

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

NORTH OYSTER BAY BAYMEN’S  
ASSOCIATION and CENTER FOR  
FOOD SAFETY,

Plaintiffs,

v.

U.S. FISH AND WILDLIFE SERVICE;  
MARTHA WILLIAMS, in her official  
capacity as Director of the U.S. Fish and  
Wildlife Service; and DEB HAALAND, in  
her official capacity as Secretary of the U.S.  
Department of the Interior.

Defendants.

Case No.

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

**INTRODUCTION**

1. Plaintiffs North Oyster Bay Baymen’s Association (“Baymen’s Association” or “Association”) and Center for Food Safety (“CFS”) (collectively, “Plaintiffs”) bring this action to challenge the improper administration of the Congressman Lester Wolff Oyster Bay National Wildlife Refuge (“Refuge”) by the U.S. Fish and Wildlife Service (“Service”).

2. The Refuge includes over 3,200 acres of submerged lands located along the north shore of Long Island, near the Town of Oyster Bay (“Town”) in eastern Nassau County. It receives the most public use of any refuge in Long Island, and it supports a range of wildlife, including federally protected Kemp’s ridley and loggerhead sea turtles, as well as more than 125 species of birds. Bald eagles visit the Refuge during the winter, while peregrine falcons, northern harriers, and federally protected red knots migrate through in the spring and autumn. Least tern, a New York State-designated threatened species, forage in Refuge waters. And osprey, a New

York State-designated species of special concern, nest and fledge young in the Refuge, where they prey, in part, on winter flounder, a New York State-designated high priority species of greatest conservation need.

3. The Refuge traditionally has provided important habitat for shellfish, yielding about 90 percent of New York State’s total oyster harvest and 40 percent of its hard clam harvest each year. However, shellfish populations in the Refuge have suffered a sharp decline.

4. The Town created the Refuge by donating submerged lands to the United States for the purposes of providing “an inviolate sanctuary for migratory birds,” “a refuge for fish and wildlife and their natural habitat,” and “a nature preserve for scientific, educational and aesthetic purposes.” *See* Town of Oyster Bay to United States Government Deed, at 2 (Dec. 18, 1968), (“Refuge Deed”) (attached as Exhibit 1). Although the Town reserved its authority to issue leases, agreements, and permits for the taking of shellfish, among other things, it expressly provided that any activity allowed under this reserved authority must be compatible with the Refuge’s purposes. *Id.* at 4.

5. The Town has exercised its reserved authority by leasing submerged lands within the Refuge to a corporation that engages in commercial industrial shellfish dredging. A well-established and growing body of scientific evidence demonstrates that industrial shellfish dredging damages aquatic habitat, degrades water quality, and harms wildlife.

6. Pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (“Administration Act”), the Service must ensure that the purposes of each refuge are carried out. Accordingly, the Service may allow use of refuge lands and waters only if it determines that the use is compatible with the refuge’s purposes. *See* 16 U.S.C. § 668dd(d)(3)(A)(i). The Service has a continuing

obligation to reevaluate each authorized use at least once every 10 years, and it must reevaluate a use more frequently if conditions change or new information about the effects of the use becomes available. *Id.* § 668dd(d)(3)(B)(vii); *see* 50 C.F.R. § 26.41. In addition, the Service’s regulations prohibit anyone from conducting a commercial enterprise on a refuge without first obtaining a special use permit. *See* 50 C.F.R. § 27.97.

7. The Service last published a document purporting to evaluate whether industrial shellfish dredging is compatible with the Refuge’s purposes in 1994—that is, over 28 years ago. It has *never* issued a special use permit authorizing commercial industrial shellfish dredging in the Refuge.

8. In February 2022, the Service formally refused to reevaluate the compatibility of industrial shellfish dredging in the Refuge, despite evidence that conditions have changed and new information demonstrating that this activity poses serious risks. *See* Letter from Annjanette Bagozzi, Project Leader, Long Island Nat’l Wildlife Refuge Complex to Representative Thomas R. Suozzi (Feb. 2, 2022) (“February 2022 Service Letter”) (attached as Exhibit 2).

