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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

WESTERN WATERSHEDS PROJECT, WILDEARTH GUARDIANS, CENTER FOR BIOLOGICAL DIVERSITY, FRIENDS OF THE CLEARWATER, and PROJECT COYOTE, Plaintiffs, v. TODD GRIMM, Idaho Director, USDA APHIS Wildlife Services; USDA APHIS WILDLIFE SERVICES; and U.S. FISH AND WILDLIFE SERVICE, Defendants.	No. 1:15-cv-40 COMPLAINT

NATURE OF ACTION

1. Defendant USDA APHIS WILDLIFE SERVICES ("Wildlife Services") spends millions of dollars and thousands of person-hours to kill thousands of wolves, coyotes, foxes, beavers, cougars, birds, and other wildlife species across Idaho each year, using aerial and ground shooting, poisons, traps, explosives, and other methods. Yet the agency has flouted its duty under the National Environmental Policy Act ("NEPA") to analyze these activities and disclose their likely impacts to the public through a comprehensive Environmental Impact Statement ("EIS").

2. Indeed, Wildlife Services has *never* prepared an EIS to assess its wildlife damage management activities in Idaho, which largely consist of killing wildlife. It relies instead on a nationwide Programmatic EIS issued two decades ago, which does not analyze Idaho-specific activities or impacts in any detail, and which is badly outdated and contrary to modern science concerning the impacts of killing wildlife. Over the years, Wildlife Services has attempted to bolster this inadequate and outdated document with a piecemealed array of Environmental Assessments ("EAs"), but these fail to provide the "hard look" at the environmental impacts of Wildlife Service's Idaho programs or to evaluate meaningful alternatives, as required by NEPA.

3. Additionally, in recent years, wildlife researchers have published numerous studies finding that Wildlife Services' methods of wildlife killing do not produce the intended consequences—and instead produce many unintended consequences. Wildlife Services has failed to consider or supplement its analyses with this critical information that fundamentally undermines its programs.

4. Accordingly, Plaintiffs bring this litigation seeking judicial relief ordering Wildlife Services to comply with its NEPA duties by preparing a comprehensive and up-to-date

EIS for its Idaho wildlife damage management activities.

5. In addition, Plaintiffs bring related claims arising under the Endangered Species Act ("ESA") for the failure of Wildlife Services and Defendant U.S. Fish & Wildlife Service ("FWS") to thoroughly assess direct, indirect, and cumulative impacts of Wildlife Services' Idaho wildlife damage management activities upon ESA-protected species, including bull trout, Canada lynx, and grizzly bear. Based on an inadequate 2014 biological assessment ("BA") prepared by Wildlife Services, FWS recently issued a biological opinion ("BiOp") and incidental take statements ("ITSs") ratifying Wildlife Services' statewide wildlife killing activities, which incorrectly define and analyze "take," and fail to impose legally-required limitations on Wildlife Services' Idaho operations.

6. Thus, Plaintiffs also bring this litigation to remedy these legal violations and to give ESA-protected species the protection they deserve from Wildlife Services' killing, poisoning, and trapping activities in Idaho.

JURISDICTION AND VENUE

7. The Court has jurisdiction over this matter pursuant to the ESA citizen suit provision, 16 U.S.C. § 1540(g), because this action seeks to enjoin Defendants from further violations of the ESA and regulations promulgated thereunder. The Court also has jurisdiction over this matter under 28 U.S.C. § 1331 because this action arises under the laws of the United States, including the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*; the Endangered Species Act, 16 U.S.C. § 1531 *et seq.*; the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*; the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*; and the Equal Access to Justice Act, 28 U.S.C. § 2412 *et seq.* An actual, justiciable controversy now exists between

Plaintiffs and Defendants, and the requested relief is therefore proper under 28 U.S.C. §§ 2201-02 and 5 U.S.C. §§ 701-06.

8. As required by the ESA, 16 U.S.C. § 1540(g)(2)(A)(i), Plaintiffs provided to Defendants sixty days' notice of intent to sue prior to bringing this action.

9. Venue in this Court is proper under 16 U.S.C. § 1540(g)(3)(A) and 28 U.S.C. § 1391(e), because all or a substantial part of the events or omissions giving rise to the claims herein occurred within this judicial district, and because Defendant Grimm and two Plaintiffs reside in this district.

7. The federal government has waived sovereign immunity in this action pursuant to 16 U.S.C. § 1540(g) and 5 U.S.C. § 702.

PARTIES

10. Plaintiff WESTERN WATERSHEDS PROJECT ("WWP") is an Idaho-based non-profit membership organization with over 1,500 members, which is dedicated to protecting and conserving the public lands and natural resources of watersheds in the American West. WWP, as an organization and on behalf of its members, is concerned with and active in seeking to protect and improve the wildlife, riparian areas, water quality, fisheries, and other natural resources and ecological values of watersheds throughout the West, and in Idaho.

11. Plaintiff WILDEARTH GUARDIANS ("Guardians") is a non-profit organization dedicated to protecting and restoring the wildlife, wild places, wild rivers, and health of the American west. Guardians has over 66,000 members and supporters, many of whom have particular interests in carnivores and other native species targeted by Wildlife Services. Headquartered in Santa Fe, New Mexico, Guardians maintains several other offices around the West, including in Missoula and Denver.

12. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY ("the Center") is a nonprofit organization that is dedicated to the preservation, protection, and restoration of biodiversity, native species, and ecosystems. The Center is based in Tucson, Arizona, with offices throughout the country, including Idaho. The Center has more than 50,000 members, including many who reside in, explore, and enjoy the native species and ecosystems of the Northern Rockies.

13. Plaintiff FRIENDS OF THE CLEARWATER ("FOC") is an Idaho nonprofit conservation organization with its principal place of business in Moscow, Idaho. FOC and its members defend the Idaho Clearwater Bioregion's wildlands and biodiversity through a Forest Watch program, litigation, grassroots public involvement, outreach and education. FOC works to protect native species affected by Wildlife Services' indiscriminate killing of Idaho wildlife, including wolves, grizzly bears, black bears, lynx, and wolverines.

14. Plaintiff PROJECT COYOTE is an organization that works to promote coexistence between people and wildlife through education, science, and advocacy. Project Coyote aims to create a shift in attitudes toward native carnivores by replacing ignorance and fear with understanding and appreciation. Project Coyote accomplishes its mission by championing progressive management policies that reduce human-coyote conflict, by supporting innovative scientific research, and by fostering respect for and understanding of America's apex predators. Project Coyote has over 9,500 supporters and constituents, including members who enjoy the native species and ecosystems of Idaho.

15. The Plaintiff organizations place a high priority on protecting and conserving wildlife species in their natural habitats in Idaho, and undertake a wide range of activities including education, advocacy, scientific study, and litigation in order to protect and conserve

wildlife populations and to communicate to the public and policy-makers about the values of preserving wildlife populations and habitats in Idaho.

