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Foundation, Dugong Network Okinawa, Committee Against Heliport Construction, Save
Life Society, Anna Koshiishi, Takuma Higashionna, and Yoshikazu Makishi

8
9 **UNITED STATES DISTRICT COURT**
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN FRANCISCO DIVISION**

12 OKINAWA DUGONG (Dugong Dugon);)
13 CENTER FOR BIOLOGICAL DIVERSITY;)
14 TURTLE ISLAND RESTORATION)
15 NETWORK; JAPAN ENVIRONMENTAL)
16 LAWYERS FEDERATION; SAVE THE) Civil Action No. C-03-4350 (MHP)
17 DUGONG FOUNDATION; DUGONG) Honorable Marilyn Hall Patel
18 NETWORK OKINAWA; COMMITTEE)
19 AGAINST HELIPORT CONSTRUCTION,)
20 SAVE LIFE SOCIETY; ANNA KOSHIISHI;) FIRST AMENDED COMPLAINT FOR
21 TAKUMA HIGASHIONNA; and) DECLARATORY AND INJUNCTIVE
22 YOSHIKAZU MAKISHI,) RELIEF
23) (National Historic Preservation Act, 16 U.S.C.
24 Plaintiffs,) §§ 470 *et seq.*)
25)
26 v.)
27)
28 DONALD H. RUMSFELD, in his official)
capacity as the Secretary of Defense; and U.S.)
Department of Defense,)
Defendants.)

29
30 **INTRODUCTION**

31 1. This action is brought under the National Historic Preservation Act (NHPA), 16
32 U.S.C. §§ 470 *et seq.*, its implementing regulations and the Administrative Procedure Act, 5

1 U.S.C. §§ 701 *et seq.* Plaintiffs challenge the Department of Defense’s (DoD) activities related
2 to the relocation of portions of the U.S. airbase Futenma in Okinawa, Japan, to a “sea-based
3 facility” (SBF) proposed to be constructed off the coast of Okinawa. This plan would destroy
4 the most important remaining habitat of the Okinawa Dugong, a genetically isolated and unique
5 population of the Dugong protected as a cultural property under the NHPA.

6 2. Specifically, Plaintiffs challenge DoD’s failure to comply with the NHPA in
7 preparing its “Operational Requirements and Concept of Operations for MCAS Futenma
8 Relocation, Okinawa, Japan,” dated September 29, 1997 (OR), insofar as the preparation,
9 approval and delivery of the OR constitutes an undertaking under the NHPA. Plaintiffs further
10 challenge DoD’s contemporaneous and subsequent activities related to facilitating the Futenma
11 relocation and implementing the OR, including funding the relocation, approving individual
12 implementation decisions, and committing to fund on-going maintenance of the SBF. Because
13 each of these activities constitutes an undertaking under the NHPA, DoD must take into account
14 their effects on the Okinawa Dugong for purposes of avoiding or mitigating any adverse effects.
15 5 U.S.C. §470a-2. DoD has failed to take account of the serious adverse effects of its actions on
16 the Okinawa Dugong for the purposes of avoiding or mitigating such adverse effects.

17 18 **JURISDICTION**

19 3. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 as this action arises
20 under the laws of the United States.

21 4. An actual controversy exists between the parties within the meaning of 28 U.S.C.
22 § 2201(a). This Court may grant declaratory relief and additional relief, including an injunction,
23 pursuant to 28 U.S.C. §§ 2201, 2202 and 5 U.S.C. §§ 705, 706.

24 5. DoD’s failure to comply with the requirements of the NHPA, 16 U.S.C. § 470a-2,
25 is arbitrary, capricious, and not in accordance with procedures required by law pursuant to the
26 APA and is thus subject to judicial review. 5 U.S.C. §§ 701 through 706.

27 6. DoD’s failure to comply with the requirements of the NHPA, 16 U.S.C. § 470a-2,
28 also constitutes agency action that is unreasonably delayed and/or unlawfully withheld as

1 provided by Section 706(1) of the APA and is thus subject to judicial review. 5 U.S.C. §§ 701
2 through 706.

