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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
(Eugene Division)

**NEWPORT FISHERMEN'S WIVES, INC.**,  
an Oregon nonprofit corporation, **CITY OF**  
**NEWPORT, LINCOLN COUNTY** and  
**PORT OF NEWPORT**,

Plaintiffs,

v.

**UNITED STATES COAST GUARD**, an  
agency of the United States Department of  
Homeland Security,

Defendant.

Case No.

**COMPLAINT**

**Action for Declaratory and Injunctive  
Relief (28 U.S.C. §§ 1331, 2201, 2202)**

**INTRODUCTION**

1. This declaratory judgment and injunctive relief action is brought against the United States Coast Guard by the Newport Fishermen's Wives, Inc. and three major governmental entities on Oregon's central coast, to prevent the Coast Guard's planned illegal decommissioning of the Coast Guard's Newport Air Station and its helicopter search and rescue capability. By eliminating the air facility and moving Newport's rescue helicopter more than one

hour's flight time south to North Bend or North to Astoria, the Coast Guard will degrade its search and rescue capability in violation of its obligations under the Homeland Security Act of 2002 and the National Environmental Policy Act. In the cold waters of the Pacific Ocean off Oregon's central coast, elimination of the air station will mean an increase in fatalities for ocean users. Survival time in these cold waters is measured in minutes rather than the more than one hour necessary for a rescue helicopter from Coast Guard air stations in Astoria or North Bend to reach areas off of Oregon's central coast.

### JURISDICTION AND VENUE

2. This Court has jurisdiction over the claims in this action pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (United States as defendant), 28 U.S.C. § 2201 (declaratory relief), 28 U.S.C. § 2202 (injunctive relief) and 5 U.S.C. §§ 701-06 (judicial review of final agency actions for which there is no other adequate remedy in a court).

3. Venue in this district is proper under 28 U.S.C. § 1391, because defendant conducts operations within this district and a substantial part of the events giving rise to plaintiffs' claims occurred within this district.

### PARTIES

4. Plaintiff Newport Fishermen's Wives, Inc. is a federally registered 501(c)(3) charity and an Oregon non-profit corporation. The mission of the Newport Fishermen's Wives, Inc. is "for the purpose of voluntarily aiding and assisting families, relatives, or dependents of commercial fishermen or deceased commercial fishermen."

5. Plaintiff City of Newport is an Oregon municipality that has as its primary mission the protection of the "public safety of residents and visitors." Home to 10,000 residents,

Newport is a popular tourist attraction where visitor counts average 2.5 million people per year. The Coast Guard's air rescue station in Newport is an important partner with the City of Newport in meeting the public safety missions of both public agencies by providing the only helicopter air rescue capability on Oregon's central coast. The City of Newport's first responders regularly rely on the Coast Guard helicopter stationed at the Newport Air Station to provide the air rescue capability that is vital to carrying out numerous search and rescue operations annually.

6. Plaintiff Lincoln County is an Oregon county bordering the Pacific Ocean which contains the City of Newport as its county seat. The population of Lincoln County is approximately 46,000. The mission of Lincoln County is "to provide essential public services" including the protection of public safety. Multiple jurisdictions from Waldport to Lincoln City throughout Lincoln County partner with, and rely on, the Coast Guard's Newport Air Station to provide helicopter air rescue capability in emergencies.

7. Plaintiff Port of Newport is a public port and one of Oregon's three deep draft ports. It is home to Oregon's largest commercial fishing fleet, the NOAA Pacific Marine Operations center—Pacific fleet, Oregon State University's Oceanographic research vessel and visiting research vessels, as well as a robust recreational and sport fishing industry. The port of Port of Newport also operates a newly modernized International Port Terminal in Yaquina Bay.

### **BACKGROUND ALLEGATIONS**

8. The U.S. Coast Guard has operated an air station with helicopter capability in Newport, Oregon since 1987. The Newport Air Station was established in response to the loss of three Newport fishermen in 1985 who perished 20 miles offshore when the fishing vessel Lasseigne capsized. By the time Coast Guard rescue helicopters from Astoria and North Bend

reached the scene one hour and fourteen minutes after the distress call from the vessel, two bodies with life jackets were seen floating in the sea. A third fisherman who appeared to be alive was retrieved from the ocean and flown to a hospital in Lincoln City where he died from hypothermia despite more than three hours of effort by doctors and nurses to revive him.