16. Plaintiffs' members, supporters, and/or staff live, work, recreate, study, and otherwise use and enjoy public lands throughout Idaho where Wildlife Services carries out wildlife killing and control activities, including within occupied habitat of threatened bull trout, Canada lynx, and grizzly bear. Plaintiffs' members, supporters, and/or staff frequently engage in hiking, camping, boating, hunting, fishing, photography, and other activities in order to observe and enjoy the myriad species of wildlife in Idaho, including wolves, bears, coyotes, foxes, mountain lions, birds, and other species that are the target of, or affected by, Wildlife Services' wildlife killing activities in Idaho. They have directly witnessed Wildlife Services' killing and other activities in Idaho and been deeply upset by the experience. Plaintiffs and their members, supporters, and/or staff have suffered, and will foreseeably continue to suffer, direct injuries to their recreational, aesthetic, scientific, spiritual and other interests and activities as a result of Wildlife Services' wildlife killing and control actions in Idaho.

17. Plaintiffs and their members, supporters, and/or staff are also directly injured by Wildlife Services' consistent refusal to fully disclose and evaluate the environmental impacts of its Idaho activities, including wildlife killing, or to evaluate reasonable alternatives (including a full range of non-lethal control actions) as required by NEPA. Likewise, Plaintiffs and their members, supporters, and/or staff are directly injured by Wildlife Services' ongoing activities that "take" and otherwise harm species protected by the ESA in Idaho (including bull trout, grizzly bear, and Canada lynx), and the failure of Wildlife Services and FWS to adequately consult over the impacts of Wildlife Services' activities upon ESA-listed species and their habitats.

18. Defendant TODD GRIMM is the Director of the Idaho State Office of USDA APHIS Wildlife Services, and is the responsible federal official for the legal violations and/or omissions at issue herein. He is sued solely in his official capacity.

19. Defendant USDA APHIS WILDLIFE SERVICES ("Wildlife Service") is an agency or instrumentality of the United States within the U.S. Department of Agriculture's ("USDA") Animal and Plant Health Inspection Service ("APHIS"). It is charged with conducting "wildlife damage management" activities in compliance with local, state and federal laws and regulations.

20. Defendant U.S. FISH AND WILDLIFE SERVICE is an agency or instrumentality of the United States under the U.S. Department of Interior, and is responsible for administering the provisions of the ESA with regard to threatened and endangered terrestrial and freshwater aquatic species, including bull trout, Canada lynx, and grizzly bear.

21. Plaintiffs have Article III standing to bring this action because they are directly injured by the procedural and substantive NEPA and ESA violations alleged herein, which are redressable by this Court. In particular, Wildlife Services receives federal funding to undertake animal damage management activities which would not otherwise be undertaken by any other entity, including but not limited to the extensive killing of coyotes, wolves and other carnivores, destruction of beaver dams and killing of beavers, and extensive poisoning of birds.

22. Because Wildlife Services has consistently refused to publicly disclose the full scope of its Idaho activities, Plaintiffs lack full information about the true scope, costs, and impacts of those actions. Discovery may be necessary in order to fully identify those actions, including in order to demonstrate that Plaintiffs' harms are redressable by the Court through the relief requested in this case, such as orders directing Wildlife Services to conduct a full EIS for

its Idaho activities and ordering Defendants to fully comply with the ESA.

LEGAL BACKGROUND

National Environmental Policy Act

23. NEPA is our "basic national charter for protection of the environment." 40 C.F.R. § 1500.1(a). It requires federal agencies to "take seriously the potential environmental consequences of a proposed action" by taking a "hard look" at the action's consequences. The statute's twin objectives are (1) to ensure that agencies consider every significant aspect of the environmental impact of a proposed action and (2) to inform the public that it has indeed considered environmental concerns in its decision-making process.

24. NEPA requires federal agencies to prepare a detailed EIS for all "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C).

25. An agency may prepare an Environmental Assessment ("EA") to briefly put forth sufficient evidence and analysis to determine whether to prepare an EIS or a Finding of No Significant Impact ("FONSI"). 40 C.F.R. § 1508.9.

26. An agency may only issue a FONSI for actions with no significant impact on the human environment. *Id*. § 1508.13. If an action *may* have a significant effect on the environment, or even if there are *substantial questions* as to whether it may, an EIS must be prepared.

27. Ten "intensity" factors help determine whether an agency action may cause significant impacts. *Id.* § 1508.27(b). The presence of even one of the factors may be sufficient to require preparation of an EIS. Factors include: effects that are "highly uncertain or involve unique or unknown risks" or "likely to be highly controversial," *id.* § 1508.27(b)(5), (4); "[u]nique characteristics of the geographic area such as proximity to . . . ecologically critical

areas," *id*. § 1508.27(b)(3); and cumulative impacts, *id*. § 1508.27(b)(7).

28. Both EAs and EISs must discuss a proposed action's direct, indirect, and cumulative effects. 40 C.F.R. § 1502.16. Direct effects are "caused by the action and occur at the same time and place," whereas indirect effects are "caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable." *Id.* § 1508.8. Cumulative effects are "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions." *Id.* § 1508.7. "Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA." *Id*. § 1500.1(b).

29. Agencies may tier environmental analyses to an earlier EIS. *Id.* § 1502.20. However, tiering is only permissible if the previous document actually discussed the impacts of the project at issue.

30. An agency has a continuing obligation to comply with NEPA and must prepare a supplemental NEPA analysis when "significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts" emerge. *Id.* § 1502.9(c)(1)(ii) (applicable to APHIS as set forth in 7 C.F.R. § 372.1).

31. An agency cannot take any action or make any commitment of resources before making its final decision that would have an adverse environmental impact or prejudice or limit the choice of reasonable alternatives. 40 C.F.R. §§ 1502.2(f), 1506.1(a).

Endangered Species Act

32. The ESA was enacted to "provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved [and] to provide a program for the conservation of such [] species." 16 U.S.C. § 1532(b).

33. Under the ESA, the Secretary of the Interior ("the Secretary") protects a non-marine species as endangered if it is "in danger of extinction throughout all or a significant portion of its range," or as threatened if it is "likely to become an endangered species within the foreseeable future." *Id.* §§ 1533(a)(1), 1532(6) & (20).

34. Concurrently with protecting a species as threatened or endangered, the Secretary also must designate the species' "critical habitat." *Id.* § 1533(a)(3). Critical habitat is the area that contains the physical or biological features essential to the "conservation" of the species and which may require special protection or management considerations. *Id*. § 1532(5)(A). "Conservation" means "the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary"—*i.e*., recovery. *Id*. §1532(3).

35. Under ESA Section 7(a)(2), all federal agencies must "insure that any action authorized, funded or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of [designated critical] habitat." 16 U.S.C. § 1536(a)(2).

36. If a proposed action "may affect" a listed non-marine species or its critical habitat, the action agency must consult with FWS. *Id.* § 1536(a)(2); 50 C.F.R. § 402.14(a). To fulfill its Section 7(a)(2) mandate, the action agency prepares a biological assessment ("BA") to evaluate potential effects to listed species and determine whether a species is "not likely to be adversely affected" or "likely to be adversely affected" by the action. 50 C.F.R. § 402.12.

37. For species not likely to be adversely affected, the action agency may seek "informal consultation" with FWS, which concludes with a Letter of Concurrence. *Id.* § 402.14(a).

