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7		TES DISTRICT COURT
8		TRICT OF WASHINGTON ACOMA
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10	PROTECT THE PENINSULA'S	
11	FUTURE; COALITION TO PROTECT	NO.
12	PUGET SOUND HABITAT; and BEYOND PESTICIDES,	
13	Plaintiffs,	COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
14	V.	
15	DEB HAALAND, SECRETARY OF THE INTERIOR; UNITED STATES	
16	FISH AND WILDLIFE SERVICE;	
17	MARTHA WILLIAMS, DIRECTOR OF UNITED STATES FISH AND	
18	WILDLIFE SERVICE; HUGH MORRISON, REGIONAL DIRECTOR	
19	OF THE PACIFIC REGION; and	
20	JENNIFER BROWN SCOTT, PROJECT LEADER, WASHINGTON MARITIME	
21	NATIONAL WILDLIFE REFUGE COMPLEX,	
22	Defendants.	
23		
24	I. NATU	URE OF ACTION
25	1. This action seeks judicial relief	compelling Defendants United States Fish and
26	Wildlife Service (the "Service") et al. to take acti	on that is required by the National Wildlife Refuge

1	System Improvement Act of 1997 ("Refuge Improvement Act"), 16 U.S.C. §§ 668dd-668ee,	
2	pursuant to 5 U.S.C. § 706(1).	
3	2. The Service has failed to fulfill its mandatory legal duty to conduct a compatibility	
4	determination and require a special use permit for a proposed commercial aquaculture use with the	
5	boundary of the Dungeness Wildlife Refuge.	
6 7	II. JURISDICTION	
8	3. Jurisdiction is proper in this Court under 28 U.S.C. § 1331, 5 U.S.C. § 701, et seq.,	
9	and 28 U.S.C § 1346 because this involves the United States as a defendant and arises under the	
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11	laws of the United States. The requested relief is proper under 28 U.S.C. § 2201-02 and 5 U.S.C.	
12	§ 705–706. The challenged agency actions and/or inactions are subject to this Court's review under	
13	the Administrative Procedure Act 5 U.S.C. § 702, 704, and 706.	
	THE TUDNIED	
14	III. VENUE	
14 15	4. Venue is proper in this Court under 28 U.S.C. §1391. All or a substantial part of the	
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15 16	4. Venue is proper in this Court under 28 U.S.C. §1391. All or a substantial part of the events or omissions giving rise to these claims herein occurred within this judicial district,	
15 16 17	4. Venue is proper in this Court under 28 U.S.C. §1391. All or a substantial part of the events or omissions giving rise to these claims herein occurred within this judicial district, Defendants reside in this district, and the public lands and resources and agency records in question	
15 16 17 18 19 20	4. Venue is proper in this Court under 28 U.S.C. §1391. All or a substantial part of the events or omissions giving rise to these claims herein occurred within this judicial district, Defendants reside in this district, and the public lands and resources and agency records in question are located in this district. IV. PARTIES	
15 16 17 18 19 20 21	 Venue is proper in this Court under 28 U.S.C. §1391. All or a substantial part of the events or omissions giving rise to these claims herein occurred within this judicial district, Defendants reside in this district, and the public lands and resources and agency records in question are located in this district. IV. PARTIES 5. Plaintiff Protect the Peninsula's Future (PPF) is a Washington nonprofit public 	
15 16 17 18 19 20 21 22	4. Venue is proper in this Court under 28 U.S.C. §1391. All or a substantial part of the events or omissions giving rise to these claims herein occurred within this judicial district, Defendants reside in this district, and the public lands and resources and agency records in question are located in this district. IV. PARTIES 5. Plaintiff Protect the Peninsula's Future (PPF) is a Washington nonprofit public benefit corporation that has been engaged in environmental protection and wise land use on the	
15 16 17 18 19 20 21 22 23	4. Venue is proper in this Court under 28 U.S.C. §1391. All or a substantial part of the events or omissions giving rise to these claims herein occurred within this judicial district, Defendants reside in this district, and the public lands and resources and agency records in question are located in this district. IV. PARTIES 5. Plaintiff Protect the Peninsula's Future (PPF) is a Washington nonprofit public benefit corporation that has been engaged in environmental protection and wise land use on the North Olympic Peninsula since 1973. PPF's main office is located in Sequim. Among other things,	
15 16 17 18 19 20 21 22	4. Venue is proper in this Court under 28 U.S.C. §1391. All or a substantial part of the events or omissions giving rise to these claims herein occurred within this judicial district, Defendants reside in this district, and the public lands and resources and agency records in question are located in this district. IV. PARTIES 5. Plaintiff Protect the Peninsula's Future (PPF) is a Washington nonprofit public benefit corporation that has been engaged in environmental protection and wise land use on the	

marine ecosystems. PPF has over 200 individual members and supporters, many of whom are