9. The Service’s failures to oversee industrial shellfish dredging in the Refuge violate the Administration Act and its implementing regulations. With this action, Plaintiffs seek to compel the expeditious completion of long overdue statutory and regulatory responsibilities necessary to ensure the protection of vulnerable habitat and wildlife in one of New York State’s most culturally and ecologically significant coastal bays.

### **JURISDICTION AND VENUE**

10. Plaintiffs have a right to bring this action pursuant to the Administrative Procedure Act (“APA”), 5 U.S.C. § 706.

11. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, because this action presents a federal question under the Administration Act and other laws of the United States.

12. An actual, justiciable controversy exists between the parties within the meaning of 28 U.S.C. § 2201. This Court has authority to issue the relief requested under 28 U.S.C. §§ 2201–2202 and 5 U.S.C. §§ 701–706.

13. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e)(1) because a substantial part of the events and omissions giving rise to this action occurred here, the Refuge is located here, and the Baymen’s Association resides here.

### **PARTIES**

14. Plaintiff NORTH OYSTER BAY BAYMEN’S ASSOCIATION is a non-profit organization based in Oyster Bay, New York, dedicated to preserving the region’s rich tradition of independent, hand-harvest shellfishing. The Association has approximately 45 members, all of whom have worked as shellfish hand-harvesters in and around Oyster Bay Harbor (“Harbor”), which includes portions of the Refuge. Together with its members, the Association works to safeguard the Harbor for future generations by organizing annual clean-ups, growing and seeding millions of clams and oysters, educating the public about traditional shellfishing and the threats it faces, and advocating for government officials to strengthen and enforce laws and regulations that protect the Harbor. The Association brings this action on behalf of its members, many of whom currently work and recreate in waters in and around the Refuge. *See* Decl. of Bill Painter (sworn to on Mar. 19, 2023) (attached as Exhibit 3).

15. Plaintiff CENTER FOR FOOD SAFETY is a national non-profit organization with over one million members across the country, including 57,962 members in New York State. CFS seeks to protect human health and the environment by empowering communities to protect themselves from the harmful impacts of industrial agriculture. To achieve its goals, CFS engages in groundbreaking legal, scientific, educational, and grassroots action, including public interest litigation and other advocacy to protect aquatic ecosystems and wildlife from the

negative consequences of industrial shellfish aquaculture and harvesting. CFS brings this action on behalf of its members and supporters, including individuals who visit the Refuge to engage in activities such as birdwatching, fishing, kayaking, and diving. *See* Decl. of Amy van Saun (sworn to on Apr. 20, 2023) (attached as Exhibit 4).

16. Defendant U.S. FISH AND WILDLIFE SERVICE is a federal agency within the U.S. Department of the Interior. Congress charged the Service with administering the National Wildlife Refuge System, including the Refuge, for the benefit of present and future generations of Americans—in part, by complying with statutory mandates concerning the evaluation, reevaluation, and permitting of refuge uses.

17. Defendant MARTHA WILLIAMS is the Director of the U.S. Fish and Wildlife Service. As such, she is the federal official directly responsible for the Service’s implementation of its legal duties. She is sued in her official capacity only.

18. Defendant DEB HAALAND is the Secretary of the U.S. Department of the Interior. In that capacity, she oversees the Service’s administration of the National Wildlife Refuge System. She is sued in her official capacity only.