38. For species likely to be adversely affected, the action agency must seek "formal consultation" with FWS, which results in issuance of a biological opinion ("BiOp") by FWS. *Id.* § 402.14(b). The BiOp determines whether the proposed action is likely to jeopardize the continued existence of a listed species or adversely modify the species' critical habitat.

39. During consultation, FWS must review all relevant information, evaluate the current status of the species or critical habitat, and evaluate the effects and cumulative effects of the proposed action on the listed species and their critical habitat. 16 U.S.C. § 1536(b)(3)(A); 50 C.F.R. § 402.14(g)(1)−(3). For the purposes of the ESA, "'[e]ffects of the action' refers to the direct and indirect effects of an action on the species or critical habitat, together with the effects of other activities that are interrelated or interdependent with that action, that will be added to the environmental baseline." 50 C.F.R. § 402.02. Cumulative effects "are those effects of future State or private activities, not involving Federal activities, that are reasonably certain to occur within the action area of the Federal action subject to consultation." *Id*.

40. Throughout its analysis, the consulting agency must utilize the "best scientific and commercial data available." 16 U.S.C. § 1536(a)(2); 50 C.F.R. §402.14(d).

41. The duty to comply with Section 7(a)(2) remains the action agency's even after the issuance of a BiOp. After the completion of consultation, the action agency must determine whether and in what manner to proceed with the action in light of its Section 7 obligations and the BiOp. 50 C.F.R. § 402.15(a).

42. Section 9 of the ESA prohibits any person from "taking" an endangered species. 16 U.S.C. § 1538(a)(1); *see also* 50 C.F.R. § 17.31, 17.40(k) (applying prohibition to most threatened species). "Take" is defined broadly to include harassing, harming, wounding, killing, trapping, capturing or collecting a listed species either directly or by degrading its habitat

sufficiently to impair essential behavior patterns. 16 U.S.C. § 1532(19). Harass means "an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering." 50 C.F.R. § 17.3. Harm "means an act which actually kills or injures wildlife," including "significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering." *Id*.

43. An exception to Section 9's take prohibition is that a person may take a listed species in accordance with an ITS. 16 U.S.C. § 1536(b)(4). The exception is only valid if the terms and conditions of the ITS are followed. *Id*. § 1536(o)(2).

44. If the FWS determines within a BiOp that take will be permitted, it must include an ITS. 50 C.F.R. § 402.14(g)(7). The ITS must (1) specify the amount or extent of the impact on the species of any incidental taking, (2) specify Reasonable and Prudent Measures to minimize such impact, and (3) set forth the Terms and Conditions that must be complied with to implement the Reasonable and Prudent Measures. *Id*. § 402.14(i)(1)(i), (ii), (iv). In addition, the ITS must contain a requirement that the applicant report the progress of its action and impacts to protected species to the FWS. *Id*. § 402.14(i)(3).

45. If during the course of the action the amount or extent of incidental taking specified in the ITS is exceeded, the action agency must immediately reinitiate consultation. *Id.* §§ 402.14(i)(4), 402.16(a). Thus, the amount of take authorized cannot be coextensive with the project's own scope.

STATEMENT OF FACTS

Background on Wildlife Services

46. Wildlife Services, under various names, has been killing wildlife since the late 1800s. Calls for reform of its suite of wildlife-killing activities commenced in 1930 and have been consistent for the 80 years since.

47. In 1896, Wildlife Services' predecessor agency, the Biological Survey, was created. The Biological Survey initially educated farmers about birds and mammals and tested poisons on sparrows. Over time, it turned its efforts to publishing methods of coyote and wolf killing, killing rodents, and demonstrating predator control methods. Congress first funded the Biological Survey's predator control efforts in 1915.

48. In 1930, the American Society of Mammalogists called the agency, then named the Division of Predatory Animal and Rodent Control ("PARC"), "the most destructive organized agency that has ever menaced so many species of our nation." Olaus J. Murie, who was employed by the agency at the time, wrote a highly critical report calling for reform in the program's attitudes and operations.

49. Despite these protests, in 1931 Congress passed the Animal Damage Control Act, 7 U.S.C. § 426, which authorized, but did not require, the Secretary of the Agriculture to "control" wildlife deemed harmful to agribusiness. Wildlife Services relies on this Depression-era authority to conduct its animal damage management activities to this day.

50. Modern calls for reform began in 1964, when Secretary of the Interior Stewart Udall's Advisory Board on Wildlife and Game Management described the agency as a "semi-autonomous bureaucracy whose function in many localities bears scant relationship to real need and less still to scientific management." The report resulting from an investigation by that Board—led by Aldo Leopold's son, Dr. A. Starker Leopold—recommended overhauling PARC

to curtail its excessive and indiscriminate wildlife killing. In response to the report, some reforms occurred, but the agency failed to implement the report's key recommendations.

51. Public outcry related to federal slaughter of wildlife continued—particularly after Boy Scouts near Casper, Wyoming, stumbled across a mess of bald and golden eagle carcasses left by the agency's poisoning activities in 1970—and, in 1971, the "Cain Report" was issued to the U.S. Department of Interior and Council on Environmental Quality. The Cain Report lamented that Wildlife Services continued to ignore both science and the sentiments of the majority of the American population, who supported wildlife protection. The report offered 15 recommendations to Congress, including halting the use of toxicants for predator and rodent control and a suggestion that Congress prohibit all predator control activities in federally-designated wilderness. The report cited an internal culture that was "resistant to change."

52. Also in 1971, environmental groups sued over Wildlife Services' use of lethal toxicants, securing an order that required the program to cease using chemical toxicants for predator damage control by February 15, 1972.

53. In 1972, on the heels of the Cain Report and the lawsuit, President Nixon issued an Executive Order banning federal agents' use of several of the toxicants Wildlife Services used then and continues to use (Compound 1080, strychnine, cyanide, and thallium) on federal public lands. Unfortunately, the Order did not stand. By 1975, the Environmental Protection Agency had granted use of sodium cyanide (the active ingredient in M-44s) to several western states and to Wildlife Services (newly renamed, at that point, the Office of Animal Damage Control, in a public rebranding effort). President Ford amended the Order to allow for "experimental" use of these poisons to control predators on federal lands. Later, President Reagan rescinded the Order entirely. In 1978, however, Department of the Interior Secretary Cecil Andrus formed another

committee to study Wildlife Services' efforts, and produced another report setting forth policy objectives and restrictions to overhaul Wildlife Services.

54. During the 1980s, efforts to relax restrictions on the use of poisons met opposition from conservation groups. Ultimately, EPA limited use of strychnine to poison prairie dogs into underground burrows and restricted the use of Compound 1080 to "livestock protection collars."

55. In 1994, Wildlife Services issued the Programmatic EIS upon which it currently bases its activities, in an attempt to comply with NEPA. In 1997, Animal Damage Control was renamed "Wildlife Services," distinguished from the "U.S. Fish and Wildlife Service," an agency within the Department of the Interior (and another defendant in this action).

