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**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON**

CENTER FOR BIOLOGICAL DIVERSITY	)	Case No.
	)	
Plaintiff,	)	<b>COMPLAINT FOR</b>
vs.	)	<b>DECLARATORY AND</b>
	)	<b>INJUNCTIVE RELIEF</b>
USDA APHIS WILDLIFE SERVICES;	)	
JANET L. BUCKNALL, Deputy	)	
Administrator, USDA APHIS Wildlife	)	
Services	)	
	)	
Defendants.	)	
	)	
	)	
	)	

**INTRODUCTION**

1. The Center for Biological Diversity brings this lawsuit against Defendants U.S. Department of Agriculture (“USDA”) Animal and Plant Health Inspection Service (“APHIS”) Wildlife Services and Janet L. Bucknall, the program’s Deputy Administrator (collectively “Wildlife Services”). Wildlife Services continues to kill bears, coyotes, and other mammals in Washington without updating outdated environmental analyses. In so doing, Wildlife Services is violating the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321-4347; the

1 implementing Council on Environmental Quality (“CEQ”) regulations, 40 C.F.R. §§ 1500-1508;  
2 and the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701-706.

3 2. NEPA requires supplemental analysis when “significant new circumstances or  
4 information relevant to environmental concerns and bearing on the proposed action or its  
5 impacts” emerge. 40 C.F.R. § 1502.9(c)(1)(ii). In Washington, Wildlife Services continues to  
6 rely on outdated analysis of its mammal-killing programs. New information and circumstances,  
7 such as new scientific publications on the ineffectiveness of predator control, require that  
8 Wildlife Services prepare a supplemental NEPA analysis.

9 3. Through this complaint, Plaintiff seeks a declaration that Wildlife Services’  
10 ongoing authorization and implementation of its mammal-killing programs in Washington  
11 violate federal law and are otherwise arbitrary and capricious. Plaintiff additionally seeks  
12 injunctive relief to redress the injuries caused by these violations of the law. Should Plaintiff  
13 prevail, it will seek an award of costs, attorneys’ fees, and other expenses pursuant to the Equal  
14 Access to Justice Act, 28 U.S.C. § 2412.

### 15 **JURISDICTION AND VENUE**

16 4. The Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question  
17 jurisdiction). It has authority to issue declaratory and injunctive relief pursuant to 28 U.S.C. §§  
18 2201-2202 and 5 U.S.C. §§ 701-706.

19 5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because a  
20 substantial part of Wildlife Service’s mammal-killing programs and the agency’s violations of  
21 law occurred and continue to occur in this district, and injury to Plaintiff and its members  
22 occurred and continues to occur in this district. Moreover, Plaintiff maintains an office in this  
23 district.

**PARTIES**

1  
2           6.       Plaintiff CENTER FOR BIOLOGICAL DIVERSITY (“the Center”) is a non-  
3 profit 501(c)(3) corporation with offices across the country, including in Seattle, Washington;  
4 Tucson, Arizona; Oakland and Los Angeles, California; Denver, Colorado; Portland, Oregon;  
5 and Washington, D.C. The Center works through science, law, and creative media to secure a  
6 future for all species, great or small, hovering on the brink of extinction. The Center has more  
7 than 67,000 members throughout the United States and the world.

8           7.       The Center, as well as its members, staff, and supporters, is dedicated to ensuring  
9 that Wildlife Services complies with all applicable federal laws. Wildlife Services’ mammal-  
10 killing programs in Washington, along with its outdated environmental analyses, adversely  
11 impact the Center’s interests in Washington’s wildlife that could be killed by Wildlife  
12 Services—intentionally or unintentionally—including gray wolves, grizzly bears, black bears,  
13 beaver, coyotes, bobcats, river otter, foxes, raccoons, skunks, and others. The Center also has  
14 members who are adversely impacted by the threat that Wildlife Services poses to companion  
15 animals in Washington.