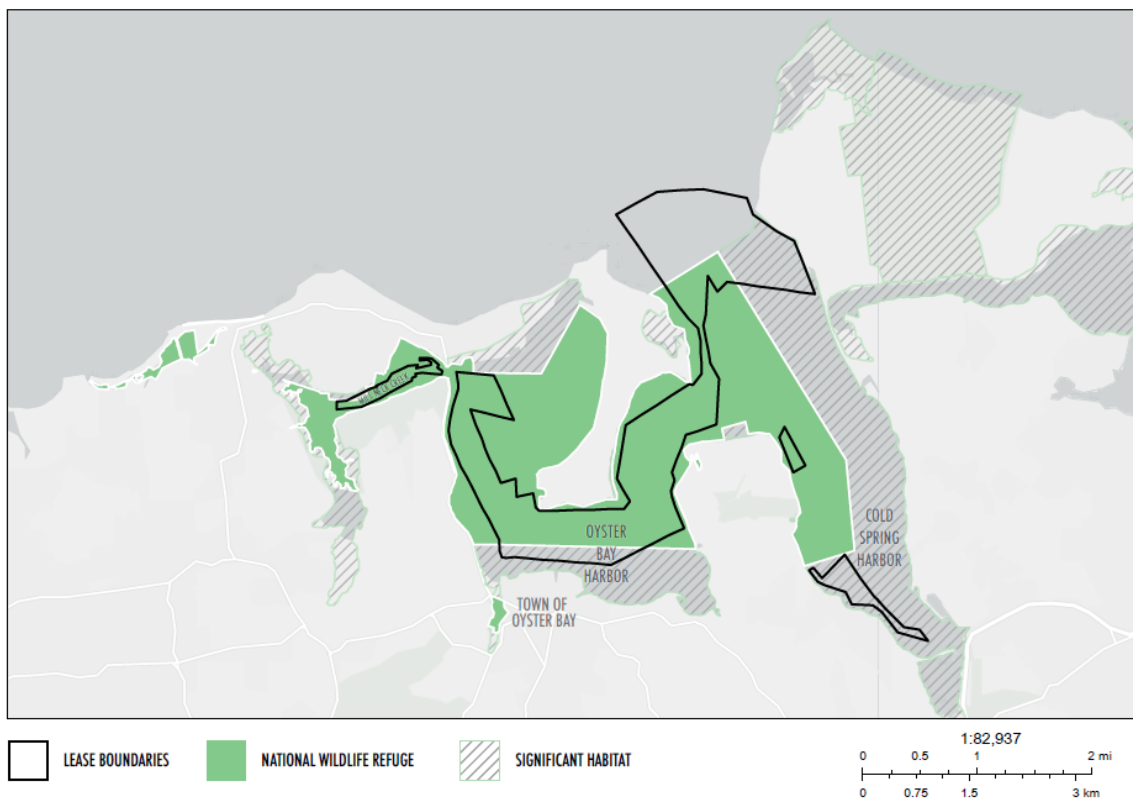
### **FACTUAL BACKGROUND**

19. As explained above, the Refuge protects over 3,200 acres of submerged lands located along the north shore of Long Island. It provides habitat for iconic and protected wildlife species, including Kemp’s ridley and loggerhead sea turtles, birds such as red knots and osprey, fish such as winter flounder, and shellfish that traditionally have comprised about 90 percent of New York State’s total annual oyster harvest and 40 percent of its hard clam harvest.

20. The New York State Department of State (“DOS”) has classified the waters immediately surrounding the Refuge as Significant Coastal Fish and Wildlife Habitat

(“Significant Habitat”), in recognition of this area’s year-round importance to wildlife, especially fish, shellfish, and wintering waterfowl.<sup>1</sup>

21. In addition, the National Marine Fisheries Service has classified the Refuge and other waters in Long Island Sound as Essential Fish Habitat for winter flounder, meaning that these waters are “necessary to [winter flounder] for spawning, breeding, feeding or growth to maturity” and, thus, should be conserved and enhanced. 16 U.S.C. §§ 1802(10), 1853(a)(7).



**Figure 1.** Map of Refuge and surrounding Significant Habitat, including the boundaries of leased parcels in which industrial shellfish dredging occurs.<sup>2</sup>

<sup>1</sup> According to DOS, the Refuge is “federally excluded” from the Significant Habitat. NY Dep’t of State, *Oyster Bay and Cold Spring Harbor Coastal Fish & Wildlife Habitat Assessment Form*, at 2 (Oct. 2005), <https://www.nrc.gov/docs/ML0712/ML071270097.pdf>.

<sup>2</sup> See Town of Oyster Bay, *Oyster Bay Harbor Shellfish Lease Area Coordinates*; see also U.S. Fish & Wildlife Serv., *FWS National Realty Boundaries*, <https://fws.maps.arcgis.com/home/>

### *Establishment of the Refuge*

22. In 1968, the Town established the Refuge by conveying submerged lands to the United States “subject to the express condition and limitation” that the lands “shall forever be held as an inviolate sanctuary for migratory birds,” “a refuge for fish and wildlife and their natural habitat,” and “a nature preserve for scientific, educational and aesthetic purposes.” Refuge Deed at 2. The Town expressly provided that the lands “shall be kept and maintained entirely in their natural state . . . undisturbed by any activities that might adversely affect the flora or the fauna, [or] their natural habitat, or which would impair the essential natural character of the premises.” *Id.* at 3 (setting out limited exceptions to this provision for scientific research and other activities not relevant here).