Recent Public Scrutiny of Wildlife Services

56. Over the past decade, public scrutiny of Wildlife Services' methods has intensified.

57. Due to a rash of accidents, mishaps, and security breaches, such as failing to secure dangerous biological agents and toxins, Wildlife Services announced in 2007 that it was undertaking a nationwide safety review to address an array of health, safety, and bio-hazard issues confronting the agency. The safety review concluded that better "information management" to track chemical and hazardous material inventory, as well as employee certifications, was warranted in all nine aspects of the program evaluated.

58. A 2012 prize-winning series of stories published in the Sacramento Bee detailed that many scientists believe Wildlife Services' programs are expensive, ineffective, and capable of setting off chain reactions of unintended, often negative consequences. It also documented ethical problems including employees hiding non-target animals killed, and the large numbers of reported killings of non-target wildlife. The series reviewed a collection of well-regarded

alternatives that focus on co-existing with wildlife species and using non-lethal methods to address conflicts with carnivores like coyotes (the most frequently targeted mammal), wolves, and bears.

59. Also in 2012, a Wildlife Services employee was criticized for posting photographs online of his dogs savagely attacking coyotes caught in leg-hold traps, including the following:

This employee was not fired, or even disciplined, even after an investigation found that he failed to check his traps for up to 69 days at a time – leaving trapped animals to die slow, painful deaths.

60. A 2013 *New York Times* editorial criticized the agency's practices and secrecy, calling for the USDA to "bring the agency's work into accord with sound biological practices."

61. In 2013, an internal audit found that the agency's accounting practices were "unreconcilable," lacked transparency and violated state and federal laws. It also revealed that $12 million of public funds placed in a special account could not be found.

62. As a result of problems like these, two California counties have not renewed their contracts with Wildlife Services.

63. Wildlife Services has also fallen under renewed congressional scrutiny: Two

Representatives have introduced legislation to ban the use of Compound 1080 and M-44s, several Representatives have requested congressional investigation of the program, and, in 2012 and 2013, Representative Susan Davis introduced legislation to induce APHIS to publicly disclose a yearly report of how many animals it was killing, how it was killing them, and why, stating that the agency's "lack of transparency and public reporting makes oversight impossible."

64. In 2013, the USDA Office of the Inspector General announced that it would investigate the agency. The investigation remains pending.

65. The American Society of Mammalogists has repeatedly expressed its strong opposition to Wildlife Services' activities, noting that current science does not support much of the agency's lethal control of native mammals, and that its activities are wasteful, often counterproductive, and work at cross-purposes with other agencies trying to protect and restore wildlife.

66. Wildlife Services continues to kill vast numbers of animals every year. Nationwide, the agency reports that it spent $116 million in 2013 to kill 4.3 million animals, including 75,217 coyotes and 319 wolves. Over two million of these animals were native. Given allegations of vast underreporting, the actual numbers of animals killed are likely much, much greater.

67. In Idaho alone, in 2013 Wildlife Services killed at least 201,132 animals, including 2,739 coyotes and 79 wolves. Since 2006, Wildlife Service admits that it has killed over 33,000 coyotes and 537 wolves in Idaho.

Wildlife Services' Current Activities In Idaho

68. Wildlife Services currently conducts an array of wildlife damage management activities in Idaho.

69. Wildlife Services uses aerial shooting "extensively" or "daily" to kill wolves, coyotes, red foxes and feral swine, using fixed-wing aircraft and helicopters. Wildlife Services also uses aircraft to "haze" elk. Aircraft with sirens conduct multiple low-level flights to chase elk away from hay fields or other private property.

70. Wildlife Services "frequently" uses rifles and shotguns to kill wildlife. Sometimes Wildlife Services uses calls to lure in the target species. Wildlife Services also uses trained dogs to pursue and lure target species. Wildlife Services claims trained dogs are particularly effective for tracking and luring coyotes, mountain lions, feral swine, and bears.

71. Wildlife Services gasses carnivores and rodents in their dens by using gas cartridges up to 100 times annually. The gas cartridges are placed in active burrows, a fuse is lit, and Wildlife Services seals the entrance with soil. The animals inside then die from asphyxiation or carbon monoxide poisoning.

72. Wildlife Services sometimes places "livestock protection collars" filled with the highly toxic Compound 1080 on domestic animals to poison carnivores. When a carnivore (typically a coyote) bites the neck of a goat or sheep, it punctures a reservoir filled with Compound 1080, poisoning the animal. The carnivore carcasses are then often consumed by other wildlife, resulting in subsequent poisonings of other species from one of the most deadly substances ever known to humankind.

73. Wildlife Services uses M-44 devices filled with sodium cyanide to kill canine species like coyotes and red foxes. The M-44 device consists of a capsule containing sodium cyanide, an ejector mechanism, and a hollow stake. The hollow stake is driven into the ground, the ejector unit is cocked and placed in the stake, and a capsule holder containing the cyanide capsule is screwed onto the ejector unit. Fetid meat or other bait is applied to the capsule holder.

An animal attracted by the bait will try to pick up or pull the baited capsule holder. When the M-44 device is pulled, a spring-activated plunger propels sodium cyanide into the animal's mouth. The animal suffocates to death. M-44 devices have killed dozens of dogs and hundreds of other non-target species across the West. They have also injured and even permanently disabled several people.

74. Wildlife Services uses a variety of lethal and non-lethal traps to capture and kill wildlife in Idaho. By its own admission, Wildlife Services "frequently" uses quick-kill or body-gripping traps to kill birds and animals. These traps are lethal to "target" and "non-target" animals alike.

75. Wildlife Services uses foothold traps to capture animals that it often later kills. It also uses foot/leg snares, primarily to capture grizzly bears, black bears, and mountain lions.

76. Also by its own admission, Wildlife Services uses neck/body snares "extensively" or "daily" to capture coyotes, red foxes, beavers and wolves, among other animals.

77. Wildlife Services regularly traps and kills beavers. Since 2006, it has killed over 421 beavers. It also breaches beaver dams by hand and by using explosives. From 2007 to 2011, Wildlife Services used explosives to blow up 60 beaver dams in Idaho. When the dams are blown up, the charges blow 75% of the beaver dam material 50-100 feet into the air.

78. Wildlife Services uses a number of chemicals to tranquilize, immobilize, and sometimes euthanize live-captured wildlife.

79. Wildlife Services regularly poisons birds and other animals using pesticides and toxins. In particular, Wildlife Services uses DRC-1339 to poison birds. DRC-1339 is a restricted-use, slow-acting poison that is primarily used to poison European starlings and blackbirds on cattle feedlots or dairies; but it can kill target and non-target birds alike, in turn

risking secondary poisoning from animals that consume the dead birds. DRC-1339 can only be used by federal applicators.

80. Wildlife Services occasionally uses Avitrol, a restricted-use pesticide that can only be sold to certified applicators, to poison unwanted birds by baiting them with contaminated grain. Although Avitrol is "relatively selective" for targeted birds, exposure to non-target birds is "possible."

81. Wildlife Services commonly uses zinc phosphide, a metallic pesticide "toxic to most forms of life," to kill rodents. Wildlife Services uses aluminum phosphide to kill rodents underground.

82. Wildlife Services uses anticoagulant rodenticides to kill rodents. These poisons reduce the blood's clotting ability and damage capillaries. Many of them have a "high potential for secondary poisoning," meaning that a predator that eats a dead animal afflicted with the poison could also be poisoned.

