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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PROTECT THE PENINSULA’S
FUTURE; COALITION TO PROTECT
PUGET SOUND HABITAT; and
BEYOND PESTICIDES,

Plaintiffs,

v.

DEB HAALAND, SECRETARY OF
THE INTERIOR; UNITED STATES
FISH AND WILDLIFE SERVICE;
MARTHA WILLIAMS, DIRECTOR OF
UNITED STATES FISH AND
WILDLIFE SERVICE; HUGH
MORRISON, REGIONAL DIRECTOR
OF THE PACIFIC REGION; and
JENNIFER BROWN SCOTT, PROJECT
LEADER, WASHINGTON MARITIME
NATIONAL WILDLIFE REFUGE
COMPLEX,

Defendants.

NO.

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

I. NATURE OF ACTION

1. This action seeks judicial relief compelling Defendants United States Fish and Wildlife Service (the “Service”) et al. to take action that is required by the National Wildlife Refuge

1 located near the Dungeness National Wildlife Refuge. PPF’s members use and enjoy the
2 Dungeness National Wildlife Refuge. PPF brings this action on its own behalf and on behalf of its
3 adversely affected members.

4 6. Plaintiff Coalition to Protect Puget Sound Habitat (the “Coalition”) is an alliance of
5 interested citizens, environmentalists, scientists, and recreation users who are concerned about
6 current and expanding industrial aquaculture in both the nearshore environment and public waters,
7 and its impacts on plant, animal and ecological function. Its mission is to voice citizens’ concerns
8 of industrial aquaculture, its impact to the health and quality of Puget Sound and coastal waters and
9 to effect changes to policies, regulations, and their enforcement to protect shoreline habitat. The
10 Coalition’s members use and enjoy the Dungeness National Wildlife Refuge. The Coalition brings
11 this action on its own behalf and on behalf of its adversely affected members.

12 7. Plaintiff Beyond Pesticides is a 501(c)3 nonprofit organization headquartered in
13 Washington, D.C., which works with allies in protecting public health and the environment to lead
14 the transition to a world free of toxic pesticides. Beyond Pesticides seeks to protect healthy air,
15 water, land, and food for ourselves and future generations. By forging ties with governments,
16 nonprofits, and people who rely on these natural resources, Beyond Pesticides works to reduce the
17 need for unnecessary pesticide use and protect public health and the environment. Beyond
18 Pesticide’s members use and enjoy the Dungeness National Wildlife Refuge. The organization
19 brings this action on its own behalf and on behalf of its adversely affected members.

20 8. Defendant United States Fish and Wildlife Service is an administrative agency
21 within the U.S. Department of the Interior whose primary responsibility is the conservation and
22 management of fish, wildlife, plants, and their habitats for the American people.

1 purposes. Plaintiffs’ members enjoy hiking, bird watching, study, contemplation, photography, and
2 other activities in and around the waters and public lands throughout the affected area. Plaintiffs
3 and their members also participate in information gathering and dissemination, education and
4 public outreach, commenting upon proposed agency actions, and other activities relating to the
5 U.S. Fish and Wildlife Service’s management and administration of these public lands.
6

7 15. Defendants’ failure to act adversely affects Plaintiffs’ organizational interests, as
8 well as their members’ use and enjoyment of the Dungeness National Wildlife Refuge, including
9 the affected area. The interests of Plaintiffs and their members have been and will continue to be
10 injured and harmed by the U.S. Fish and Wildlife Service’s failure to act as complained of herein.
11 Unless the relief prayed for herein is granted, Plaintiffs and their members will suffer ongoing and
12 irreparable harm and injury to their interests.
13

14 16. The injuries to Plaintiffs would be redressed by a favorable decision of this Court
15 because Plaintiffs are seeking an order requiring that the Fish and Wildlife Service engage in a
16 process required by law for the purpose of protecting and preserving natural areas and plant, fish,
17 and animal species the Plaintiffs’ members use and enjoy.
18

19 VI. STATUTORY AND REGULATORY BACKGROUND

20 17. The National Wildlife Refuge System is managed pursuant to the Refuge
21 Improvement Act, 16 U.S.C. §§ 668dd–668ee.