23. The Town conveyed the lands subject to existing and renewed leases, agreements, and permits—including permits for taking shellfish—provided that authorized activities “are *not incompatible* with the use of such lands for a migratory bird refuge, and fish and wildlife purposes.” *Id.* at 4 (emphasis added).

24. In 2020, Congress renamed the Refuge in honor of former Congressman Lester Wolff, who helped to protect this area from industrial pollution and other threats. *See* Pub. L. 116-110, 134 Stat. 6 (Jan. 27, 2020). In so doing, Congress acknowledged that the Refuge “is truly a national treasure.” *Id.*

### *Shellfish Harvesting in the Refuge*

25. For over two centuries, independent baymen have harvested shellfish off the coast of Long Island, using hand-rakes to collect oysters and clams from the seafloor.

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[item.html?id=745ed874c1394da3a9aae50267c9e049](https://gis.ny.gov/gisdata/inventories/details.cfm?DSID=318); N.Y. State, *Significant Coastal Fish and Wildlife Boundaries GIS Data Set*, <https://gis.ny.gov/gisdata/inventories/details.cfm?DSID=318>.

26. Independent baymen continue to operate in public waters in and around the Refuge. However, industrial shellfish harvesting techniques—including the use of hydraulic and suction dredges—now are used in this area as well. Hydraulic dredges use powerful water jets to loosen sediment and dislodge shellfish, which subsequently are collected in a metal basket that drags along the seafloor. Suction dredges operate like large vacuum cleaners, using a hose to suction up mud, sand, shellfish, and other creatures—including non-target species—from the seafloor.

27. In September 1994, the Town renewed a lease with Frank M. Flower & Sons, Inc. (“Flower”), granting Flower the exclusive right to cultivate and harvest shellfish on more than 1,800 acres of submerged lands, including 1,000 acres in the Refuge.

28. Flower’s activities in and around the Refuge include industrial shellfish dredging.

29. Flower closed its shellfish hatchery several years ago. On information and belief, Flower no longer cultivates shellfish in the Refuge.

30. The New York State Department of Environmental Conservation (“DEC”) issues certain shellfish harvesting permits and manages harvest area closures. In 2022 and 2023, DEC authorized Flower to conduct industrial shellfish dredging in an area of the Refuge included in Flower’s lease, which previously had been closed to shellfish harvesting as a result of sanitation and water quality problems.

***Harm to Wildlife and Degradation of Habitat from Industrial Shellfish Dredging***

31. A well-established, substantial body of scientific evidence shows that industrial shellfish dredging damages aquatic habitat, degrades water quality, and harms fish, birds, and other wildlife, including protected species.

32. For example, industrial dredges damage habitat by scraping the seafloor, leaving lasting scars and erasing complex natural structures used by fish and other species for shelter and



nursery areas. Industrial dredges also damage habitat by disturbing sand, silt, and clay on the seafloor and dispersing large quantities of these materials into the water column. As the materials re-settle—a process known as sedimentation—they change the texture and composition of the seafloor, making it less suitable for fish and shellfish. DEC has expressed concern that “critical benthic habit for many important juvenile finfish [is] highly vulnerable to the effects of [shellfish] dredge gear.” Letter from Alice Weber, Marine Finfish Unit Leader, DEC to Ed Bausman (May 7, 2007). And scientific studies show that even a single instance of dredging can damage shellfish populations for decades. Harm to fish and shellfish populations, in turn, threatens birds and other predators, including red knots, which rely on these species for survival.