83. Wildlife Services uses strychnine to poison pocket gophers. Strychnine is very toxic and poses a risk for secondary poisoning.

84. Wildlife Services sabotages bird reproduction by egg, nest, and hatchling removal and destruction. For example, Wildlife Services "addles" eggs by vigorously shaking them to cause detachment of the embryo from the egg sac, punctures and breaks eggs, and applies oil to eggs to suffocate the embryos inside. Wildlife Services uses devices including lasers, propane exploders, pyrotechnics and radio-controlled vehicles to harass and scare off birds.

85. Two of Wildlife Services most-targeted species are coyotes and wolves.

86. Both prior to and following a 2011 Congressional rider removing ESA protection from gray wolves, Wildlife Services has engaged in an intensive campaign to kill wolves in

Idaho. The killing is primarily done at the behest of cattle and sheep ranchers. However, Wildlife Services also cooperates with Idaho Department of Fish and Game to kill wolves in areas without ranching, including in extremely remote areas that were supposed to be "core refugia" for wolves post-delisting, ostensibly to assist elk populations. Although Wildlife Services analyzed its Idaho wolf killing activities in a 2011 EA, it has not investigated it since wolves were delisted; thus, Wildlife Services has never examined or disclosed the effect of its activities in combination with recreational wolf hunting and trapping conducted by the public.

Wildlife Services' NEPA Analysis of Idaho Programs

87. Wildlife Services has never prepared a comprehensive EIS describing its wildlife-killing and other activities in Idaho and disclosing their effects on wildlife and other resources.

88. As noted, in 1994, the agency prepared a Programmatic EIS ("PEIS") to analyze its nationwide wildlife damage control program. In 1997, it reissued the document with some corrections. These documents are sometimes collectively referred to as the "1994/1997 PEIS."

89. Following that PEIS, Wildlife Services has issued a series of EAs that purport to tier to or otherwise incorporate the PEIS.

90. In 1996, Wildlife Services issued a Central and Northern Idaho Predator Control EA, followed in 2004 by a FONSI.

91. In 1998, Wildlife Services issued an EA and FONSI for Bird Damage Management in Idaho. This EA was followed by an Amendment and FONSI in 2003, and an additional Amendment and FONSI in 2006.

92. In 2002, Wildlife Services issued an EA and FONSI for Predator Damage Management in Southern Idaho, followed by a "five year update" in 2007 and another FONSI in

2008.

93. In 2004, Wildlife Services issued an EA and FONSI for Rodent Damage Management in Idaho.

94. In 2011, Wildlife Services issued an EA and FONSI regarding "Gray Wolf Damage Management in Idaho for Protection of Livestock and other Domestic Animals, Wild Ungulates, and Human Safety."

95. In March 2014, Wildlife Services issued a draft supplement to the 2002 EA for Predator Damage Management in Southern Idaho, primarily focusing on expanding the killing of ravens to supposedly benefit imperiled Greater sage-grouse. It was not finalized.

96. On September 8, 2014, Plaintiffs sent Wildlife Services a Notice of Intent to Sue. Plaintiffs explained that Wildlife Services' NEPA documents for Idaho were inadequate and outdated, and requested the immediate preparation of a new statewide analysis.

97. On December 12, 2014, Wildlife Services announced an opportunity for public comment on a new anticipated EA for Predator Damage Management in Idaho, ostensibly to be completed sometime during 2015.

98. Wildlife Services' NEPA analyses remain fragmented and outdated. No EIS fully documenting Wildlife Services' wildlife damage management activities in Idaho and their cumulative effects has ever been produced—even though Wildlife Services is administered on a state-wide scale, and even though it selected the state-wide scale as a proper level of analysis for its ESA consultation.

Wildlife Services' ESA Consultation For Activities In Idaho

99. In 1992, FWS issued a BiOp related to Wildlife Services' nation-wide suite of wildlife damage management activities.

100. In 2002, the FWS issued a letter of concurrence and BiOp regarding the impacts of Wildlife Services' activities on Canada lynx in southern Idaho.

101. In September 2013, Wildlife Services submitted a BA to FWS regarding its Wildlife Damage Management Activities in Idaho. The BA described Wildlife Services' ongoing activities, including the trapping, shooting, and poisoning activities described above, and the anticipated impact upon ESA-protected species in Idaho.

102. On July 1, 2014, FWS issued a BiOp and Letter of Concurrence for Wildlife Damage Management Activities in the State of Idaho (BiOp #14420-2014-F-0193). The Letter of Concurrence, prepared for species not likely to be adversely affected by Wildlife Services' activities, addressed impacts to the woodland caribou, Northern Idaho ground squirrel, Southern Idaho ground squirrel, yellow-billed cuckoo, greater sage-grouse, and Columbia spotted frog. The BiOp, prepared for species likely to be adversely affected, addressed impacts on threatened bull trout, threatened grizzly bears, threatened Canada lynx, and the North American wolverine (then a candidate for ESA protection).

103. Because Wildlife Services did not disclose specific locations for its wildlife-killing activities, the BiOp relies on averages and generalizations to predict the number of protected species that might be harmed by Wildlife Services' activities. Based on these averages, FWS produced separate ITSs for bull trout, grizzly bears, and lynx.

104. The ITSs do not account for or authorize harassment, wounding or injury, pursuit, displacement, habitat destruction, or secondary poisonings of protected species. Although the BiOp recognizes that certain activities may displace endangered or threatened species, the projected amount of take only accounts for that which occurs when individuals are physically captured or killed.

105. Unlike the previous ITSs issued in the 1992 consultation, the present ITSs do not identify any reasonable and prudent measures, beyond voluntary practices, for Wildlife Services to follow to avoid taking bull trout, lynx, or grizzly bears. Nor do they impose any mandatory terms and conditions on Wildlife Services' activities beyond simple reporting requirements. The reporting requirements likewise only account for direct killing or capturing.

a. Bull trout

106. Bull trout (*Salvelinus confluentus*) is a native, freshwater fish species that was protected as threatened under the ESA in 1998 due to declining populations, habitat loss and degradation, and other threats. 63 Fed. Reg. 31647 (June 10, 1998).

107. Bull trout critical habitat in Idaho encompasses 8,771.6 miles of stream and shoreline and 170,217.5 reservoir surface acres. 75 Fed. Reg. 63898-64060 (Oct. 18, 2010).

108. Bull trout are a migratory char in the salmonid family that require cold, clean, fast-flowing waters with suitable cover and channel stability to survive and reproduce. Fry and juvenile fish are strongly associated with the stream bottom and are often found at or near it. Adults are often found in pools sheltered by large, organic debris.

109. Beaver activity creates habitat for bull trout. For example, bull trout rear, feed, and overwinter in the deep, slow, and complex pool and off-channel habitats created by beaver dams. Dams are also important for maintaining hydrology and high water tables that contribute to streamflows, particularly important during the summer and drought periods. Beaver dams slow down high-intensity flows that scour substrate and erode stream channels. They also increase productivity of plants and insects that provide food for fish.

