may be opened "for any refuge use ... only after the [FWS] determines that it is a *compatible use* and not inconsistent with any applicable law." ^{FN6} 50 C.F.R. § 25.21(b) (emphasis added). In particular, these regulations require that such compatibility determinations must: (1) be in writing; (2) identify the proposed or existing use that the compatibility determination applies to; and (3) state whether the proposed use is in fact a compatible use based on "sound professional judgment." See 50 C.F.R. § 25.12. In addition, the NWRSA requires that a written compatibility determination be completed before farming is permitted on a national wildlife refuge. ^{FN7} *Id.*

^{FN6}. The term "refuge use" includes farming. See 50 C.F.R. § 25.12.

^{FN7}. This written compatibility determination should take into consideration, among other things, the "applicable law, principles of sound fish and

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wildlife management, available science, and refuge resources.” See [50 C.F.R. § 25.12](#).

Here, there is no dispute that the defendants permitted farming on Prime Hook without first conducting or preparing a written compatibility determination. The defendants do not contest that from 1995 to 2007, they entered into no less than 37 cooperative farming agreements, and that under these agreements, farmers were permitted to harvest commodity corn or soybean crops at Prime Hook. The defendants also do not contest that prior to entering these cooperative farming agreements, they did not make any compatibility determinations, or conduct any studies to assess whether these uses were compatible with Prime Hook’s purposes. The administrative record is simply devoid of anything that even purports to be a compatibility determination, much less a formal document that comports with the clear requirements set forth in the NWRSA regulations.

Because there are no issues of material fact that the defendants failed to make a written compatibility determination prior to permitting cooperative farming on Prime Hook—the court concludes that the defendants violated the NWRSA as a matter of law.

2. Whether the Defendants Violated the NEPA

^[7] The court, likewise, concludes that the defendants violated the NEPA. The NEPA requires environmental review for any major federal action that may significantly affect the environment. See [42 U.S.C. § 4321](#).^{FNS} The act was established to ensure that federal agencies carefully consider the environmental impacts of their projects and that information about those impacts be made available to the public. See, e.g., *Spiller v. White*, [352 F.3d 235, 237 \(5th Cir.2004\)](#). The NEPA was also intended to reduce or eliminate environmental damage and to promote the understanding of the ecological systems and *451 natural resources important to the United States. *Id.* at 237. To that end, the NEPA requires federal agencies to prepare a detailed environmental impact statement (“EIS”) for all “major federal actions significantly [affecting] the quality of the human environment.” [42 U.S.C. § 4332\(C\)](#). The NEPA itself does not mandate particular results, rather NEPA imposes procedural requirements on federal agencies, requiring them to analyze the environmental impact of their proposals and actions.

See, e.g., *Coliseum Square Assoc., Inc. v. Jackson*, [465 F.3d at 215, 223 \(5th Cir.2006\)](#).

^{FN8} In the Third Circuit, “major federal action” exists when the “agency action is a legal requirement for the other party to affect the environment and [when] the agency has discretion to take environmental considerations into account before acting.” *N.J. Dept. of Env. Prot. and Energy v. Long Island Power Auth.*, [30 F.3d 403, 417-18 \(3d Cir.1994\)](#) (quoting *NAACP v. Med. Ctr., Inc.*, [584 F.2d 619, 634 \(3d Cir.1978\)](#)).

Under NEPA regulations, an agency undertaking an action is required to determine whether its proposal requires an EIS. See [40 C.F.R. § 1501.4\(a\)](#). The agency is to first prepare a more limited environmental assessment (“EA”) to determine whether an EIS is required. See [40 C.F.R. § 1501.4\(b\)](#).^{FN9} If the agency determines, based on the EA, that no EIS is needed because the action would not significantly affect the environment, it must issue a “finding of no significant impact”, which briefly presents the reasons why the proposed agency action will not have a significant impact on the human environment. See [40 C.F.R. §§ 1501.4\(e\), 1508.13](#). Otherwise, the agency must prepare an EIS. Furthermore, an EIS must describe the environmental impact of the proposed action, any adverse environmental effects that cannot be avoided should the proposal be implemented, alternatives to the proposed action, and any irreversible and irretrievable commitments of resources that would be involved if the proposed action should be implemented. See [42 U.S.C. § 4332\(C\)](#).

^{FN9} An EA is “a concise public document” that an agency prepares when deciding whether it needs to prepare an EIS. [40 C.F.R. § 1508.9](#). An EIS is a “detailed written statement” which comprehensively discloses and analyzes potential environmental impacts of proposed government action. [40 C.F.R. § 1508.11](#). There is an exception to each of these requirements, where an agency establishes that the challenged conduct were routine activities that did not, individually or cumulatively, have any significant impact on the environment. See [40 C.F.R. § 1508.4](#).

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The defendants, however, have not asserted that this exception applies in this case.

Again, there is no issue of material fact that the defendants in this case permitted farming of genetically modified crops to occur at Prime Hook without first preparing either an EIS or an EA, as required by NEPA. The defendants do not contest that, starting in 2003, they allowed genetically modified crops to be planted on Prime Hook. They also do not contest that their own biologists determined that these activities posed significant environmental risks to Prime Hook, including biological contamination, increased weed resistance, and damage to soils. Nonetheless, the record reflects that the defendants did not conduct any NEPA environmental assessments, make any compatibility determinations, or prepare any environmental impact statements to assess the impact of these activities on Prime Hook. Because there is no genuine issue of material fact that the defendants allowed farmers to grow genetically modified crops on Prime Hook without first preparing either an environmental assessment or an environmental impact statement, the court concludes that the defendants violated the NEPA as a matter of law.