9. In response to the tragic Lasseigne incident and others, plaintiff Newport Fishermen's Wives, Inc. led the fight on behalf of the larger Newport community to secure a rapid response Coast Guard rescue helicopter for Oregon's central coast. On July 3, 1986, President Ronald Reagan signed legislation appropriating the funds for the Coast Guard's Newport Air Station. A temporary station was established in 1987 on property leased by the City of Newport to the Coast Guard. The Coast Guard constructed a building on the site and installed fuel tanks. In 1992, Congress approved funding for a permanent air facility which was formally dedicated on January 20, 1994. This important air rescue station has operated in Newport since 1987.

10. During the approximately quarter century that the Coast Guard has operated its air station at the Newport Airport, hundreds of individuals including commercial fishermen, recreational boaters, Oregon residents and visitors have been saved from severe injury or death as a direct result of the speed with which a properly equipped helicopter with a highly trained search and rescue crew can retrieve individuals from the cold waters of the Pacific Ocean. Along Oregon's central coast, ocean temperatures remain below 59 degrees Fahrenheit on a year-round basis with an overall average of 53 degrees.

11. As demonstrated by the tragic loss of three fishermen in the fishing vessel Lasseigne casualty in 1985, decommissioning the Coast Guard air station in Newport will deliver

a death sentence to commercial fishermen, recreationists, Oregon residents and visitors who are washed overboard, fall into the Pacific Ocean or become trapped by rising Pacific Ocean tides along a rocky coastline because search and rescue helicopters deployed from Astoria or North Bend cannot reach central Oregon coast victims in the 30 to 45 minutes that is recognized as the normal survival window in these cold ocean waters. Since the establishment of the Coast Guard air station in 1987, there has been no change in the Coast Guard's search and rescue capability by aircraft or vessel that has lowered the deployment time for air rescue helicopters from either Astoria or North Bend to waters offshore of Newport.

12. Newport serves as the home-port for over 250 commercial fishing vessels, which represents the single largest concentration of fishing vessels on the Oregon coast. In 2013, seafood landings in Newport ranked 15th in the nation in terms of pounds and 19th nationally in total value.

13. On October 2, 2014, the U.S. Coast Guard notified multiple stakeholders in the Newport area that the Coast Guard had decided to close its Newport Air Station on November 30, 2014. A copy of that notice is attached as Exhibit A. Defendant has since extended the November 30 closure date to December 15, 2014.

14. Commercial fishing is one of the most dangerous occupations in the United States, and the Dungeness crab fishery, which is prosecuted during winter months, is universally recognized as the most dangerous of the commercial fisheries in the United States. Plaintiff Newport Fishermen's Wives, Inc. has a vital interest in the maintenance of helicopter air rescue capability on Oregon's central coast. Without that capability, any commercial fisherman is

placed at an extreme risk of death in the event he is washed overboard in heavy seas or his fishing vessel capsizes before the fisherman has an opportunity to don a survival suit.

15. Newport, Oregon and Oregon's central coast are centers of recreational activity on Oregon's beaches and on the ocean utilizing boats of all sizes. None of the jurisdictions in Lincoln County has any helicopter rescue capability, leaving the longstanding Coast Guard air station as a critically important component of the emergency response plans of these jurisdictions. In fact, the Coast Guard's air rescue capability in Newport puts first responders throughout Oregon's central coast in a position to move more aggressively with their own limited equipment in search and rescue situations knowing that the Coast Guard air rescue capability provides essential safety back-up for these first responders.

**FIRST CLAIM FOR RELIEF**  
**(Violation of Homeland Security Act of 2002)**

16. Plaintiffs reallege Paragraphs 1 through 15.

17. The Homeland Security Act of 2002 designates "search and rescue" as one of the six non-homeland security missions of the U.S. Coast Guard. When the Department of Homeland Security was created in 2002, the U.S. Coast Guard, which had previously been an agency of the U.S. Department of Transportation, was transferred to the new department. In connection with that transfer, the Homeland Security Act of 2002 expressly prohibited significant change to the search and rescue mission of the Coast Guard. 6 U.S.C. § 468(c).

18. The Homeland Security Act of 2002 specifically requires that "the authorities, functions, and capabilities of the Coast Guard to perform its missions shall be maintained intact and without significant reduction after the transfer of the Coast Guard" to the Department of Homeland Security.

19. In addition, the Homeland Security Act of 2002 contains the following express prohibition on reducing the Coast Guard's missions or capability to perform those missions:

The Secretary [of Homeland Security] may not substantially or significantly reduce the missions of the Coast Guard or the Coast Guard's capability to perform those missions, except as specified in subsequent Acts.