16           8.       The Center’s members live and recreate in or near areas in Washington where  
17 implementation of the mammal-killing programs occur, for the purposes of hiking, observing  
18 wildlife, and other recreational and professional pursuits. The Center’s members enjoy  
19 observing, attempting to observe, photographing, and studying wildlife, including signs of those  
20 species’ presence in these areas. The opportunity to possibly view wildlife or their signs in these  
21 areas is of significant interest and value to the Center’s members, and it increases the use and  
22 enjoyment of public lands and ecosystems in Washington. The Center’s members have engaged  
23 in these activities in the past, and they intend to do so again soon.

24           9.       The Center’s members have a procedural interest in ensuring that Wildlife

1 Services' activities comply with all applicable federal statutes and regulations. The Center has  
2 worked to reform Wildlife Services' activities throughout the United States, including in  
3 Washington. The Center and its members have an interest in preventing Wildlife Services from  
4 being involved in lethal wildlife damage management, particularly predator control, and in the  
5 use of more effective and proactive nonlethal alternatives that foster communities' coexistence  
6 with wildlife.

7 10. In sum, the interests of the Center's members have been, and will continue to be,  
8 injured by Wildlife Services' wildlife-killing activities in Washington and its failure to comply  
9 with NEPA in implementing its mammal-killing programs.

10 11. The relief the Center seeks in this complaint would redress the injuries of the  
11 Center's members. The relief the Center requests, if granted, would prevent Wildlife Services  
12 from engaging in mammal-killing activities unless and until it complies with federal law. The  
13 Center's requested relief, if granted, could reduce the amount of lethal predator control and other  
14 wildlife killing conducted in Washington. The Washington Department of Fish and Wildlife,  
15 Washington Department of Agriculture, local municipalities, and private livestock operators  
16 cannot completely replace Wildlife Services' activities authorized through the governing NEPA  
17 analysis and decision documents. Those entities do not have the equipment, such as fixed-wing  
18 aircraft for aerial gunning operations, or trained wildlife killing personnel that Wildlife Services  
19 has.

20 12. The Center's interests, and those of its members, have been, are being, and, unless  
21 the requested relief is granted, will continue to be harmed by Wildlife Services' actions and  
22 inactions challenged in this complaint. If this Court issues the relief requested, the harm to the  
23 Center's interests, and the harm to its members' interests, will be redressed.

24 13. Defendant USDA APHIS WILDLIFE SERVICES is a division of the United

1 States Department of Agriculture (“USDA”) Animal and Plant Health Inspection Service  
2 (“APHIS”). Wildlife Services is a federal agency that is responsible for applying and  
3 implementing the federal laws and regulations challenged in this complaint. Wildlife Services  
4 receives federal and cooperator funding to undertake wildlife damage management activities in  
5 Washington.

6 14. Defendant JANET L. BUCKNALL is being sued in her official capacity as the  
7 Deputy Administrator of USDA APHIS Wildlife Services.

## 8 LEGAL BACKGROUND

### 9 I. National Environmental Policy Act

10 15. Under NEPA, a federal agency must prepare an Environmental Impact Statement  
11 (“EIS”) for “major Federal actions significantly affecting the quality of the human environment .  
12 . . .” 42 U.S.C. § 4332(2)(C). The human environment “shall be interpreted comprehensively to  
13 include the natural and physical environment and the relationship of people with that  
14 environment.” 40 C.F.R. § 1508.14.

15 16. “The NEPA process is intended to help public officials make decisions that are  
16 based on understanding of environmental consequences, and take actions that protect, restore,  
17 and enhance the environment.” *Id.* § 1500.1(c). The CEQ “regulations provide the direction to  
18 achieve this purpose.” *Id.* To that end, “NEPA procedures must insure that environmental  
19 information is available to public officials and citizens before decisions are made and before  
20 actions are taken. The information must be of high quality. Accurate scientific analysis, expert  
21 agency comments, and public scrutiny are essential to implementing NEPA.” *Id.* § 1500.1(b).