33. Not only do industrial dredges damage habitat by disturbing sediment on the seafloor, but they also degrade water quality. As dredges stir up sand, silt, and clay, they generate plumes of suspended sediment that can result in hours of increased turbidity and spread over 100 meters, with the finest sediments having effects as far as 200-500 meters from the site of original disturbance, depending on currents, dredging intensity, and depth. Increased turbidity and sedimentation threaten wildlife. For example, the Atlantic States Marine Fisheries Commission has found that increased turbidity from shellfish dredging and other activities makes it more difficult for adult and juvenile winter flounder to detect, locate, and catch prey, while re-settling sediment poses serious risks to winter flounder larvae and eggs. *See* Fishery Management Report No. 43 of the Atlantic States Marine Fisheries Commission, Amendment 1 to the Interstate Fishery Management Plan for Inshore Stocks of Winter Flounder (Nov. 2005), <http://www.asafc.org/uploads/file/amendment1.pdf>. According to DEC, “[h]abitat alteration and degradation,” attributable, in part, to dredging, “have negatively affected winter flounder populations in New York waters.” DEC, *Species Status Assessment: Winter Flounder*, at 14 (last

revised Jan. 28, 2014), [https://www.dec.ny.gov/docs/wildlife\\_pdf/sgcnwinterflounder.pdf](https://www.dec.ny.gov/docs/wildlife_pdf/sgcnwinterflounder.pdf). Harm to winter flounder also threatens osprey, for which winter flounder are an essential prey species.

34. In addition, industrial dredges harm wildlife directly—for example, by crushing, burying, or exposing shellfish and other seafloor-dwelling species. The Service and other government agencies have acknowledged that industrial dredge strikes pose a significant threat to loggerhead and Kemp’s ridley sea turtles, potentially resulting in injury or death.

35. In and around the Refuge, Plaintiffs’ members have observed changes to habitat and wildlife that they attribute to industrial shellfish dredging. For instance, a CFS member “find[s] [him]self going fishing in the Refuge less and less often,” because “over the past decade or so, . . . certain fish, such as winter flounder and fluke, are less common than they used to be in the Refuge.” Decl. of Robert Wemyss ¶ 8 (sworn to on Mar. 19, 2023) (attached as Exhibit 5). Based on his personal experience, observations, and research, this member “know[s] that industrial shellfish dredging increases turbidity and sedimentation, and [he] believe[s] these effects have made it difficult for winter flounder, fluke, and other fish to survive.” *Id.* Similarly, a member of the Baymen’s Association reports that “[a]reas near where the industrial dredge boats spend a lot of time, including some places that were once the most productive in the Harbor, are now completely dead; you cannot find any shellfish there.” Decl. of Paul Lombardi ¶ 10 (sworn to on Mar. 19, 2023) (attached as Exhibit 6).

36. The Town regularly surveys the distribution and abundance of clam populations in and around the Refuge, and the results of these surveys confirm that shellfish populations are suffering serious declines. Indeed, according to the most recent survey, clam distribution declined by 5 percent from 2013 to 2018, meaning that clams now are present at fewer locations

included in the survey area. During the same period, clam abundance declined by 44 percent, meaning that there now are significantly fewer clams overall.

### **STATUTORY AND REGULATORY FRAMEWORK**

37. The National Wildlife Refuge System exists to facilitate the administration of “a national network of lands and waters for the conservation, management, and where appropriate, restoration of . . . fish, wildlife, and plant resources and their habitats . . . for the benefit of present and future generations of Americans.” 16 U.S.C. § 668dd(a)(2).

38. Lands and waters within the System are the only federal lands and waters managed primarily for the benefit of wildlife.

39. Through the Administration Act, Congress directed the Service to “ensure that the mission of the System . . . and the purposes of each refuge are carried out.” *Id.*

§ 668dd(a)(4)(D).<sup>3</sup> In addition, the Service must administer the System in accordance with certain objectives, including “provid[ing] for the conservation of fish, wildlife, and plants, and their habitats” and “ensur[ing] that the biological integrity, diversity, and environmental health of the System are maintained.” *Id.* § 668dd(a)(4)(A)–(B).

#### ***The Service’s Obligation to Determine Compatibility***

40. The Service may allow use of lands and waters within the System *only if* it determines that the use is “compatible with the major purposes for which such areas were established.” *Id.* § 668dd(d)(1)(A); *see also* 50 C.F.R. § 25.21(b) (“[The Service] may open a national wildlife refuge for any refuge use, or expand, renew, or extend an existing refuge use

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<sup>3</sup> The Service determines refuge purposes based on 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).