22 18. The primary mission of the National Wildlife Refuge System is “to administer a
23 national network of lands and waters for the conservation, management, and where appropriate,
24 restoration of the fish, wildlife, and plant resources and their habitats within the United States for
25 the benefit of present and future generations of Americans.” 16 U.S.C. § 668dd(a)(2).
26

1 19. In administering the Refuge System, the Service shall, among other things, “provide
2 for the conservation of fish, wildlife, and plants, and their habitats within the System...” 16 U.S.C.
3 668dd(a)(4)(A).

4 20. The term “conservation” means “to sustain and, where appropriate, restore and
5 enhance, healthy populations of fish, wildlife, and plants utilizing, in accordance with applicable
6 Federal and State laws, methods and procedures associated with modern scientific resource
7 programs. ...” 16 U.S.C. § 668ee(4).

8 21. The Refuge Improvement Act further asserts that the agency must “ensure that the
9 mission of the [Refuge] System . . . and the purposes of each refuge are carried out.” 16 U.S.C.
10 § 668dd(a)(4)(D).

11 22. According to the Refuge Improvement Act, “purposes of each refuge” means “the
12 purposes specified in or derived from the law, proclamation, executive order, agreement, public
13 land order, donation document, or administrative memorandum establishing, authorizing, or
14 expanding a refuge, refuge unit, or refuge subunit.” 16 U.S.C. § 668ee(10).

15 23. Under most circumstances, all areas included in the Refuge System are closed to
16 public access until and unless the Service opens the area for a use in accordance with the Refuge
17 Improvement Act and its regulations. 50 C.F.R. § 25.21(a); *see also United States v. Sams*, 45 F.
18 Supp. 3d 524, 525 (E.D.N.C. 2014) (the Refuge Improvement Act “closes national wildlife refuges
19 in all states except Alaska to all uses until opened”).

20 24. The Service is authorized, under implementing regulations, to permit the use of any
21 area within the System for any purpose whenever it determines that such uses are compatible with
22 the major purposes for which such areas were established. 16 U.S.C. § 668dd(d)(1)(A).

1 25. With limited exceptions, the Secretary cannot permit a new use or expand, renew,
2 or extend an existing use without first determining whether that use is compatible. 16 U.S.C.
3 § 668dd(d)(3)(A)(i).

4 26. To decide whether a use would be compatible, the Service must engage in a multi-
5 factored analysis called a “compatibility determination.” A compatibility determination is a written
6 determination signed and dated by the Refuge Manager and Regional Chief, signifying that a
7 proposed or existing use is or is not a compatible use. 50 C.F.R. § 25.12(a).

8 27. The Refuge Improvement Act also requires the Service to develop “comprehensive
9 conservation plans” for refuges, 16 U.S.C. § 668dd(e), which describe the desired future conditions
10 of a refuge or planning unit and provide long-range guidance and management direction to achieve
11 the purposes of the refuge. 50 C.F.R. § 25.12(a). They are intended to maintain and, where
12 appropriate, restore the ecological integrity of each refuge and the Refuge System. *Id.* The Service
13 must manage each refuge in a manner consistent with its plan, 16 U.S.C. § 668dd(e)(1)(E), and
14 may revise the conservation plan as may be necessary. 16 U.S.C. § 668dd(e)(1)(A)(iv).

15 28. The Refuge Improvement Act furthermore authorizes the Service to issue
16 regulations to carry out the act. 16 U.S.C. § 668dd(b)(5). These regulations “apply to areas of land
17 and water held by the United States in fee title and to property interests in such land and water in
18 less than fee For areas held in less than fee, the regulations . . . apply only to the extent that
19 the property interest held by the United States may be affected.” 50 C.F.R. § 25.11(a).