3 4 **VENUE AND INTRADISTRICT ASSIGNMENT**

5 7. Venue lies in this Court pursuant to 28 U.S.C. § 1391(e) because Plaintiff Turtle
6 Island Restoration Network (TIRN) resides in this judicial district. TIRN is incorporated and has
7 its principal place of business in Marin County. Additionally, Plaintiff Center for Biological
8 Diversity maintains an office in this judicial district.

9 8. This case has been assigned to the Honorable Marilyn Hall Patel in the San
10 Francisco Division of this Court. This assignment is proper under Civil Local Rule 3-2 (c)-(d)
11 because Plaintiffs reside in this judicial district.

12 13 **PARTIES**

14 9. Plaintiff OKINAWA DUGONG (Dugong dugon) is a genetically isolated and
15 unique member of the Dugong species, a threatened marine mammal species, listed as
16 “endangered” under the U.S. Endangered Species Act (ESA), 16 U.S.C. §§ 1531 *et seq.* Fewer
17 than fifty mature Okinawa Dugong remain. Preservation of the Okinawa Dugong depends
18 entirely upon the preservation of its habitat. The Okinawa Dugong is a protected “Natural
19 Monument” under Japan’s “Law for the Protection of Cultural Properties.” Because the list of
20 protected cultural properties under Japan’s Cultural Properties Law is the “equivalent” of the
21 U.S. National Register of Historic Places, the Okinawa Dugong is protected under the NHPA.
22 *See* 16 U.S.C. § 470a-2.

23 10. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY (CBD) is a non-profit
24 environmental organization dedicated to protecting endangered species and wild places and
25 environmental health through science, policy, education, and environmental law. It has offices
26 in Oakland, Idyllwild, and San Diego, California; Phoenix and Tucson, Arizona; Silver City,
27 New Mexico; Portland, Oregon; Buxton, North Carolina; and Sitka, Alaska. CBD is actively
28 involved in species and habitat protection issues throughout the United States and abroad. It has

1 7,500 members, including some who reside in Japan and others who have a strong interest in the
2 Okinawa Dugong ranging from educational, cultural, scientific, and recreational. These staff and
3 members care deeply about the Okinawa Dugong, have observed its native habitat and derive
4 aesthetic, recreational, scientific, inspirational, conservation, educational, and other benefits from
5 the existence of the Okinawa Dugong. They do so on a regular and continuing basis and they
6 intend to continue to do so in the near future.

7 11. Plaintiff TURTLE ISLAND RESTORATION NETWORK (TIRN) is a non-profit
8 corporation committed to the study, protection, enhancement, conservation, and preservation of
9 the world's marine and terrestrial ecosystems and the wildlife that inhabit the oceans, including
10 marine mammals such as the Okinawa Dugong. TIRN has its principal place of business in
11 Forest Knolls (Marin County), California, and operates offices in Houston, Texas and San Jose,
12 Costa Rica. TIRN has approximately 4,000 members throughout the world, including members
13 in the United States and Japan, including research biologists, ecological and cultural tour
14 operators, and professional photographers and videographers, all of whom rely on healthy
15 populations of marine mammals for personal pleasure and for the conduct of their businesses.
16 TIRN's members and staff regularly visit and use the marine ecosystems of the world and
17 anticipate visiting Okinawa Dugong habitat in the future for observation, research, aesthetic and
18 cultural enjoyment, and for other recreational, scientific, cultural and educational activities that
19 require the continued existence of the Okinawa Dugong. TIRN brings this action on behalf of
20 itself and its adversely affected members and staff.

21 12. Plaintiff JAPAN ENVIRONMENTAL LAWYERS FEDERATION (JELF) is the
22 only non-profit, non-governmental lawyers' organization in Japan dedicated to the protection of
23 Japan's environment and Japan's natural and cultural monuments. JELF was founded in 1996 in
24 Tokyo and currently has its office in Nagoya, Japan. JELF is comprised of approximately 540
25 members including 430 attorneys and academics. The members research, litigate and lobby for
26 cultural and wildlife preservation and prevention of toxic contamination throughout Japan. JELF
27 staff and members have a strong educational, cultural, historic, scientific, and recreational
28 interest in the Okinawa Dugong. These staff and members regularly visit and observe Okinawa

1 Dugong habitat and derive cultural, aesthetic, recreational, scientific, inspirational, conservation,
2 educational, and other benefits from the existence of the Okinawa Dugong. They do so on a
3 regular and continuing basis and they intend to continue to do so in the near future. JELF staff
4 and members work extensively for the protection of the Okinawa Dugong.