110. Wildlife Services' BA discloses that the agency conducts ongoing "rodent management" programs in Idaho under which Wildlife Services regularly blows up and hand

breaches beaver dams. The agency removed 104 dams in the past five years, at least 54 of which were in bull trout habitat. When using explosives, the powerful charges detonate at 2,000°F, causing 75% of the material to fly out onto land, and the remainder to drop back into the water. The agency also kills dozens of beavers in Idaho every year—over 420 since 2006.

111. The BA failed to include up-to-date information regarding the positive role beavers play in ecosystems, the harms caused by removing them, and the importance of beaver activity in creating bull trout habitat.

112. The BA and BiOp admit that breaching dams affects bull trout by stranding fish, releasing sediment, and killing/injuring fish from the explosion shockwave. However, of these three mechanisms, the BiOp claims that the impacts of the first two are insignificant, with little explanation. It only considers direct effects to bull trout from explosives.

113. The BiOp calculated that 162 bull trout were likely to be directly harmed by explosives over each 5-year period by calculating the average number of fish per river mile and multiplying that number by the number of dam breaches every 5 years.

114. The BiOp did not consider any other effects from blowing up beaver dams on bull trout, any effects from hand-breaching dams, any effects of habitat destruction from breaching dams, or any effects of killing beavers.

115. The ITS stated that monitoring the number of bull trout actually taken is impracticable, so it selected a surrogate take trigger. Under this approach, the ITS concludes that reinitiation is only required if more than 54 beaver dams are breached using explosives in waters occupied by bull trout in any 5 consecutive years.

116. The ITS did not impose any reasonable and prudent measures or terms and conditions on Wildlife Services' dam breaching operations, only requiring Wildlife Services to

submit an annual report with a 5-year running total of dams breached with explosives.

117. FWS did not require Wildlife Services to survey for bull trout presence before blowing up dams or to report any fish actually harmed by dam breaching. Even if dead bull trout are found following dam breaching, Wildlife Services is not required to inventory or report them.

118. FWS evaluated the potential for jeopardy from take at the core level rather than at the local population level. In other words, FWS determined that the dam explosions would not adversely affect the species, but did not look at effects the dam breaches might have on small, more fragile local populations.

b. Grizzly bears

119. Grizzly bears define wilderness in the northern Rocky Mountain region. The grizzly was the victim of an aggressive campaign by settlers to eradicate the bear from the western landscape. Those efforts were largely successful: Persecution, poisoning, conflicts with ranchers, sport hunting, and habitat destruction nearly eliminated the grizzly bear from the lower 48 states by the time of the bear's listing as a threatened species in 1975. 40 Fed. Reg. 31,734 (July 28, 1975).

120. In Idaho, grizzlies occur within recovery zones known as the Selkirk, the Cabinet-Yaak, and the Greater Yellowstone ecosystems. The population in the Selkirk ecosystem may be increasing, but high levels of human-caused mortality and lack of regulatory mechanisms threaten this population, and FWS's current goal for human-caused mortality, set forth in the 1993 Grizzly Bear Recovery Plan, is zero mortality. The population in the Cabinet-Yaak ecosystem is failing all recovery goals, and the goal for human-caused mortality is also zero—less than 15 bears are thought to currently occupy the Cabinet Mountains portion of this recovery zone and the number of bears in the Yaak portion is "small yet unknown." The population in the

Greater Yellowstone ecosystem is increasing, but mortality in that ecosystem is not to exceed 4% of the total population size, which was estimated in 2011 to be 582 bears. Grizzly bears have huge ranges and can occur both within and outside of areas known to be occupied.

121. The BiOp admits that grizzly bears may be affected by the following Wildlife Services devices and activities: (1) culvert and large cage traps, (2) foothold traps, (3) foot snares, (4) neck/body snares, (5) Compound 1080, (6) M-44 sodium cyanide, (7) aerial shooting, (8) aerial telemetry, (9) ground shooting, (10) propane exploders, (11) pyrotechnics, (12) other scaring devices, (13) electric/temporary fences, (14) trained dogs, and (15) site access.

122. To mitigate the impacts of the trapping program on grizzlies, Wildlife Services relies on a series of voluntary, self-imposed protective measures, which FWS assumes will work. Specifically, Wildlife Services commits to the following:

1. Not using neck snares for coyotes, red foxes, bobcats, wolves, mountain lions or black bears between March 16 and November 30 in the Idaho portion of the Cabinet-Yaak Recovery Zone.
2. Limiting use of neck snares for coyotes, red foxes or bobcats from March 16 to November 30 in the Idaho portions of the Selkirk Mountains Recovery Zone boundary and the Greater Yellowstone PCA boundary and requiring that those snares be equipped with a breakaway lock.
3. Suspending wolf trapping near carcasses in occupied grizzly bear habitat while bears are not in hibernation, unless it is a confirmed livestock depredation situation.
4. Foothold traps and foot snares set for mountain lions or wolves between March 16 and November 30 in the Idaho recovery zones boundaries will be checked daily and anchored sufficiently to hold an adult grizzly bear should one inadvertently be

captured.

Notably, several of these are less protective than those required by prior consultations.

123. The BiOp admits that grizzly bears may be displaced, pursued, or harassed by Wildlife Services' aerial operations, ground-hunting operations, and use of motorized site access. Although pursuing or harassing a protected species is within the ESA's definition of "take," the BiOp concludes that no take will occur from these activities whatsoever.

124. The BiOp's only anticipated effects are four trapped bears in any consecutive 20 year period, including one each from culvert traps, foothold traps, foot snares, and neck snares; the bear caught in the neck snare is expected to die.

125. The BA failed to consider the best available science regarding impacts to grizzly bears from aircraft overflights, or provide a thorough analysis of how its aerial operations affect grizzly bears. In turn, the BiOp failed to analyze these impacts.

126. The BiOp does not consider that any cumulative or indirect impacts may occur to grizzly bears from Wildlife Services' activities in conjunction with other private and state activities. Significantly, this fails to consider impacts to grizzlies from motorized recreation and site access, or commercial and recreational hunting and trapping.

127. FWS concluded that the proposed action would not adversely affect or jeopardize grizzly bears in the "action area" (the state of Idaho), mainly because "[t]he estimated death of no more than 1 grizzly bear in 20 years will have a relatively minor impact on the overall population of this species." FWS assumed that this death would occur in the Greater Yellowstone ecosystem, but did not explain this assumption, or analyze how impacts would differ if it occurred in the Cabinet-Yaak or Selkirk ecosystems. The BiOp's jeopardy analysis only considered effects to grizzly bears at the species level and not at the recovery zone level. In

contrast, FWS's 1992 BiOp differentiated between "take" of grizzly bear populations in different recovery areas; and it determined that if "take" of even one bear occurred in the Cabinet-Yaak ecosystem, that would represent jeopardy.

128. Based on this analysis, the ITS permitted take of four grizzly bears over a 20-year period, one of which may be fatally taken.