22 17. To determine whether an action is significant—i.e., whether an EIS is necessary  
23 for the proposed action—an agency may first prepare an Environmental Assessment (“EA”). *Id.*  
24 § 1501.4(b). “Significance” determinations are governed by CEQ regulations, which require

1 agencies to consider both the context of the action and the intensity of the environmental  
2 impacts. *Id.* § 1508.27. If the agency determines that a full EIS is not necessary, the agency must  
3 prepare a finding of no significant impact (“FONSI”). *Id.* § 1501.4(e). A FONSI is a “document .  
4 . . . briefly presenting the reasons why [the proposed] action . . . will not have a significant effect  
5 on the human environment . . . .” *Id.* § 1508.13.

6 18. The environmental analysis must disclose and analyze the direct, indirect, and  
7 cumulative effects of the proposed action on the environment. *Id.* §§ 1502.16 (environmental  
8 consequences), 1508.7 (cumulative impacts), 1508.8 (direct and indirect effects), 1508.25(c)(3)  
9 (scope of impacts that must be considered).

10 19. An agency has a continuing obligation to comply with NEPA and must prepare a  
11 supplemental NEPA document when “significant new circumstances or information relevant to  
12 environmental concerns and bearing on the proposed action or its impacts” emerge. *Id.* §  
13 1502.9(c)(1)(ii); see *Klamath Siskiyou Wildlands Ctr. v. Boody*, 468 F.3d 549, 560 (9th Cir.  
14 2006).

## 15 **II. Administrative Procedure Act**

16 20. NEPA does not contain an internal standard of review, so judicial review is  
17 therefore governed by the APA. Under the APA, courts “shall hold unlawful and set aside”  
18 agency action, findings, or conclusions found to be “arbitrary, capricious, an abuse of discretion,  
19 or otherwise not in accordance with the law” or “without observance of procedure required by  
20 law.” 5 U.S.C. § 706(2)(A), (D).

21 21. In addition, APA section 706(1) authorizes reviewing courts to “compel agency  
22 action unlawfully withheld or unreasonably delayed.” *Id.* § 706(1).

**FACTUAL BACKGROUND**

**I. Wildlife Services’ Nationwide Wildlife-Killing Programs**

22. Wildlife Services and its precursors have specialized in killing wildlife for more than 100 years and are responsible for the eradication of wildlife like wolves, bears, and other animals from much of the United States, particularly in the West. Wildlife Services contracts with other federal agencies, non-federal government agencies, and private landowners.

23. At present, Wildlife Services kills a total of one and a half million native animals every year in the U.S. In Fiscal Year 2018, Wildlife Services reports that it killed 357 gray wolves; 68,186 adult coyotes, plus an unknown number of coyote pups in 361 destroyed dens; 515,915 red-winged blackbirds; 338 black bears; 375 mountain lions; 1,002 bobcats; 173 river otters, plus an additional 537 killed “unintentionally;” 3,349 foxes, plus an unknown number of fox pups in 133 dens; and 22,521 beavers.

24. Each year Wildlife Services unintentionally kills thousands of nontarget animals. The wildlife-killing program unintentionally killed 2,700 animals in 2018, including bears, bobcats, foxes, muskrats, otters, porcupines, raccoons, and turtles. Its killing of nontarget birds included chickadees, cardinals, ducks, eagles, hawks, herons, owls, and turkeys. Dozens of domestic animals—including companion animals and livestock—were also killed. These killings undermine efforts to conserve and recover state and federally protected endangered wildlife, which oftentimes need protection in part due to Wildlife Services’ historic and ongoing practices.

25. Former employees have alleged that Wildlife Services underreports the numbers of animals the agency kills, and therefore, the actual numbers of animals killed are likely greater than reported.

26. Many of the species Wildlife Services targets play critical roles in ecosystems, and their removals result in a cascade of unintended consequences. The loss of top predators is

1 well documented to cause a wide range of unanticipated impacts that are often profound, altering  
2 processes as diverse as the dynamics of disease, wildfire, carbon sequestration, invasive species,  
3 and biogeochemical cycles. In short, the removal of so many animals from the environment—  
4 especially mammals at the top of the food chain like bears, coyotes, and bobcats—significantly  
5 alters native ecosystems directly, indirectly, and cumulatively.