5 13. Plaintiff SAVE THE DUGONG FOUNDATION (SDF) is a non-profit
6 organization based in Okinawa, Japan, formed by Okinawa locals and their supporters in 1999.
7 Currently, SDF has about 21 members. SDF's main goal is to protect the Okinawa Dugong and
8 its habitat. This goal reflects the interest of its members in the biological, cultural, historic and
9 aesthetic benefits that they each derive from the continued existence of the Okinawa Dugong
10 population and from the protection and strengthening of that population. To achieve this aim,
11 members regularly conduct joint research with scientists and local residents and study the
12 Okinawa Dugong and its habitat. In the course of this research, and as part of their daily lives,
13 members routinely visit Okinawa Dugong habitat to study Okinawa Dugong, and plan to
14 continue doing so in the near future. To advocate the importance of conserving dugongs, SDF
15 has also participated in the general meeting of International Union for Conservation of Nature
16 and Natural Resources (IUCN), an international environmental organization comprised of
17 members from over 140 countries. It has also organized numerous symposia on dugong
18 conservation and local community empowerment.

19 14. Plaintiff DUGONG NETWORK OKINAWA (DNO) is a non-profit organization
20 in Okinawa, Japan, dedicated to the protection of the Okinawa Dugong and its habitat. DNO's
21 members have deep and diverse educational, cultural, historic, scientific, and recreational
22 interests in the protection of the Okinawa Dugong population. These members observe the
23 Okinawa Dugong's native habitat on a regular and continuing basis and they intend to continue
24 to do so in the near future. They derive aesthetic, cultural, recreational, scientific, inspirational,
25 conservation, educational, and other benefits from the existence of the Okinawa Dugong. In the
26 past, DNO's members have appealed to the general assembly of The World Conservation Union
27 (IUCN) to protect Japan's marine habitats for the benefit of species that depend on them.
28

1 15. Plaintiff COMMITTEE AGAINST HELIPORT CONSTRUCTION, SAVE LIFE
2 SOCIETY (CAHC) is an organization based in Okinawa, Japan that is dedicated to halting the
3 construction of new military bases on and around Okinawa, and to the protection of the sea, coral
4 reefs, and marine life surrounding the island. CAHC’s members have long-standing educational,
5 cultural, historic, scientific, and recreational interest in the continued survival of and prevention
6 of adverse impacts to the Okinawa Dugong and its habitat. These members observe the Okinawa
7 Dugong’s native habitat on a regular and continuing basis and they intend to continue to do so in
8 the near future. They derive aesthetic, recreational, cultural, scientific, inspirational,
9 conservation, educational, and other benefits from the existence of the Okinawa Dugong and its
10 habitat. CAHC members regularly visit Okinawa Dugong habitat to gather seaweed and
11 shellfish and catch fish for subsistence. The ability of CAHC members to maintain this
12 subsistence culture is dependent upon the ecological balance of Okinawa Dugong habitat. This
13 balance will be destroyed if DoD does not mitigate the adverse effects of its action on the
14 Okinawa Dugong.