129. The ITS did not set forth any reasonable and prudent measures or terms and conditions with which Wildlife Services must comply to protect the grizzly bear. The ITS only imposed a reporting requirement that Wildlife Services disclose a 20-year running total of incidental grizzly bear "captures" each year. FWS did not require Wildlife Services to report any instances of bear displacement or harassment during its activities, even though Wildlife Services was previously required to report bear sightings.

c. Canada Lynx

130. The Canada lynx was first protected as threatened under the ESA by FWS in 2000 due to declining populations, habitat loss and fragmentation, and numerous other threats. 65 Fed. Reg. 16052 (March 24, 2000).

131. Currently, Canada lynx have 45 square miles of designated critical habitat in Idaho. 79 Fed. Reg. 54741-54846, 54824 (Sept. 12, 2014). When the BiOp was issued, Canada lynx had approximately 50 square miles of designated critical habitat in Idaho. 74 Fed. Reg. 8616 (Feb. 25, 2009).

132. The lynx is a medium-sized cat with long legs, well-furred feet, long tufts on the ears, and a short, black-tipped tail. Its long legs and large feet make it especially adept at hunting in deep snow. Lynx use large woody debris, such as downed logs, root wads, and windfalls for denning sites with security and thermal cover for kittens. An abundance of high

quality foraging habitat must be available in close proximity to all den sites if they are to be functional. Lynx may have very large home ranges and travel long distances to find prey.

133. Neither the BA nor the BiOp estimate the lynx population size or trend, in Idaho or at any other scale.

134. Trapping is one of the most commonly-reported causes of lynx mortality.

135. Trapping has surged in popularity in Idaho in the past decade, with 647 trapping licenses issued in 2001-2002 and 1,943 issued in 2012-2013. Out of the four most recent confirmed lynx sightings in Idaho in recent years described in the BA, three were accidentally trapped. Further, Idaho Wildlife Services officials have acknowledged that trappers often to do not report accidental captures.

136. The BiOp admitted that proposed actions by Wildlife Services that may affect Canada lynx include use of: (1) culvert and large cage traps, (2) foothold traps/foot snares, (3) neck/body snares, (4) aerial shooting/telemetry, (5) ground shooting, (6) propane exploders, pyrotechnics, other scaring devices, (7) trained dogs, and (8) site access.

137. The BiOp predicts that two lynx in Idaho could be trapped in the next 40 years, and that one may die from a neck/body snare. It concludes that this death will have a relatively minor impact on the overall population of this species and will not implicate "both the survival and recovery of lynx."

138. The BiOp failed to analyze the impacts of trapping or the recent Idaho trapping surge, either in its analysis of the environmental baseline, cumulative impacts, or jeopardy analyses.

139. The ITS permitted incidental take for two lynx in any 40 year period; of these, only one lynx can be killed.

140. The ITS did not set forth any additional reasonable and prudent measures or terms and conditions with which Wildlife Services must comply to protect the lynx. The ITS made this determination in part because the BA claimed that Wildlife Services is complying with all reasonable and prudent measures and terms and conditions set forth in the prior 2002 Lynx BiOp—however, the ITS does not identify what these reasonable and prudent measures or terms and conditions are, or re-impose them.

141. Instead, FWS only imposed a reporting requirement that Wildlife Services disclose a 40-year running total of incidental lynx "captures" each year. This reporting requirement does not require Wildlife Services to disclose the number of lynx displaced or harassed during the course of its activities.

FIRST CLAIM FOR RELIEF
Failure to Prepare EIS

142. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

143. This First Claim for Relief challenges Wildlife Services' past and ongoing violations of NEPA in failing to prepare a comprehensive, up-to-date Environmental Impact Statement for its wildlife damage management activities in Idaho.

144. Wildlife Services has violated and is violating NEPA and its implementing regulations because it has failed to conduct any comprehensive, up-to-date, thorough environmental analysis that analyzes the impacts of its activities in the state of Idaho, and alternatives to them.

145. Wildlife Services has violated and is violating NEPA by failing to take the requisite "hard look" at the significant environmental impacts of continuing Wildlife Services' activities in Idaho, including its wildlife-killing and predator damage management activities.

146. Wildlife Services has violated and is violating NEPA by segmenting its analyses into multiple, piecemealed EAs, thereby failing to consider the cumulative effects of the proposed actions in association with past, present, and reasonably foreseeable future actions. Wildlife Services has violated and is violating NEPA by failing to analyze the impacts of its suite of wildlife damage management activities on endangered, threatened, sensitive, and otherwise protected species in Idaho.

147. This pattern continued in Wildlife Services' March 2011 Final EA for Gray Wolf Damage Management in Idaho for Protection of Livestock and other Domestic Animals, Wild Ungulates, and Human Safety (Wolf EA); and its accompanying March 29, 2011 FONSI. Wildlife Services violated NEPA and federal regulations in multiple respects through issuance of the Wolf EA and FONSI, including but not limited to:

a) Relying on an EA/FONSI rather than preparing an EIS addressing the proposed actions even though approval of Wildlife Services' wolf eradication and control programs in Idaho, on its own and cumulatively with other Wildlife Services activities and other activities (such as private hunting and trapping), constitutes a major federal action which will have significant adverse impacts to the human environment;

b) Adopting the EA/FONSI without producing a convincing statement of reasons establishing why the project's impacts are insignificant, on its own and cumulatively with other Wildlife Service activities and other activities (such as private hunting and trapping);

c) Failing to consider the cumulative impacts of Wildlife Services' wolf "damage management" activities, along with other Wildlife Service activities and other activities (such as private hunting and trapping).

d) Failing to conduct scoping to assess public attitudes and values around wolf "damage management," or to provide any substantive analysis of, or consideration of scientific studies discussing, those attitudes.

148. Wildlife Services' failure or refusal to prepare an EIS for its Idaho wildlife damage management activities as required by NEPA is arbitrary, capricious, an abuse of discretion, not in accordance with law and/or constitutes agency action unlawfully withheld or unreasonably delayed under Section 706 of the APA, which has caused or threatens serious prejudice and injury to Plaintiffs' rights and interests.

149. Wildlife Services' Wolf EA and FONSI are arbitrary, capricious, an abuse of discretion, and not in accordance with law, and must be reversed and set aside pursuant to the APA, 5 U.S.C. § 706(2)(A).

WHEREFORE, Plaintiffs pray for relief as set forth below.

SECOND CLAIM FOR RELIEF
Failure to Supplement EAs and PEIS

150. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

151. This Second Claim for Relief is brought in the alternative to the First Claim for Relief, and challenges Wildlife Services' failure to supplement the numerous EAs and FONSIs currently governing its wildlife damage management activities in Idaho, as well as its 20-year-old 1994/1997 PEIS.

152. These EAs include: the 1996 Central and Northern Idaho Predator Control EA

and its 2004 FONSI; the 1998 Bird Damage Management in Idaho EA, its 2003 and 2006 Amendments and FONSIs; the 2002 EA and FONSI for Predator Damage Management in Southern Idaho, followed by a "five year update" in 2007 and another FONSI in 2008; the 2004 EA and FONSI for Rodent Damage Management in Idaho; and the 2011 Wolf EA and FONSI.

153. Agencies must prepare a supplemental NEPA analysis when "significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts" emerge. 40 C.F.R. § 1502.9(c)(1)(ii). An agency cannot take any action or make any commitment of resources before making its final decision that would have an adverse environmental impact or prejudice or limit the choice of reasonable alternatives. *Id*. §§ 1502.2(f), 1506.1(a).