6 U.S.C. § 468(e)(1).

20. The Secretary of Homeland Security may waive the above prohibition for a period not to exceed 90 days, but only following the issuance of a declaration and certification by the Secretary to Congress "that a clear, compelling and immediate need exists for such a waiver" and a detailed justification for that waiver that includes reasons and specific information demonstrating "that the nation and the Coast Guard cannot respond effectively if the restrictions under the above-quoted prohibition are not waived." 46 U.S.C. § 468(e)(2). To date, the Secretary has issued no such waiver.

21. The decommissioning of the Coast Guard's Newport Air Station and elimination of rescue helicopter at that facility will result in a significant reduction in the search and rescue mission of the Coast Guard that has existed since the enactment of the Homeland Security Act of 2002. Specifically, by eliminating the Newport Air Station, the Coast Guard will be unable to rescue victims in the Pacific Ocean waters of Oregon's central coast in sufficient time to prevent their deaths. The proposed closure of the Newport Air Station constitutes a significant reduction in the Coast Guard's search and rescue mission that violates the Homeland Security Act of 2002.

22. The action the Coast Guard is taking on December 15, 2014 is not in accordance with law, without observation of the procedures required by law, and is arbitrary and capricious within the meaning of the Administrative Procedure Act (APA). 5 U.S.C. § 706(2)(A).

23. In the event the Coast Guard proceeds to decommission Newport Air Station and eliminate the helicopter air rescue capability serving Oregon's central coast on December 15, 2014 as announced by defendant, irreparable harm will result in the form of the near certain loss of human life in areas offshore of the central Oregon coast in the near term during the winter of 2014-15 and the certain loss of life in this area over the long term.

24. Plaintiffs have no adequate remedy at law and require preliminary and permanent injunctive relief to prevent the loss of the Newport Air Station and its search and rescue capability.

25. Defendant should be preliminarily and permanently enjoined from decommissioning and closing the Coast Guard air facility in Newport, Oregon and from discontinuing the agency's air rescue service performed by that facility.

26. Plaintiffs are entitled to their reasonable attorney's fees, costs and expenses associated with this litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

**SECOND CLAIM FOR RELIEF**  
**(Violation of National Environmental Policy Act)**

27. Plaintiffs reallege Paragraphs 1 through 26.

28. The National Environmental Policy Act (NEPA) requires federal agencies to analyze the foreseeable environmental impacts, including direct and indirect impacts of "major federal actions." 42 U.S.C. § 4332(c)(1); 40 C.F.R. 1508.7.

29. Pursuant to Coast Guard policy as published in the Federal Register, a decision to permanently decommission or close Coast Guard shore facilities is an action that may qualify for a categorical exclusion from the requirement to prepare an environmental assessment or environmental impact statement under NEPA. However, according to this policy, the Coast

Guard must justify the use of a categorical exclusion to decommission or close an onshore facility through the issuance of a written Categorical Exclusion Determination (CED) which must be supported and justified through the preparation of a written environmental checklist. The purpose of the checklist is to provide a "tool" that is designed to assist the agency "in determining whether there are any extraordinary circumstances" that might require preparation of an environment impact statement or an environmental assessment.

30. Upon information and belief, the Coast Guard has not prepared the written checklist designed to assess its proposed decommissioning and closure of the Newport Air Station in violation of Coast Guard policy that is designed to ensure compliance with NEPA. On November 29, 2000, the Commandant of the U.S. Coast Guard issued policy guidance regarding the use of categorical exclusion decisions and the written checklist. A copy of the written checklist is attached as Exhibit B. Four of the ten questions on the checklist, which are designed to identify extraordinary circumstances that may preclude the agency's use of a categorical exclusion, are quoted below:

1. Is there likely to be a significant effect on public health or safety?
2. Does the proposed action occur on or near a unique characteristic of the geographic area, such as a historic or cultural resource, parkland, prime farmland, wetland, wild and scenic river, ecological area, or property requiring special consideration under 49 U.S.C. 303(c)?
3. Is there a potential for effects on the quality of the environment that are likely to be controversial in terms of scientific validity or public opinion?
- ....
9. Is there any potential or a threatened violation of a Federal State or local law or requirement imposed for the protection of the environment?

31. If the above quoted questions are analyzed appropriately, the Coast Guard should conclude that closure of the Newport Air Station will result in a significant degradation of both public safety and oil spill prevention and mitigation along Oregon's central coast, which warrants preparation of either an environmental impact statement or an environment assessment before action can be taken.

32. Defendant's actions as described above violate the Coast Guard's obligations under NEPA. Defendant's proposed action to close the Newport Air Station as of December 2014 is arbitrary, capricious, not in accordance with the law, without observance of the procedures required by law, and is arbitrary and capricious within the meaning of the APA.