15 16. Plaintiff ANNA KOSHIISHI grew up and continues to live in Nago City, located
16 approximately seven miles from the threatened habitat of the Okinawa Dugong, which is also the
17 site of the proposed SBF. This habitat, the sea of Kayou, was Ms. Koshiishi’s childhood
18 playground. Ms. Koshiishi therefore has a long-standing and deep cultural, historic, biological,
19 ethical, aesthetic and scientific interest in the continued viability of the Okinawa Dugong and its
20 habitat. Since April 1999, Ms. Koshiishi has been a professional eco-guide around the eastern
21 coast of Nago City with the eco-tour group called “Econet: Chura,” a company established in
22 1998 to provide nature guiding services in the northern part of Okinawa. Her professional tour
23 operations include regular visits to Okinawa Dugong habitat, and she depends on these visits for
24 her livelihood, as well as for the cultural, aesthetic and recreational enjoyment she personally
25 derives from such visits. Ms. Koshiishi plans to continue visiting Okinawa Dugong habitat and
26 earning a living as an eco-guide in Okinawa Dugong habitat for the duration of her career, as
27 many tourists who visit Okinawa and contract her services are very interested in learning about
28 and seeing first-hand the cultural and natural history of the Okinawa Dugong.

1 17. Plaintiff TAKUMA HIGASHIONNA was born and raised in Sedake, Okinawa,
2 close to the threatened Okinawa Dugong habitat. Since 1994, he has frequented the Okinawa
3 Dugong habitat at issue here for recreation, subsistence and cultural enjoyment. On these visits,
4 he benefits from the ecological balance provided by the continued existence of the Okinawa
5 Dugong by catching shellfish, octopus and sea urchins for subsistence. In 1998, he started
6 working as a tour guide, guiding visitors through the coasts of Henoko, Okinawa, and
7 particularly through Okinawa Dugong habitat, including up-close snorkeling and scuba diving
8 excursions into Okinawa Dugong habitat. He leads these tours approximately three times a
9 week. Thus, beyond his personal cultural, aesthetic, biological, and subsistence interests in the
10 Okinawa Dugong, he depends on the preservation of Okinawa Dugong habitat for his livelihood
11 as an eco-tour guide. Many of his clients visit Okinawa seeking to learn about the historic and
12 cultural value of the Okinawa Dugong first hand. He therefore has a strong interest in the
13 protection of the Okinawa Dugong, and plans to continue visiting Okinawa Dugong habitat and
14 deriving these personal and professional cultural benefits into the foreseeable future.

15 18. Plaintiff YOSHIKAZU MAKISHI is a Japanese architect who has visited the site
16 of the proposed SBF monthly since 1997 for research, cultural interest and enjoyment, and
17 recreation. He is one of the founders of Plaintiff SDF. Mr. Makishi has a long-standing
18 educational, cultural, historic, scientific, and recreational interest in the continued survival of and
19 prevention of adverse impacts to the Okinawa Dugong and its habitat. He observes the Okinawa
20 Dugong's native habitat on a regular and continuing basis and intends to continue to do so in the
21 near future. He derives aesthetic, recreational, cultural, scientific, inspirational, conservation,
22 educational, and other benefits from the existence of the Okinawa Dugong and its habitat.

23 19. Each Plaintiff's cultural, scientific, recreational, conservation, and aesthetic
24 interests in the Okinawa Dugong and its habitat are harmed by the failure of DoD to take into
25 account the effect of its activities related to the Futenma relocation and the planning,
26 construction, and maintenance of the proposed SBF on the Okinawa Dugong and its habitat for
27 purposes of avoiding or mitigating any adverse effects on the Okinawa Dugong and its habitat, as
28 required by the NHPA. Specifically, DoD's failure to engage in a consultative process with local

1 preservation authorities, relevant experts and local communities, and DoD's failure to take steps
2 to avoid or mitigate the adverse effects, will result in mortality and serious injury to this cultural
3 property. DoD's failure to prepare any study taking into account the adverse effects of its
4 actions on the Okinawa Dugong and its habitat has prevented DoD from taking action required
5 by the NHPA to avoid or mitigate these adverse effects. The death and injury of the Okinawa
6 Dugong will irrevocably impair Plaintiffs' ability to pursue their cultural, scientific, recreational,
7 conservation, professional and aesthetic interests in this unique and endangered species. This
8 harm to the marine mammals, and to Plaintiffs' interests in them, will be a result of DoD's
9 failure to comply with the requirements of the NHPA. Only if DoD complies with the
10 procedural and substantive requirements of the NHPA – and consequently takes the necessary
11 steps to avoid and mitigate the mortality and serious injury of Okinawa Dugong – will the harm
12 to Plaintiffs' interests be redressed. Therefore, Plaintiffs' members and staff have been, are
13 being, and unless the relief requested is granted, will continue to be, adversely affected and
14 injured by DoD's failure to comply with the NHPA.