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

- 6. Plaintiff Coalition to Protect Puget Sound Habitat (the "Coalition") is an alliance of interested citizens, environmentalists, scientists, and recreation users who are concerned about current and expanding industrial aquaculture in both the nearshore environment and public waters, and its impacts on plant, animal and ecological function. Its mission is to voice citizens' concerns of industrial aquaculture, its impact to the health and quality of Puget Sound and coastal waters and to effect changes to policies, regulations, and their enforcement to protect shoreline habitat. The Coalition's members use and enjoy the Dungeness National Wildlife Refuge. The Coalition brings this action on its own behalf and on behalf of its adversely affected members.
- 7. Plaintiff Beyond Pesticides is a 501(c)3 nonprofit organization headquartered in Washington, D.C., which works with allies in protecting public health and the environment to lead the transition to a world free of toxic pesticides. Beyond Pesticides seeks to protect healthy air, water, land, and food for ourselves and future generations. By forging ties with governments, nonprofits, and people who rely on these natural resources, Beyond Pesticides works to reduce the need for unnecessary pesticide use and protect public health and the environment. Beyond Pesticide's members use and enjoy the Dungeness National Wildlife Refuge. The organization brings this action on its own behalf and on behalf of its adversely affected members.
- 8. Defendant United States Fish and Wildlife Service is an administrative agency within the U.S. Department of the Interior whose primary responsibility is the conservation and management of fish, wildlife, plants, and their habitats for the American people.

- 9. Defendant Deb Haaland is named in her official capacity as Secretary of the United States Department of the Interior.
- 10. Defendant Martha Williams is named in her official capacity as Director of the U.S. Fish and Wildlife Service. Ms. Williams is the official responsible for leading the agency in its mission of conservation and management of fish, wildlife, plants and their habitats, including in the Dungeness National Wildlife Refuge.
- 11. Defendant Hugh Morrison is named in his official capacity as Regional Director of the Pacific Region of the U.S. Fish and Wildlife Service. Mr. Morrison is the official responsible for agency decisions within the Pacific Region, including the Dungeness National Wildlife Refuge.
- 12. Defendant Jennifer Brown-Scott is named in her official capacity as the U.S. Fish and Wildlife Service Project Leader for the Washington Maritime National Wildlife Refuge Complex. Ms. Brown-Scott is the official responsible for managing the Dungeness National Wildlife Refuge, which is part of the Washington Maritime National Wildlife Refuge Complex.

V. STATEMENT OF STANDING

- 13. The interests at stake in this matter are germane to Plaintiffs' organizational purposes. Defendants' violations of law will harm plants, wildlife, and natural ecosystems in the Dungeness National Wildlife Refuge and thereby injure Plaintiffs' members who use and enjoy those resources.
- 14. Plaintiffs and their members observe, enjoy, and appreciate the Refuge's native wildlife, water quality, and terrestrial habitat quality, and expect to continue to do so in the future, including in the specific area that will be affected by the Jamestown-S'Klallam Tribe's proposed industrial oyster operation. Members use and enjoy the waters, public lands, and natural resources throughout these areas for recreational, scientific, spiritual, educational, aesthetic, and other

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

- 15. Defendants' failure to act adversely affects Plaintiffs' organizational interests, as well as their members' use and enjoyment of the Dungeness National Wildlife Refuge, including the affected area. The interests of Plaintiffs and their members have been and will continue to be injured and harmed by the U.S. Fish and Wildlife Service's failure to act as complained of herein. Unless the relief prayed for herein is granted, Plaintiffs and their members will suffer ongoing and irreparable harm and injury to their interests.
- 16. The injuries to Plaintiffs would be redressed by a favorable decision of this Court because Plaintiffs are seeking an order requiring that the Fish and Wildlife Service engage in a process required by law for the purpose of protecting and preserving natural areas and plant, fish, and animal species the Plaintiffs' members use and enjoy.