6 27. Many of the methods Wildlife Services uses—including snares, leg-hold and  
7 body-gripping traps, and gas cartridges—are fundamentally nonselective, environmentally  
8 destructive, inherently cruel, and often ineffective, as explained below.

9 28. For example, leg-hold traps are internationally recognized as inhumane and have  
10 been banned or restricted in many countries and U.S. states. Upon being trapped, animals  
11 frantically struggle to free themselves both by attempting to pull their trapped limb out of the  
12 device and by chewing at the trap itself or even their own limbs. The force of the jaws clamping  
13 on the animal’s limb and the subsequent struggle result in severe trauma, including mangling of  
14 the limb, fractures, damage to muscles and tendons, lacerations, injury to the face and mouth,  
15 broken teeth, loss of circulation, frostbite, and amputation. Wildlife Services often fails to  
16 routinely check its traps, and thus many animals experience prolonged suffering and sometimes  
17 eventually die of exposure.

## 18 **II. History of NEPA Analysis of Mammal-Killing Programs in Washington**

19 29. Wildlife Services in 1994 prepared (and in 1997 amended) a Programmatic EIS  
20 (“1994 PEIS”) to analyze its nationwide wildlife damage control program. That outdated  
21 document relies mostly on science from the 1980s, with some studies from as far back as the  
22 1930s. On October 12, 2016, Wildlife Services announced that it intends to redo or revise the  
23 NEPA documents currently tiered to the 1994 PEIS.

24 30. In 1997, Wildlife Services issued an Environmental Assessment (“EA”) and



1 Finding of No Significant Impact (“FONSI”) for “Predator Damage Management” in  
2 Washington. The 1997 EA/FONSI explains that its analysis “relies mainly on existing data  
3 contained in published documents and the ADC programmatic EIS (USDA 1994) to which this  
4 document is tiered.”

5 31. In 2008, Wildlife Services issued an Environmental Assessment and Finding of  
6 No Significant Impact for “Reducing Aquatic Mammal Damage” in Washington. The 2008  
7 EA/FONSI explains that its analysis “relies primarily on existing data contained in published  
8 documents and other information, and WS’ Environmental Impact Statement (USDA 1997).”

9 32. In 2010, Wildlife Services issued a “Summary Environmental Monitoring Review  
10 of the ‘Predator Damage Management in Washington’ EA and Supplement to the EA.” The  
11 purpose of the 2010 EA & Supplement/FONSI was to update analysis of impacts of mammal-  
12 killing conducted by Wildlife Services in Washington and evaluate damage caused by opossums  
13 and racoons (species not analyzed in the 1997 EA/FONSI). The analysis in this document relies  
14 heavily on the 1997 EA/FONSI.

15 33. On October 25, 2016, Wildlife Services released a pre-decisional Environmental  
16 Assessment for “Mammal Damage Management in Washington.” On December 8, 2016, the  
17 Center submitted written comments on the pre-decisional Environmental Assessment.

18 34. In Washington, the 1997 EA/FONSI, 2008 EA/FONSI and 2010 EA &  
19 Supplement/FONSI authorize Wildlife Services’ statewide involvement in mammal-killing  
20 programs. Specifically, these documents authorize the use of leg-hold traps, cage traps, snares,  
21 ground shooting, hunting dogs, aerial hunting (shooting fleeing animals from airplanes or  
22 helicopters), M-44s (sodium cyanide “bombs”), gas cartridges (to kill animals in dens), and  
23 more.

24 35. Target species listed in the 1997 EA/FONSI and 2010 EA & Supplement/FONSI

1 include coyote, black bear, grizzly bear, gray wolf, cougar, red fox, bobcat, badger, feral free-  
2 ranging dog, raven, opossum, and raccoon.

3 36. Target species listed in the 2008 EA/FONSI for aquatic mammals include beaver,  
4 nutria, muskrat, river otter, and mink.