15 20. Due to DoD's failure to comply with the NHPA, Plaintiffs' members and staff
16 have also suffered procedural and informational harms connected to their substantive cultural,
17 preservation, conservation, recreational, scientific, professional, and aesthetic interests.
18 Plaintiffs' members and staff rely on DoD to comply with the requirements of the NHPA and to
19 properly implement the statute so as to protect cultural properties like the Okinawa Dugong from
20 the adverse effects of DoD's undertakings outside the United States. Plaintiffs' members and
21 staff also rely on DoD to comply with the requirements of the NHPA to study the adverse effects
22 of its undertakings and to engage in a consultative process with the affected communities as
23 required by the statute. Plaintiffs' members and staff rely on these studies and consultations to
24 facilitate their cultural preservation missions and as important sources of information from which
25 informed decisions regarding the management of fragile and threatened cultural properties can be
26 made. Without the proper preparation of these studies and consultations, DoD, Plaintiffs, and the
27 public at large are denied essential information regarding the management of precious cultural
28 properties like the Okinawa Dugong. These informational and procedural harms can only be

1 remedied if DoD is made to comply with the requirements of the NHPA. Plaintiffs have no
2 adequate remedy at law.

3 21. Defendant DEPARTMENT OF DEFENSE is the agency responsible for
4 preparation, approval and delivery of the OR, as well as contemporaneous and subsequent
5 activities related to facilitating the Futenma relocation and implementing the OR, including
6 funding the relocation, approving individual implementation decisions, and committing to fund
7 on-going maintenance of the SBF.

8 22. Defendant Donald H. Rumsfeld is the Secretary of Defense and is sued in his
9 official capacity.

11 **FACTS**

12 The Futenma Relocation and the Sea-Based Facility

13 23. Since 1945, the United States has maintained military bases on Okinawa.
14 Although Okinawa reverted from U.S. to Japanese control in 1972, the United States retains
15 control of most of the U.S. military bases that existed in Okinawa at that time.

16 24. In 1960, the United States and the Government of Japan (GoJ) entered into the
17 Treaty of Mutual Cooperation and Security (Security Agreement), which secures U.S. presence
18 and involvement in the Asia-Pacific region and forms a political foundation for wide-ranging
19 Japan-U.S. cooperative relations in the international community. The Security Agreement
20 created the Security Consultative Committee (SCC) to provide a forum for diplomatic and
21 military officials to meet on a regular basis to discuss issues surrounding implementation of the
22 treaty, as well as regional and global security developments of mutual interest. Decisions taken
23 by the SCC under the Security Agreement require the approval of the U.S. government.

24 25. In November 1995, the United States and the GoJ formed the bilateral Special
25 Action Committee on Okinawa (SACO) to reduce the burden of U.S. military presence on the
26 Okinawan people. On April 15, 1996, SACO issued an Interim Report approved by the SCC,
27 which recommended 26 initiatives including the return of the Futenma Marine Corps Air Station
28 to Japan after replacement facilities were constructed and operational.

1 26. On December 2, 1996, SACO issued its Final Report, which was approved by the
2 SCC. Pursuant to this Final Report, SACO created the Futenma Implementation Group (FIG), a
3 bilateral committee charged with identifying the relocation site for Futenma and preparing an
4 implementation plan for the relocation. The FIG would oversee design, construction, testing and
5 the transfer of assets associated with construction of the replacement facility. The Final Report
6 concluded that a sea-based facility was the best option for the Futenma relocation, and that FIG
7 would recommend a candidate sea-based facility to the SCC no later than December 1997.

8 27. On September 29, 1997, DoD presented its “Operational Requirements and
9 Concept of Operations for MCAS Futenma Relocation, Okinawa, Japan,” (OR) to the GoJ. On
10 November 5, 1997, pursuant to DoD’s OR, the area serving as the most important remaining
11 habitat for the Okinawa Dugong was formally designated as the SBF site.