3. Whether the Defendants Violated the APA

[8] Under the APA, a final agency action must be set aside if it is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A); *Citizens to Pres. Overton Park v. Volpe*, 401 U.S. 402, 414, 91 S.Ct. 814, 28 L.Ed.2d 136 (1971); *452 *Soc’y Hill Towers Owners’ Ass’n v. Rendell*, 210 F.3d 168, 179 (3d Cir.2000). Here, the court concludes that by permitting cooperative farming at Prime Hook without first making a written compatibility determination, and by allowing farmers to grow genetically modified crops at Prime Hook without first preparing either an environmental assessment or an environmental impact statement, the defendants’ conduct was “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” Particularly, with respect to the defendants’ decision to allow farmers to grow genetically modified crops at Prime Hook, the court notes that the defendants permitted this activity in contravention of (and in spite of) their own “GMO Policy” at the time against such, and in view of their own biologists’ findings that these activities posed several significant risks to Prime Hook. The court is

not convinced that the defendants carefully considered and analyzed the environmental impacts of these activities as required by the law. The court must, therefore, grant the plaintiffs’ motion in this regard.

C. Whether the Plaintiffs Are Entitled to Injunctive Relief

[9] The plaintiffs seek a permanent injunction that prohibits the defendants from allowing: any cooperative farming at Prime Hook, until a written compatibility determination is completed; and any cultivation or farming with genetically modified crops at Prime Hook, until either an environmental assessment or environmental impact statement is completed.

In general, injunctive relief is appropriate when there is irreparable injury and where other legal remedies would be inadequate. *See, e.g., Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 542, 107 S.Ct. 1396, 94 L.Ed.2d 542 (1987). In determining whether to grant permanent injunctive relief, the court must consider (1) actual success on the merits, (2) irreparable harm to the; plaintiffs as the moving party, (3) harm to other interested persons, including the non-movant, and (4) the public interest. *See Natural Resources Defense Council v. Texaco*, 906 F.2d 934, 941 (3d Cir.1990). That is, a court may issue an injunction “only after a showing both of irreparable injury and inadequacy of legal remedies, and a balancing of competing claims of injury and the public interest.” *Id.* at 941. In view of these considerations, and the undisputed facts of this case, the court is satisfied that the plaintiffs have made the requisite showings.

1. Success on the Merits

First, the plaintiffs have succeeded on the merits on their claims that the defendants violated the NWRSAA, the NEPA, and the APA, and that the defendants’ conduct was arbitrary, capricious, and not in accordance with existing law.

2. Irreparable Harm and Inadequacy of Legal Remedies

Second, the plaintiffs have demonstrated irreparable harm and inadequacy of legal remedies. Indeed, it is undisputed that farming with genetically modified crops at Prime Hook poses significant environmental risks. What’s more, “[e]nvironmental

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injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, *i.e.*, irreparable.” [Amoco Prod. Co.](#), 480 U.S. at 545, 107 S.Ct. 1396. This consideration, therefore, weighs in favor of issuing an injunction.

3. Harm to Others

Third, the court is persuaded that an injunction in this case will not harm the defendants. For one thing, the defendants have already stated that they do not intend to allow any cooperative farming or farming with genetically modified crops at Prime Hook, until the necessary compatibility determinations, environmental assessments,*453 and environmental impact statements are completed. Therefore, an injunction in this case will be in line with the plaintiffs' stated intentions in this regard, especially since the defendants have already “voluntarily ceased” those farming practices at issue. The defendants also have not alleged any adverse consequences that will result from the court granting the plaintiffs' request for injunctive relief. Conversely, if an injunction is not granted, the plaintiffs (and Prime Hook) will likely suffer additional environmental, recreational, and aesthetic injuries. Also without an injunction, there is no legal impediment to the defendants resuming the farming practices at issue again at some later time. This consideration, therefore, favors issuing an injunction.

4. The Public Interest

Finally, the public interest would also be benefitted by an injunction. Specifically, the public would likely benefit from the defendants' compliance with the environmental laws and regulations in connection with Prime Hook. These laws require the defendants to: (1) carefully consider the environmental impacts of their projects before taking action, and to (2) provide information about those impacts to the public. The public also has an interest in the defendants' continued habitat preservation and wildlife conservation at Prime Hook in compliance with federal law.

Given the plaintiffs' success on the merits, the risk of irreparable harm and the inadequacy of legal remedies, and the public interest in protection of the nation's wildlife refuges, the court finds that these factors all weigh in favor of granting the plaintiffs' request for injunctive relief. Accordingly, the court

orders the defendants to be enjoined from: (1) allowing cooperative farming at Prime Hook, until they make written compatibility determinations; and (2) permitting genetically modified crops to be cultivated or farmed at Prime Hook, until they complete either an environmental assessment and/or an environmental impact statement as required by law.

V. CONCLUSION

For the foregoing reasons, the court will grant the plaintiffs' motion for summary judgment, and their request for injunctive relief.

ORDER

For the reasons stated in the court's Memorandum of this same date, IT IS HEREBY ORDERED THAT:

1. The plaintiffs' motion for summary judgment (D.I. 35) is GRANTED; and

2. The defendants are enjoined from:

(a) Allowing any cooperative farming at Prime Hook, until a written compatibility determination is completed; and

(b) Allowing any cultivation or farming with genetically modified crops at Prime Hook, until an environmental assessment and/or environmental impact statement is completed.

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