5 37. During fiscal year 1995 and 1996 the bulk of Wildlife Service's work occurred in  
6 Adams, Asotin, Benton, Columbia, Franklin, Garfield, Grant, Island, Klickitat, Lincoln, Skagit,  
7 Walla Walla, Whitman, and Yakima county. According to the 2016 pre-decisional  
8 Environmental Assessment Wildlife Services has performed and is still performing services  
9 under the programs in the 2008 EA/FONSI and 2010 EA & Supplement/FONSI in 29 of the 39  
10 counties in Washington state.

11 38. As of the date of this complaint, Wildlife Services still has not supplemented its  
12 analysis in the 2008 EA/FONSI or 2010 EA & Supplement/FONSI or finalized the 2016 pre-  
13 decisional Environmental Assessment. Wildlife Services has never prepared an EIS analyzing  
14 the impacts of its mammal-killing programs in Washington and instead continues to rely on the  
15 outdated 1994 PEIS.

16 **III. New Information and Circumstances Affecting Mammal-Killing Programs in**  
17 **Washington**

18 39. Since Wildlife Services prepared its 2008 EA/FONSI and 2010 EA &  
19 Supplement/FONSI, new information and circumstances demonstrate that supplemental NEPA  
20 analysis is required.

21 40. The annual average number of black bears that Wildlife Services killed in  
22 Washington has increased significantly. The 2010 EA & Supplement/FONSI reports that no  
23 black bears were killed during fiscal years 2002-2008. The 2016 pre-decisional Environmental  
24 Assessment reports that an average of 6.7 black bears were killed annually, up to 13 bears per

1 year. Just last year, Wildlife Services killed six black bears with snares and firearms.

2           41.     The number of opossums that Wildlife Services killed in Washington has  
3 increased greatly. When they were added to the program in the 2010 EA & Supplement/FONSI  
4 Wildlife Services killed on average 17 opossums annually. In the 2016 pre-decisional  
5 Environmental Assessment it was reported that Wildlife Services killed an average of 43  
6 opossums annually, an increase of over 150 percent. Indeed, last year, the program killed 42  
7 opossums, mostly using cage traps and firearms.

8           42.     Additionally, the annual average number of river otters that Wildlife Services  
9 killed in Washington has increased substantially. The 2008 EA/FONSI reports an annual average  
10 of 2.7 river otters killed in Washington, while the 2016 pre-decisional Environmental  
11 Assessment reports Wildlife Services killed an annual average of 52 river otters in the state. That  
12 trend continues with 52 river otters killed in 2018.

13           43.     Wildlife Services now targets different species than it did under the 2008  
14 EA/FONSI and 2010 EA & Supplement/FONSI. Many mammals that Wildlife Services  
15 currently kills or has recently killed have not been included in any of the NEPA analyses or  
16 decisional documents. For example, Wildlife Services killed hundreds of marmots, mountain  
17 beavers, rabbits, and squirrels in 2018, but the 2008 EA/FONSI or 2010 EA &  
18 Supplement/FONSI analyzes none of these animals. The 2016 pre-decisional Environmental  
19 Assessment includes these species, but that NEPA analysis was not completed.

20           44.     Specifically, in 2018 Wildlife Services reported to killing 134 mountain beavers,  
21 153 rabbits and 448 squirrels.

22           45.     The methods Wildlife Services uses have changed since the most recent analysis.  
23 According to 2018 reporting by Wildlife Services, the agency used electronic calling devices,  
24 strychnine oats, and suitcase traps to kill mammals in Washington during 2018. However,

1 Wildlife Services failed to analyze any of these methods in the NEPA analyses or decision  
2 documents.

3 46. Since Wildlife Services released its 2008 EA/FONSI and 2010 EA &  
4 Supplement/FONSI, additional animals that live in Washington were listed as endangered or  
5 threatened under the Endangered Species Act, and additional species of special concern also  
6 have been identified in the state. Notably, in 2014 four species of pocket gophers, the Olympia  
7 pocket gopher, the Roy prairie pocket gopher, the Tenino pocket gopher, and the Yelm pocket  
8 gopher, were all added to the threatened species list With supplemental analysis under NEPA,  
9 Wildlife Services could analyze risks to these listed species from its killing of hundreds of  
10 pocket gophers each year.