12 28. The OR details the non-negotiable design specifications that, according to DoD,
13 must be followed by the GoJ to facilitate the Futenma relocation. According to the OR, once the
14 SBF is built according to the U.S. specifications, the SBF will “become the new home” of certain
15 DoD divisions. The OR indicates that the SBF “shall be designed for a 40 year operational life
16 with a 200 year fatigue life.” The OR mandates approval of SBF design criteria according to
17 U.S. standards. The OR dictates that the SBF will be built off the east coast of the island of
18 Okinawa, Japan, on top of and/or adjacent to a coral reef that is the most important remaining
19 habitat for the Okinawa Dugong.

20 29. DoD, through the Army Corps of Engineers, funds and operates a special office to
21 work on the design and implementation of military construction projects in Japan, including the
22 implementation of the SACO Agreement.

23 30. In June 2003, DoD testified before Congress that “we continue to emphasize to
24 the GoJ that our requirements have not changed, and a complete replacement facility is required
25 before returning Futenma.”

26 31. Underwater construction surveys, including acoustic surveys that use high
27 intensity noise sources and boring activities are planned to begin as early as December 2003.
28 These activities are likely to inflict serious and irreparable harm to the Okinawa Dugong. Noise

1 and other disruptive aspects of these activities are believed to adversely affect marine mammals,
2 sometimes causing severe injury including deafness, tissue damage, and disorientation.

3 The Okinawa Dugong and the NHPA

4 32. The NHPA was enacted in 1966 to preserve the “historical and cultural
5 foundations of the Nation . . . in order to give a sense of orientation to the American People.” 16
6 U.S.C. § 470(b)(2). Pursuant to the NHPA, it is “the policy of the Federal Government, in
7 cooperation with other nations” to “provide leadership in the preservation of the prehistoric and
8 historic resources of the United States and of the international community of nations.” 16 U.S.C.
9 § 470-1(2).

10 33. Congress enacted 16 U.S.C. § 470a-2 as part of the NHPA Amendments of 1980
11 to comply with U.S. obligations under the Convention Concerning the Protection of the World
12 Cultural and Natural Heritage (“World Heritage Convention”) and to mitigate the adverse effects
13 of Federal undertakings outside of the United States.

14 34. The NHPA requires that “[p]rior to the approval of any Federal undertaking
15 outside the United States which may directly and adversely affect a property which is on . . . the
16 applicable country’s equivalent of the National Register, the head of a Federal agency having
17 direct or indirect jurisdiction over such undertaking take into account the effect of the
18 undertaking on such property for purposes of avoiding or mitigating any adverse effects.” 16
19 U.S.C. § 470a-2.

20 35. The Dugong is a globally threatened marine mammal species, listed as
21 “endangered” under the U.S. Endangered Species Act (ESA), 16 U.S.C. §§ 1531 *et seq.* The
22 Okinawa Dugong is a genetically isolated from other Dugong populations. Fewer than fifty
23 mature Okinawa Dugongs remain. Preservation of the Okinawa Dugong depends entirely upon
24 the preservation of its habitat.

25 36. The Okinawa Dugong is a protected “Natural Monument” under Japan’s “Law for
26 the Protection of Cultural Properties.” Because the list of protected cultural properties under
27 Japan’s Cultural Properties Law is the “equivalent” of the U.S. National Register of Historic
28 Places, the Okinawa Dugong is protected under the NHPA. *See* 16 U.S.C. § 470a-2.

1 37. In order to comply with the NHPA, DoD must take into account, and avoid or
2 mitigate, any adverse effects that its actions relating to the Futenma relocation might have on the
3 Okinawa Dugong. In taking such effects into account, DoD must at a minimum engage in a
4 consultative process with local preservation authorities, relevant experts and local communities.
5 *See* 63 Fed. Reg. 20496, 20504 (April 24, 1998). DoD has failed to comply with these
6 requirements.

7
8 **CLAIM FOR RELIEF**

9 38. Plaintiffs incorporate by reference the allegations of all the foregoing paragraphs
10 as if fully set forth herein.