VI. STATUTORY AND REGULATORY BACKGROUND

- 17. The National Wildlife Refuge System is managed pursuant to the Refuge Improvement Act, 16 U.S.C. §§ 668dd–668ee.
- 18. The primary mission of the National Wildlife Refuge System is "to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans." 16 U.S.C. § 668dd(a)(2).

- 19. In administering the Refuge System, the Service shall, among other things, "provide for the conservation of fish, wildlife, and plants, and their habitats within the System..." 16. U.S.C. 668dd(a)(4)(A).
- 20. The term "conservation" means "to sustain and, where appropriate, restore and enhance, healthy populations of fish, wildlife, and plants utilizing, in accordance with applicable Federal and State laws, methods and procedures associated with modern scientific resource programs. ..." 16 U.S.C. § 668ee(4).
- 21. The Refuge Improvement Act further asserts that the agency must "ensure that the mission of the [Refuge] System . . . and the purposes of each refuge are carried out." 16 U.S.C. § 668dd(a)(4)(D).
- 22. According to the Refuge Improvement Act, "purposes of each refuge" means "the purposes specified in or derived from the law, proclamation, executive order, agreement, public land order, donation document, or administrative memorandum establishing, authorizing, or expanding a refuge, refuge unit, or refuge subunit." 16 U.S.C. § 668ee(10).
- 23. Under most circumstances, all areas included in the Refuge System are closed to public access until and unless the Service opens the area for a use in accordance with the Refuge Improvement Act and its regulations. 50 C.F.R. § 25.21(a); *see also United States v. Sams*, 45 F. Supp. 3d 524, 525 (E.D.N.C. 2014) (the Refuge Improvement Act "closes national wildlife refuges in all states except Alaska to all uses until opened").
- 24. The Service is authorized, under implementing regulations, to permit the use of any area within the System for any purpose whenever it determines that such uses are compatible with the major purposes for which such areas were established. 16 U.S.C. § 668dd(d)(1)(A).

- 25. With limited exceptions, the Secretary cannot permit a new use or expand, renew, or extend an existing use without first determining whether that use is compatible. 16 U.S.C. § 668dd(d)(3)(A)(i).
- 26. To decide whether a use would be compatible, the Service must engage in a multi-factored analysis called a "compatibility determination." A compatibility determination is a written determination signed and dated by the Refuge Manager and Regional Chief, signifying that a proposed or existing use is or is not a compatible use. 50 C.F.R. § 25.12(a).
- 27. The Refuge Improvement Act also requires the Service to develop "comprehensive conservation plans" for refuges, 16 U.S.C. § 668dd(e), which describe the desired future conditions of a refuge or planning unit and provide long-range guidance and management direction to achieve the purposes of the refuge. 50 C.F.R. § 25.12(a). They are intended to maintain and, where appropriate, restore the ecological integrity of each refuge and the Refuge System. *Id.* The Service must manage each refuge in a manner consistent with its plan, 16 U.S.C. § 668dd(e)(1)(E), and may revise the conservation plan as may be necessary. 16 U.S.C. § 668dd(e)(1)(A)(iv).
- 28. The Refuge Improvement Act furthermore authorizes the Service to issue regulations to carry out the act. 16 U.S.C. § 668dd(b)(5). These regulations "apply to areas of land and water held by the United States in fee title and to property interests in such land and water in less than fee For areas held in less than fee, the regulations . . . apply only to the extent that the property interest held by the United States may be affected." 50 C.F.R. § 25.11(a).
- 29. Pursuant to Refuge Improvement Act regulations, no one may conduct commercial activities on a refuge unless they are issued a permit by the Service, often referred to as a "special use permit." 50 C.F.R. § 27.97. Refuge Improvement Act regulations also specify that disturbing,

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injuring, spearing, poisoning, destroying, or collecting any plant or animal on any national wildlife refuge is prohibited except by special permit unless otherwise permitted. 50 C.F.R. § 27.51(a).

VII. FACTUAL ALLEGATIONS

- 30. Recognizing the importance of the fertile habitats in the area, President Woodrow Wilson established the Dungeness National Wildlife Refuge on January 20, 1915 as a refuge, preserve, and breeding ground for native birds.
- 31. 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, restoration of the fish, wildlife and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.
- 32. The Dungeness National Wildlife Refuge shelters a bay rich in marine life. Eelgrass beds attract brant, shorebirds feed on the tideflats, and ducks find sanctuary in the calm waters. The Refuge is a preserve and breeding ground for more than 250 species of birds and 41 species of land animals.
- 33. Dungeness Spit protects nutrient-rich tideflats for migrating shorebirds in spring and fall; a quiet bay with calm waters for wintering waterfowl; an isolated beach for harbor seals and their pups; and abundant eelgrass beds for young salmon and steelhead nurseries and some duck species, such as the Black Brant.
- 34. The Refuge is located near Sequim, Washington, in Clallam County on the north end of the Olympic Peninsula.
- 35. The Jamestown S'Klallam Tribe has proposed to conduct commercial activities in the form of a new industrial shellfish aquaculture operation within the Dungeness National Wildlife Refuge.