*only after* the Refuge Manager determines that it is a compatible use and not inconsistent with any applicable law.”) (emphasis added).<sup>4</sup>

41. To comply with this requirement, the Service must prepare a written compatibility determination assessing whether the use at issue will “materially interfere with or detract from the fulfillment of the mission of the System or the purposes of the refuge.” 16 U.S.C. § 668ee(1); *see also* 50 C.F.R. § 25.12. A compatibility determination must be “consistent with principles of sound fish and wildlife management and administration, [as well as] available science and resources.” 16 U.S.C. § 668ee(3).

42. The Service has a continuing obligation to reevaluate each authorized use “not less frequently than once every 10 years.” *Id.* § 668dd(d)(3)(B)(vii).

43. The Service may be required to reevaluate a use *more frequently* “if conditions under which the use is permitted change significantly or if there is significant new information regarding the effects of the use.” *Id.*

44. In addition, the Service “will frequently monitor and review” any long-term use in existence on November 17, 2000 and authorized for a period longer than 10 years. 50 C.F.R. § 25.21(h). The Service “will request modifications . . . [if] necessary to ensure that the use remains compatible.” *Id.*

***The Service’s Obligation to Require Special Use Permits for Commercial Enterprises***

45. Under the Administration Act, no person who is not authorized to manage an area within the National Wildlife Refuge System “shall . . . take or possess any fish, bird, mammal, or

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<sup>4</sup> In situations in which the United States holds refuge lands in less than fee simple, the Service exercises its oversight responsibilities “to the extent that the property interest held by the United States may be affected.” 50 C.F.R. § 25.11(a).

other wild vertebrate or invertebrate animals . . . or enter, use, or otherwise occupy” the area, “unless such activities are permitted.” 16 U.S.C. § 668dd(c).

46. In particular, the Service’s regulations prohibit anyone from “conducting a commercial enterprise on any national wildlife refuge . . . except as may be authorized by special permit.” 50 C.F.R. § 27.97.

47. Service regulations also prohibit anyone from “[d]isturbing, injuring, spearing, poisoning, destroying, [or] collecting . . . any plant or animal on any national wildlife refuge . . . except by special permit,” unless the activity at issue is otherwise permitted by the Service—for example, as a recreational activity. 50 C.F.R. § 27.51(a).

**THE SERVICE HAS FAILED TO OVERSEE INDUSTRIAL SHELLFISH DREDGING  
IN THE REFUGE AS REQUIRED BY LAW**

***1994 Compatibility Determination***

48. In June 1994, several months before the Town executed its most recent lease with Flower, the Service published a document purporting to be a compatibility determination for “aquaculture (shellfish) and commercial and recreation [*sic*] shellfishing,” including industrial shellfish dredging, in the Refuge. *See* Service Compatibility Determination for Aquaculture/Shellfish Harvest (June 23, 1994) (“1994 Compatibility Determination”) (attached as Exhibit 7).

49. In the 1994 Compatibility Determination, the Service asserted that Flower’s operation had “enhanced the water and habitat quality of the Refuge,” because “the continual seeding of oysters and clams has insured a high degree of filtration and avoided hypoxia problems,” the “presence of the industry has assured the monitoring of water quality by the Town and State,” and “many . . . marine organisms have been provided habitat by the operation.” *Id.* The Service did not identify any scientific evidence or other authority for these assertions.

50. The Service also acknowledged that industrial shellfish dredging poses a threat to wildlife. For example, the Service observed that “[t]he dredging operation (for harvest of shellfish) maybe [*sic*] harmful to winter flounder and investigations have been requested.” *Id.* In addition, the Service noted that the Refuge is a “prime feeding site for wintering waterfowl,” and it indicated that “[i]nvestigations into specific foods being utilized by winter waterfowl needs [*sic*] to be addressed further.” *Id.*

51. Despite concluding that additional investigations were necessary to assess harm, the Service nonetheless found that Flower’s operation is compatible with the Refuge’s purposes. *Id.*

52. In a section of the 1994 Compatibility Determination labelled “Justification,” the Service asserted: “The rights of taking shellfish and the leasing of lands for shellfish culture are guaranteed by deed to the Town by the Service. Therefore the Service has no jurisdiction in this use.” *Id.*

53. Although the Service stated that it had requested a Solicitor’s opinion to resolve uncertainty about its “jurisdiction to review aquaculture in the Special Use Permit/compatibility process,” it indicated that it *would* exercise jurisdiction over at least one issue relating to shellfish cultivation. *See id.* (stating that “any liming operation must obtain a Special Use Permit from the Refuge and the activity must be subject to the compatibility process”).<sup>5</sup> On information and belief, no Solicitor’s opinion was finalized.