11 39. DoD's failure to take into account the adverse effects of the design, preparation,
12 approval, funding and delivery of the OR, as amended and updated, for purposes of avoiding or
13 mitigating any adverse effects of such actions prior to the approval of such actions violates the
14 NHPA and is unlawful.

15 40. DoD's failure to take into account the adverse effects of its activities
16 contemporaneous and subsequent to the preparation, approval, finding and delivery of the OR,
17 including appropriating Futenma relocation implementation funding, and other relocation
18 activities, violates the NHPA and is unlawful.

19 41. DoD's failure to comply with the requirements of the APA, 5 U.S.C. §§ 701
20 through 706, insofar as it failed to comply with the requirements of the NHPA, 16 U.S.C. §
21 470a-2, is arbitrary, capricious, and not in accordance with procedures required by law, and
22 constitutes agency action that is unreasonably delayed and/or unlawfully withheld in violation of
23 the APA.

24
25 **PRAYER FOR RELIEF**

26 WHEREFORE, for all the foregoing reasons, Plaintiffs request that this Court issue:
27
28

1 1. A judgment declaring that DoD's activities connected to the OR and
2 implementation of the Futenma relocation fail to comply with the requirements of the NHPA, 16
3 U.S.C. § 470a-2;

4 2. A judgment declaring that DoD failed to comply with the requirements of the
5 NHPA, 16 U.S.C. § 470a-2, and that such failure is arbitrary, capricious, and not in accordance
6 with procedures required by law pursuant to the APA, 5 U.S.C. §§ 701 through 706;

7 3. A judgment declaring that DoD failed to comply with the requirements of the
8 NHPA, 16 U.S.C. § 470a-2, and that such failure constitutes agency action that is unreasonably
9 delayed and/or unlawfully withheld as provided by Section 706(1) of the APA;

10 4. A judgment declaring that DoD failed to comply with the requirements of the
11 APA, 5 U.S.C. §§ 701 through 706, insofar as its failure to comply with the requirements of the
12 NHPA, 16 U.S.C. § 470a-2, is arbitrary, capricious, and not in accordance with procedures
13 required by law, and constitutes agency action that is unreasonably delayed and/or unlawfully
14 withheld as provided by the APA, 5 U.S.C. §§ 701 through 706;

15 5. A judgment and order setting aside the illegally issued OR and other activities
16 related to the Futenma relocation and planning, construction and maintenance of the proposed
17 SBF, pending compliance with the NHPA, including compliance with the DOI guidelines, 63
18 Fed. Reg. 20496, 20504 (April 24, 1998);

19 6. A judgment and order for costs of suit herein, including attorneys fees, pursuant
20 to the Equal Access to Justice Act, 28 U.S.C. § 2412 or other authority; and

21 7. For such other and further relief as the court deems proper and just.

22 Respectfully Submitted on the 24th day of November, 2003,
23

24 s/ J. Martin Wagner
25 J. Martin Wagner (Cal. Bar No. 190049)
26 Marcello Mollo (Cal. Bar No. 225816)
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9 **UNITED STATES DISTRICT COURT**
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11 **SAN FRANCISCO DIVISION**

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17 DUGONG FOUNDATION; DUGONG) Honorable Marilyn Hall Patel
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24 v.)
25 DONALD H. RUMSFELD, in his official)
26 capacity as the Secretary of Defense; and U.S.)
27 Department of Defense,)
28 Defendants.)

26 I am a citizen of the United States and a resident of the State of California. I am over 18
27 years of age and not a party to this action. My business address is 426 Seventeenth Street, 6th
28 Floor, Oakland, California, 94612.

1 On November 24, 2003, I served a true and correct copy of the *First Amended Complaint*
2 *for Declaratory and Injunctive Relief* via electronic mail using the CM/ECF system on the party
3 listed below:

4 Charlie Shockey
5 charles.shockey@usdoj.gov

6 I, Alyssa Johl, declare under penalty of perjury that the foregoing is true and correct.
7 Executed this 24th day of November, 2003, at Oakland, California.

8 /s Alyssa Johl
9 Alyssa Johl
10
11
12
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