1	36.	This commercial activity will involve cultivating 34 acres of non-native Pacific	
2	oysters within a 50-acre tideland parcel leased from the Washington State Department of Natural		
3	Resources within the Refuge.		
5	37.	The Service has not completed a compatibility determination or issued a special use	
6	permit for the Tribe's proposal.		
7	38.	The Service has informed plaintiffs that the Service does not intend to complete a	
8	compatibility	determination or require a special use permit for the Tribe's proposal at any time in	
9	the future.		
10		VIII. CLAIMS FOR RELIEF	
11	FIRST CLAIM FOR RELIEF: VIOLATION OF THE REFUGE IMPROVEMENT ACT – FAILURE TO COMPLETE A COMPATIBILITY DETERMINATION		
12			
13	39.	Plaintiffs reallege and incorporate by reference all preceding paragraphs.	
14	40.	The Service can open refuge areas to a use after ensuring that the use at issue is	
15	"compatible	with the major purposes for which such areas were established." 16 U.S.C.	
16 17	§ 668dd(d)(1)(A).		
18	41.	To decide whether a use would be compatible, the Service must make a	
19	compatibility determination in writing. 50 C.F.R. § 25.12(a). This compatibility determination must		
20	take into consideration, among other factors, impacts of the use on the refuge's purpose, whether		
21	the use is a priority public use, and where, when, and how a use would be conducted. 50 C.F.R.		
22	§ 26.41(a)(6)(i)–(iv), (a)(8).		
23	42.	The Service has failed to conduct a compatibility determination for the proposed	
24 25	commercial aquaculture use with the boundary of the Dungeness National Wildlife Refuge.		
26			

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 – FAILURE TO REQUIRE A SPECIAL USE PERMIT FOR COMMERCIAL ACTIVITY		
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5			
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	IX. PRAYER FOR RELIEF		
15	Plaintiffs respectfully request that the Court grant the following relief:		
16	A.	Declare that Defendants are in violation of the Refuge Improvement Act and its	
1617		Declare that Defendants are in violation of the Refuge Improvement Act and its g regulations;	
17	implementing B.	g regulations; Order Defendants to conduct a compatibility determination and, if the proposed	
17 18	implementing B. commercial	g regulations; Order Defendants to conduct a compatibility determination and, if the proposed use is determined to be compatible, require a special use permit for the Jamestown	
17 18 19	implementing B. commercial	g regulations; Order Defendants to conduct a compatibility determination and, if the proposed	
17 18 19 20	implementing B. commercial	g regulations; Order Defendants to conduct a compatibility determination and, if the proposed use is determined to be compatible, require a special use permit for the Jamestown	
17 18 19 20 21	implementing B. commercial S'Klallam co	order Defendants to conduct a compatibility determination and, if the proposed use is determined to be compatible, require a special use permit for the Jamestown ommercial aquaculture enterprise in the Dungeness National Wildlife Refuge;	
17 18 19 20 21 22	implementing B. commercial S'Klallam co C. attorneys' fee	order Defendants to conduct a compatibility determination and, if the proposed use is determined to be compatible, require a special use permit for the Jamestown ommercial aquaculture enterprise in the Dungeness National Wildlife Refuge; Award Plaintiffs their costs, litigation expenses, expert witness fees, and reasonable	
17 18 19 20 21 22 23	implementing B. commercial S'Klallam co C. attorneys' fee	Order Defendants to conduct a compatibility determination and, if the proposed use is determined to be compatible, require a special use permit for the Jamestown ommercial aquaculture enterprise in the Dungeness National Wildlife Refuge; Award Plaintiffs their costs, litigation expenses, expert witness fees, and reasonable es associated with this litigation pursuant to the Equal Access to Justice Act, and all other	

1	Dated this 16th day of August, 2023	
2		Respectfully submitted,
3		BRICKLIN & NEWMAN, LLP
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