20 29. Pursuant to Refuge Improvement Act regulations, no one may conduct commercial
21 activities on a refuge unless they are issued a permit by the Service, often referred to as a “special
22 use permit.” 50 C.F.R. § 27.97. Refuge Improvement Act regulations also specify that disturbing,
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1 injuring, spearing, poisoning, destroying, or collecting any plant or animal on any national wildlife
2 refuge is prohibited except by special permit unless otherwise permitted. 50 C.F.R. § 27.51(a).

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4 **VII. FACTUAL ALLEGATIONS**

5 30. Recognizing the importance of the fertile habitats in the area, President Woodrow
6 Wilson established the Dungeness National Wildlife Refuge on January 20, 1915 as a refuge,
7 preserve, and breeding ground for native birds.

8 31. The mission of the National Wildlife Refuge System is to administer a national
9 network of lands and waters for the conservation, management and, where appropriate, restoration
10 of the fish, wildlife and plant resources and their habitats within the United States for the benefit
11 of present and future generations of Americans.

12 32. The Dungeness National Wildlife Refuge shelters a bay rich in marine life. Eelgrass
13 beds attract brant, shorebirds feed on the tideflats, and ducks find sanctuary in the calm waters. The
14 Refuge is a preserve and breeding ground for more than 250 species of birds and 41 species of land
15 animals.

16 33. Dungeness Spit protects nutrient-rich tideflats for migrating shorebirds in spring and
17 fall; a quiet bay with calm waters for wintering waterfowl; an isolated beach for harbor seals and
18 their pups; and abundant eelgrass beds for young salmon and steelhead nurseries and some duck
19 species, such as the Black Brant.
20

21 34. The Refuge is located near Sequim, Washington, in Clallam County on the north
22 end of the Olympic Peninsula.
23

24 35. The Jamestown S’Klallam Tribe has proposed to conduct commercial activities in
25 the form of a new industrial shellfish aquaculture operation within the Dungeness National Wildlife
26 Refuge.

1 43. By failing to conduct a compatibility determination, the Service has failed to comply
2 with the Refuge Improvement Act, 16 U.S.C. § 668dd(d)(1)(A).

3 **SECOND CLAIM FOR RELIEF: VIOLATION OF THE REFUGE IMPROVEMENT ACT –**
4 **FAILURE TO REQUIRE A SPECIAL USE PERMIT FOR**
5 **COMMERCIAL ACTIVITY**

6 44. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

7 45. Refuge Improvement Act regulations prohibit “conducting a commercial enterprise
8 . . . except as may be authorized by special permit.” 50 C.F.R. § 27.97.

9 46. The Service has not required a special use permit for the Jamestown S’Klallam
10 commercial aquaculture enterprise.

11 47. By failing to require that the Jamestown S’Klallam Tribe obtain a special use permit,
12 the Service has violated the Refuge Improvement Act.

13 **IX. PRAYER FOR RELIEF**

14 Plaintiffs respectfully request that the Court grant the following relief:

15 A. Declare that Defendants are in violation of the Refuge Improvement Act and its
16 implementing regulations;

17 B. Order Defendants to conduct a compatibility determination and, if the proposed
18 commercial use is determined to be compatible, require a special use permit for the Jamestown
19 S’Klallam commercial aquaculture enterprise in the Dungeness National Wildlife Refuge;

20 C. Award Plaintiffs their costs, litigation expenses, expert witness fees, and reasonable
21 attorneys’ fees associated with this litigation pursuant to the Equal Access to Justice Act, and all other
22 applicable authorities; and

23 D. Grant Plaintiffs any such further relief as may be just, proper, and equitable.
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Dated this 16th day of August, 2023.

Respectfully submitted,

BRICKLIN & NEWMAN, LLP

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