#### ***Congressman Suozzi’s 2022 Letter and the Service’s Response***

54. On January 4, 2022, then-Congressman Thomas R. Suozzi sent a letter to the Service, requesting that it reevaluate industrial shellfish dredging in the Refuge. *See* Letter from

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<sup>5</sup> “Liming” refers to the application of lime to a shellfish bed to kill predators, including starfish.

Representative Thomas R. Suozzi to Annjanette Bagozzi, Project Leader, Long Island Nat'l Wildlife Refuge Complex (Jan. 4, 2022) (attached as Exhibit 8). Congressman Suozzi explained that the Service was, at that time, more than 17 years overdue with respect to its statutory obligation to reevaluate industrial shellfish dredging; the closure of Flower's shellfish hatchery and seeding operation amounted to a significant change in the conditions under which industrial shellfish dredging occurred; and significant new information indicated that industrial shellfish dredging is incompatible with Refuge's purposes. In particular, Congressman Suozzi cited a number of scientific articles finding that industrial shellfish dredging alters the seafloor, increases turbidity and sedimentation, and threatens marine plants and wildlife.

55. On February 2, 2022, the Service responded to Congressman Suozzi's letter, stating that the Service lacks jurisdiction to evaluate whether industrial shellfish dredging is compatible with the Refuge's purpose. *See* February 2022 Service Letter. In addition, the Service admitted that "the 'uses' of aquaculture and commercial and recreational shellfishing were found compatible with the purposes of the Oyster Bay [National Wildlife Refuge in the 1994 Compatibility Determination] *only because the Service maintained its lack of jurisdiction over the shellfish program or any aspect of it.*" *Id.* (emphasis added).<sup>6</sup>

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<sup>6</sup> Contrary to the Service's assertion, it has *not* consistently maintained that it lacks jurisdiction over "any aspect" of shellfish harvesting and cultivation in the Refuge. Not only has the Service asserted jurisdiction over some aspects of shellfish *cultivation*, as explained above, but it also has stated that any shellfish *dredging* operation in the Refuge must undergo compatibility review and obtain a special use permit. *See* U.S. Fish and Wildlife Serv., *Long Island National Wildlife Refuge Complex Comprehensive Conservation Plan* (2006), <https://www.fws.gov/sites/default/files/documents/Long%20Island%20NWR%20Complex%20Final%20CCP%20and%20EA.pdf>.

***The Service's Failure to Reevaluate the Compatibility of Industrial Shellfish Dredging in the Refuge or to Issue Any Special Use Permit as Required***

56. The Administration Act and its implementing regulations mandate that the Service must ensure the purposes of each refuge are carried out—in part, by evaluating, reevaluating, and permitting refuge uses. In addition, the Refuge Deed stipulates that the Town lacks authority to allow shellfish harvesting that is *incompatible* with the Refuge's purposes.

57. Nonetheless, even though the Service signed the 1994 Compatibility Determination more than 28 years ago, it has *never* reevaluated the compatibility of industrial shellfish dredging in the Refuge.

58. In addition, the Service has never issued a special use permit for industrial shellfish dredging in the Refuge.

**CLAIMS FOR RELIEF**

**First Claim for Relief: The Service Violated the Administration Act by Failing to Reevaluate the Compatibility of Industrial Shellfish Dredging in the Refuge.**

59. Pursuant to the Administration Act, the Service has a continuing obligation to reevaluate the compatibility of any existing use of refuge lands and waters at least once every 10 years. *See* 16 U.S.C. § 668dd(d)(3)(B)(vii). More frequent reevaluation is required “if conditions under which the use is permitted change significantly or if there is significant new information regarding the effects of the use.” *Id.*

60. In 1994, the Service published a document purporting to be a compatibility determination for activities including industrial shellfish dredging in the Refuge. However, the Service did not reevaluate industrial shellfish dredging 10 years later in 2004, 20 years later in 2014, or during any other year after 1994—even though conditions changed and new information added to a growing body of evidence indicating that industrial shellfish dredging damages aquatic habitat, degrades water quality, and harms wildlife.