33. In the event the Coast Guard proceeds to decommission Newport Air Station and eliminate the helicopter air rescue capability serving Oregon's central coast on December 15, 2014 as announced by defendant, irreparable harm will result in the form of the near certain loss of human life in areas offshore of the central Oregon coast in the near term during the winter of 2014-15 and the certain loss of life in this area over the long term.

34. Plaintiffs have no adequate remedy at law and require preliminary and permanent injunctive relief to prevent the loss of the Newport Air Station and its search and rescue capability.

35. Defendant should be preliminarily and permanently enjoined from decommissioning and closing the Coast Guard air facility in Newport, Oregon and from discontinuing the agency's air rescue service performed by that facility.

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36. Plaintiffs are entitled to their reasonable attorney's fees, costs and expenses associated with this litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

WHEREFORE, plaintiffs pray for the following relief from this Court:

1. Declare that the Coast Guard has violated the Homeland Security Act of 2002 and the National Environmental Policy Act in proposing to decommission its Air Facility in Newport, Oregon as of December 15, 2014;

2. Enjoin the Coast Guard from taking any action to decommission its Newport Air Station or to discontinue air rescue services deployed from that facility;

3. Award plaintiffs their reasonable attorney fees, costs and expenses under the Equal Access to Justice Act; and

4. Grant plaintiffs any further relief that the Court deems just and equitable.

DATED this 25<sup>th</sup> day of November, 2014.

HAGLUND KELLEY LLP

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OCT 02 2014

Mr. Lance Vanderbeck  
Newport Airport Operations Manager  
135 SE 84<sup>th</sup> St.  
South Beach, OR 97366

Dear Mr. Vanderbeck:

I am writing to notify you, as authorized in the Consolidated Appropriations Act of 2014, the Coast Guard has decided to close our Air Facility in Newport, Oregon on November 30, 2014. This facility is a detachment of Coast Guard Sector North Bend. Aircraft and crews from North Bend deploy to Newport for Search and Rescue (SAR) and other operations.

Through targeted investment in vital recapitalization projects, the Coast Guard has significantly improved our SAR response posture. Specifically, we have deployed the Coast Guard's Rescue 21 communications and distress calling system, which provides us with significantly improved detection capability, as well as the ability to use radio signals to more efficiently locate mariners in distress. In addition, there have been improvements in safety and survival equipment that greatly increase the chance of survival and detection for imperiled mariners. Given these improvements in the overall SAR system, the Coast Guard will consolidate air operations in Southern Oregon at our Air Station in North Bend while continuing to meet all national SAR response standards.

If you have any questions regarding this matter, please feel free to contact Captain Todd Trimpert, Sector North Bend Commander, (541) 756-9253 or Commander Eric Belleque, District Thirteen Chief of External Affairs, (206) 220-7236.

Sincerely,

A handwritten signature in black ink, appearing to read "R. T. Gromlich".

R. T. GROMLICH  
Rear Admiral, U.S. Coast Guard  
Commander, Thirteenth Coast Guard District

**Part I. Checklist Analysis.**

**YES   NO   NEED  
DATA**

1. Is there likely to be a significant effect on public health or safety? (p. 5)			
2. Does the proposed action occur on or near a unique characteristic of the geographic area, such as a historic or cultural resource, park land, prime farmland, wetland, wild and scenic river, ecologically critical area, or property requiring special consideration under 49 U.S.C. 303(c)? (p. 5-6)			
3. Is there a potential for effects on the quality of the environment that are likely to be highly controversial in terms of scientific validity or public opinion? (p. 7)			
4. Is there a potential for effects on the human environment that are highly uncertain or involve unique or unknown risks? (p. 7)			
5. Will the action set a precedent for future actions with significant effects or a decision in principle about a future consideration? (p. 7)			
6. Are the action's impacts individually insignificant, but cumulatively significant when considered along with other past, present, and reasonably foreseeable future actions? (p. 7-8)			
7. Is the proposed action likely to have a significant impact on a district, site, highway, structure, or object that is listed in or eligible for listing in the National Register of Historic Places, or to cause the loss or destruction of a significant scientific, cultural, or historic resource? (p.8)			
8. Will the proposed action have a significant effect on species or habitats protected by Federal law or Executive Order ? (p. 9)			
9. Is there a potential or threatened violation of a Federal, State, or local law or requirement imposed for the protection of the environment? (p. 9-10)			
10. Is the action likely to have other significant effects on public health and safety or on any other environmental media or resources that are not specifically identified in this checklist? (p. 10)			

**Part II. Comments or Additional Information Related to Part I:**

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