



Summary of legal challenges against the U.S. Navy for Senator Cantwell, March 18th, 2021

The ROD - March 12, 2019, the Navy issued a Record of Decision (“ROD”) that authorized the addition of 36 Growlers to Naval Air Station Whidbey Island, increased low-flying airfield operations at both Ault Field and Outlying Landing Field Coupeville (“OLF Coupeville”), and shifted most of the flights from Ault Field to OLF Coupeville.

- The result of these changes is a four-fold increase in the number of extremely noisy, low-flying Growlers flying over portions of Whidbey Island near Coupeville and the federally designated Ebey’s National Historical Reserve- impacting areas of the Olympic Peninsula, the San Juns and Skagit Valley.
- The Navy forecasts that in an average year, these changes will result in approximately 17,600 more takeoffs and landings and in a “high-tempo year” there will be 20,000 more takeoffs and landings. The ROD subjects local residents to shocking and offensive levels of additional noise, causes irreparable harm to the National Historic Reserve, harasses and kills Washington’s declining population of marbled murrelets, and harasses Washington’s southern resident orcas.

In Response to the ROD:

1.2. The State of Washington and Citizens of the Ebey’s Reserve (“COER”) filed suit against the Navy, alleging violations of the National Environmental Policy Act (“NEPA”), the National Historic Preservation Act (“NHPA”), and the Endangered Species Act (“ESA”). July 9, 2019,

Both lawsuits are ongoing. Plaintiff initial brief due by Feb 28th, reply briefs follow a 6 week schedule, thereafter to be submitted to the judge in the U.S. Western District of Washington in Seattle by July 4th.

While the pending lawsuits already include ESA claims related to impacts on southern resident orcas, those harms were thrown into stark relief by a ground-breaking study published in the Journal of Marine Science and Engineering on November 16, 2020 (Kuehne, L.M., and 5 coauthors. 2020. **Above and below: Military Aircraft Noise in Air and under Water at Whidbey Island, Washington. Journal of Marine Science and Engineering. 8(11): 923. Available at: <https://www.mdpi.com/2077-1312/8/11/923>).**

- The Kuehne et al. study reveals that Growler noise does **not** dissipate within the first meter or two of water, as was previously incorrectly asserted by the Navy. Instead, Growler noise penetrates at significant decibel levels to a depth of at least 30 meters (the deepest depth measured), thus affecting orcas and other marine life to a much greater extent than the Navy expected.

3. In light of this new information, COER requested the Navy, NOAA Fisheries, and the U.S. Fish and Wildlife Service to reinitiate consultation to properly analyze the impacts of Navy operations on southern resident orcas and other protected species. The letter stated COER's intent to sue the Navy if it does not re-initiate consultation. Letter filed on February 29, 2021,

4. Navy SEAL Expansion from 5 to 28 WA State Parks.

A lawsuit filed by Whidbey Environmental Action Network (WEAN) of Langley, Washington in Thurston County Superior Court alleges that the Washington State Parks and Recreation Commission has violated the State Environmental Policy Act.

- The suit also claims that the commission has breached its legal obligation to manage Washington state parks for public park purposes. At issue is the commission's January approval of the United States Navy's use of up to 28 waterfront state parks for military training purposes.
- Petitioners seek judicial review and reversal of the Commission's decision and MDNS pursuant to Article IV, Section 6 of the Washington Constitution (Writ of Certiorari) and the judicial review provisions of SEPA (RCW 43.21C.075(1)). To the extent applicable, Petitioners also seek judicial review under Washington's Administrative Procedures Act ("AP A"), Chapter 34.05 RCW.
- The right-of-entry permit was approved despite overwhelmingly negative public response. At the only public meeting on the proposal on January 26, 53 people spoke against the proposal with only 8 in favor. An online petition against the Navy's use of state parks currently has over 7,100 signatures. There have been 806 public comments submitted to the commission, and the majority oppose the Navy's use of state parks for war training.

5. Cays v. The United States. Filed: September 10, 2020 ♦ [§ 1:20-cv-01174](#) .

- A CLASS ACTION COM PLAINT FOR INVERSE CONDEMNATION. Whidbey Island, WA property owner claims the excessive noise created by U.S. Navy jet aircraft operations Naval Air Station Whidbey Island and the Naval Outlying Landing Field Coupeville have harmed property values, among other damages. Benjamin H. Richman
brichman@edelson.com EDELSON PC Case 1:20-cv-01174-LKG Document 1 Filed 09/10/20, 17350 North LaSalle Street, 14th Floor Chicago, Illinois 60654 T: 312.589.6370 F: 312.589.6378 Attorney of Record for Plaintiff Robert Teel* lawoffice@rlteel.com LAW OFFICE OF ROBERT L.TEEL1425 Broadway, Mail Code: 20-6690 Seattle, Washington 98122 T: (866) 833-5529 F: (855) 609-6911.

6. NPCA v. Navy has been filed as of 2019 in federal district court.

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This is a Freedom of Information Act (FOIA) suit regarding lack of adequate or full information in regard to the Northwest Training and Testing Range Supplemental EIS, which is the training area on the west side of the Olympic Peninsula. The Navy has sent some information as

requested but redacted or refused to send others information, which we area still trying to get. The court has not yet ruled on all of NPCA claims.

- This action specifically challenges the failure of Defendant, the Navy, to respond to NPCA's FOIA request, served on June 10, 2016, within the time and in the manner required by FOIA. The Navy is illegally withholding records responsive to NPCA's FOIA request. The Navy has illegally failed to estimate the volume of responsive documents that it has withheld from NPCA. The Navy is illegally invoking FOIA exemptions without justification. The Navy has illegally failed to adequately search for documents that are responsive to NPCA's FOIA request, including illegally narrowing the scope of NPCA's FOIA request. The Navy illegally failed to make a determination in response to the second remand of NPCA's FOIA request.
- NPCA is legally entitled to the responsive records the Navy has been withholding for nearly three years. The Navy has violated numerous FOIA mandates by failing to provide an adequate determination on NPCA's FOIA request within the time and manner required by law. Accordingly, NPCA seeks a declaration from this Court that the Navy has violated FOIA in the ways set forth below. NPCA also seeks an injunction from this Court that directs the Navy to promptly provide NPCA with the requested records.

Meanwhile, the final NWTT SEIS which was scheduled to be released this past fall has yet to be issued, so no challenge to that is yet possible.

Any **solution(s)** should include limiting the impacts of Navy expansions in and around Puget Sound, and Growler aircraft on residential communities throughout Northwest Washington, including the Olympic National Park, Ebey's Landing National Historic Reserve, and threatened and endangered species.