11 47. Since Wildlife Services released the 2008 EA/FONSI and 2010 EA &  
12 Supplement/FONSI, the Environmental Protection Agency has changed rules on use of gas  
13 cartridges to kill wild animals.

14 48. Since the 2008 EA/FONSI and 2010 EA & Supplement/FONSI, numerous studies  
15 have been published that demonstrate the harmful ecological effects of removing predators from  
16 ecosystems (e.g., Beschta & Ripple 2009, 2016; Levi et al. 2012; Bergstrom et al. 2013;  
17 Bergstrom 2017).

18 49. Numerous studies published since the mid-2000s call into question Wildlife  
19 Services' assumption that killing predators effectively protects commercial livestock over the  
20 long-term. For example, Wielgus and Peebles (2014) found that killing predators to protect  
21 livestock can backfire and may increase livestock depredation. In addition, Treves and others  
22 (2016) found little or no scientific support for the proposition that killing predators reduces  
23 livestock losses.

24 50. In addition, new information regarding the cost-effectiveness of predator control

1 has emerged since the 2008 EA/FONSI and 2010 EA & Supplement/FONSI. For example,  
2 Rashford and Grant (2010) published a literature review of economic analyses of predator  
3 control.

4 51. New information raising ethical concerns about the practices of some Wildlife  
5 Services staff has also emerged since Wildlife Services finalized the 2008 EA/FONSI and 2010  
6 EA & Supplement/FONSI. For example, in 2012, the Sacramento Bee published a series of  
7 articles exposing the practices of Wildlife Services. This series described ethical problems within  
8 the agency, including employees hiding killings of nontarget animals.

9 52. Since the 2008 EA/FONSI and 2010 EA & Supplement/FONSI, a variety of  
10 nonlethal, alternative methods have been successfully used to prevent wildlife conflicts, and  
11 numerous studies have demonstrated the effectiveness of such nonlethal methods to protect  
12 livestock from predators (e.g. Lance et al. 2010).

13 53. More than 20 years have passed since preparation of the 1994 PEIS and 1997  
14 EA/FONSI, and nearly a decade since Wildlife Services published the 2008 EA/FONSI and 2010  
15 EA & Supplement/FONSI. For all the reasons explained above, those analyses are now outdated  
16 and can no longer be reasonably relied upon without supplemental NEPA analysis. Indeed,  
17 Wildlife Services itself acknowledged the necessity of new analysis in 2016 when it announced it  
18 would redo all environmental assessments relying on the outdated documents and undertake a  
19 new NEPA process for its Washington program.

20 **CLAIM FOR RELIEF**  
21 **NEPA and APA Violation: Failure to Supplement**  
22 **2008 EA/FONSI and 2010 EA & Supplement/FONSI**

23 54. The Center re-alleges and incorporates by reference the preceding paragraphs into  
24 the claim set forth below.



1 (2) Declare that Wildlife Services' failure or refusal to supplement its outdated NEPA  
2 analyses is arbitrary, capricious, an abuse of discretion, not in accordance with law, and  
3 constitutes agency action unlawfully withheld or unreasonably delayed under section 706 of the  
4 APA;

5 (3) Order Wildlife Services to complete the required supplemental NEPA analysis by  
6 a reasonable date certain;

7 (4) Enjoin Wildlife Services and its agents from implementing the challenged  
8 mammal-killing programs unless and until the violations of federal law set forth herein have  
9 been corrected to the satisfaction of this Court;

10 (5) Award Plaintiff their attorneys' fees and costs in this action pursuant to 28 U.S.C.  
11 § 2412; and

12 (6) Grant such other and further relief as the Court deems just and proper.

13 DATED: October 22, 2019

Respectfully submitted,

14 /s/ Sophia N. Ressler

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