61. In February 2022, the Service formally refused to reevaluate the compatibility of industrial shellfish dredging in the Refuge. *See* February 2022 Service Letter. The Service asserted that it lacked jurisdiction to evaluate “any aspect” of industrial shellfish dredging, based on its interpretation of the Refuge Deed. *Id.*

62. Contrary to the Service’s assertion, the Refuge Deed provides that the conveyance creating the Refuge shall be subject to leases and agreements authorizing shellfish harvesting *only if* those uses “are not incompatible with the use of [Refuge] lands for a migratory bird refuge, and fish and wildlife purposes.” *See* Refuge Deed at 4.

63. The Service’s failure to reevaluate the compatibility of industrial shellfish dredging in the Refuge is contrary to the Administration Act and its implementing regulations, as well as the Refuge Deed. Thus, the Service’s failure constitutes “agency action unlawfully withheld” reviewable under the APA. 5 U.S.C. § 706(1).

64. As a result of the Service’s failure, Plaintiffs’ members fear that an inadequately examined activity is threatening their aesthetic, recreational, conservation, and economic interests in the Refuge.

65. An order from this Court requiring the Service to comply with its obligations under the Administration Act, its implementing regulations, and the Refuge Deed will ensure that the Service properly reevaluates the compatibility of industrial shellfish dredging, thereby redressing Plaintiffs’ injuries.

66. Plaintiffs are entitled to declaratory and injunctive relief ordering the Service to reevaluate the compatibility of industrial shellfish dredging in the Refuge.

**Second Claim for Relief: The Service Violated the Administration Act by Failing to Require a Special Use Permit for Commercial Industrial Shellfish Dredging in the Refuge.**

67. The Service’s regulations prohibit anyone from “conducting a commercial enterprise on any national wildlife refuge . . . except as may be authorized by special permit.” 50 C.F.R. § 27.97.

68. Currently, at least one corporation conducts commercial industrial shellfish dredging in the Refuge.

69. On information and belief, the Service has not issued a special use permit authorizing this use.

70. The Service’s failure to require a special use permit for commercial industrial shellfish dredging conflicts with its own regulations. Therefore, this failure constitutes “agency action unlawfully withheld” reviewable under the APA. 5 U.S.C. § 706(1).

71. As a result of the Service’s failure, Plaintiffs’ members fear that an inadequately examined activity is threatening their aesthetic, recreational, conservation, and economic interests in the Refuge.

72. An order from this Court requiring the Service to comply with its regulatory obligations will ensure that the Service properly oversees commercial industrial shellfish dredging in the Refuge, thereby redressing Plaintiffs’ injuries.

73. Plaintiffs are entitled to declaratory and injunctive relief ordering the Service to require a special use permit for commercial industrial shellfish dredging in the Refuge.

**RELIEF REQUESTED**

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Declare that the Service violated the Administration Act and its implementing regulations by failing to reevaluate the compatibility of industrial shellfish dredging in the Refuge;

2. Declare that the Service violated the Administration Act and its implementing regulations by failing to issue a special use permit before allowing or facilitating commercial industrial shellfish dredging in the Refuge;

3. Order the Service to comply with its duties under the Administration Act and its implementing regulations to reevaluate the compatibility of industrial shellfish dredging in the Refuge and to require a special use permit before allowing or facilitating commercial industrial shellfish dredging in the Refuge;

4. Retain jurisdiction of this action to ensure compliance with its decree;

5. Award Plaintiffs the costs of this action, including attorneys' fees; and

6. Grant such other relief as the Court deems just and proper.

Dated this 26th day of April 2023.

Respectfully submitted,

s/ Alexis Andiman

ALEXIS ANDIMAN

ASHLEY INGRAM (*application for admission pending*)

Earthjustice

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