154. Here, significant new circumstances and information relevant to environmental concerns and bearing on Wildlife Services' wildlife damage management activities in Idaho, and its impacts, have emerged since the preparation of the relevant analyses. This includes new information concerning:

a) The role of carnivores in ecosystems and the harmful effects of removing them from ecosystems.

b) Science regarding the role of beavers in ecosystems, including on salmonids, and the risks of removing them from ecosystems.

c) The efficacy (or lack thereof) of predator control as a means of promoting persistence of the Greater sage-grouse.

d) The efficacy of non-lethal control methods as an alternative to the lethal methods Wildlife Services primarily employs.

e) The secondary or indirect, yet reasonably foreseeable, consequences of highly-toxic poisoning methods.

f) The risks to human safety and ecological health inherent in Wildlife Services' lethal control methods.

g) The risks to human safety and ecological health from the many toxic chemicals Wildlife Services uses to carry out its wildlife-killing programs.

h) The dramatic increase in trapping and its impact on threatened, endangered and other sensitive species when combined with Wildlife Services' activities.

i) Science on the efficacy and impacts of lethal control on wildlife-livestock conflicts.

j) New social science addressing human values around wildlife generally and/or particular wildlife species.

155. Wildlife Services' ongoing predator damage management activities have an adverse environmental impact, constitute an irreversible and irretrievable commitment of resources, and foreclose and prejudice the choice of reasonable alternatives in its ongoing NEPA process.

156. Wildlife Services' failure or refusal to supplement its existing NEPA documents, and its failure to halt or limit its ongoing activities while completing new analyses, as required by NEPA, is arbitrary, capricious, an abuse of discretion, not in accordance with law and/or constitutes agency action unlawfully withheld or unreasonably delayed under Section 706 of the APA, which has caused or threatens serious prejudice and injury to Plaintiffs' rights and interests.

WHEREFORE, Plaintiffs pray for relief as set forth below.

THIRD CLAIM FOR RELIEF

2014 Biological Opinion and Incidental Take Statements Violate the ESA

157. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

158. ESA section 7(a)(2) requires FWS to undertake consultation to insure that agency actions are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat.

159. Including for the reasons described above, the conclusions in FWS's 2014 BiOp that Wildlife Services' activities are not likely to jeopardize the continued existence of bull trout, grizzly bear, or lynx, or adversely modify their critical habitats, are based on inaccurate and incomplete information and invalid assumptions from the BA, an incomplete discussion of the environmental baseline, a failure to consider the indirect and cumulative impacts to any of the species at issue, and an inadequate and flawed analysis assessing the effects of the action on both survival and recovery of the species.

160. FWS violated the ESA because it failed to include all relevant activities and their effects in the BiOp's environmental baseline and cumulative effects analysis. For instance, FWS has failed to consider the impacts of private hunting, fishing and trapping on protected species combined with Wildlife Services' activities. It has also failed to consider the combined, cumulative effects of aerial operations, motorized access, scaring devices and other methods used by Wildlife Services in the BiOp and ITS.

161. FWS, through the BiOp and ITSs, violated the ESA by failing to analyze and account for take from harassing, harming, wounding, or pursuing protected species; or from the destruction of their habitats. *See* 16 U.S.C. § 1532(19). They also violated the ESA by failing to impose any enforceable reasonable and prudent measures and terms and conditions to mitigate for or minimize this type of take.

162. FWS violated the ESA by failing to require WS to monitor and report instances where its activities displace or harass grizzly bears, lynx, and bull trout. In the case of bull trout, FWS further violated the ESA by failing to require WS to report when its activities result in actual death or harm of bull trout.

163. FWS violated the ESA by authorizing take of bull trout that is coextensive with the project's own scope.

164. FWS violated the ESA by reaching its no jeopardy determination through looking at trout and grizzly bear populations only on a large scale. By evaluating impacts from take only on this large scale, FWS evaded analyzing or differentiating the significance of the projected take to smaller and more fragile populations.

165. FWS's determination that take of two lynx will not cause jeopardy to the species is arbitrary and capricious and violates the ESA because FWS failed to adequately discuss the status of the species—indeed, FWS does not have any idea what the lynx population is in Idaho.

166. The BiOp and ITSs fail to make a rational connection between their findings and their conclusions. Thus, they violate the APA and ESA section 7(a)(2), and are not based on the best available science, as required by the ESA.

FOURTH CLAIM FOR RELIEF
Wildlife Services' Violations of the ESA

167. Plaintiffs reallege and incorporate by reference the preceding paragraphs.

168. ESA Section 7(a)(2) requires Wildlife Services to insure that its actions are not likely to jeopardize the continued existence of listed species or destroy or adversely modify their critical habitats.

169. Wildlife Services has failed to meet this duty by relying on the flawed 2014 BiOp

for its Wildlife Damage Management Activities in Idaho and the accompanying ITSs to continue to authorize its wildlife-killing and other activities in Idaho.

170. Wildlife Services also violated its duty under the ESA to provide FWS with the best available scientific and commercial data during consultation. As described above, that included failures to provide up-to-date and reliable information on beavers, dam removal, harassment to grizzly bears from aircraft overflights, lynx population data, and the trapping surge in Idaho.

171. Wildlife Services authorizes and conducts activities in Idaho that have caused, and will foreseeably continue to cause, unlawful take of bull trout, without a valid ITS, in violation of ESA Section 9, 16 U.S.C. § 1538, and regulations promulgated under Section 4(d) of the ESA, 16 U.S.C. § 1533(d), including 50 C.F.R. §§ 17.31, 17.40, and 17.44. Ongoing take is also caused by continuing to authorize wildlife-killing and other activities despite the need to reinitiate consultation and the invalidation of the BiOp.

WHEREFORE, Plaintiffs pray for relief as set forth below.

PRAYER FOR RELIEF

Plaintiffs respectfully request that the Court grant the following relief:

A. Under Plaintiffs' First Claim for Relief, order, declare, and adjudge that Wildlife Services has violated and is violating NEPA and the APA by failing to prepare an EIS analyzing its wildlife damage management activities in Idaho, and order Wildlife Services to promptly comply with NEPA by preparing a legally and scientifically adequate EIS addressing its Idaho wildlife damage management activities.

B. Also under Plaintiffs' First Claim for Relief, order, declare and adjudge that the 2011 Wolf EA and FONSI violate NEPA and the APA, and reverse and set them aside.

C. Under Plaintiffs' alternative Second Claim for Relief, order, declare, and adjudge that Wildlife Services must supplement the NEPA analyses it has prepared for its wildlife damage management activities in Idaho and/or its 1994/1997 PEIS.

D. Under Plaintiffs' Third Claim for Relief, order, declare and adjudge that FWS has violated the ESA and/or the APA by issuing the 2014 Biological Opinion and Incidental Take Statements for Wildlife Damage Management Activities in Idaho, and set them aside.

E. Under Plaintiffs' Fourth Claim for Relief, order, declare, and adjudge that Wildlife Services has violated the ESA by relying on an inadequate BA and BiOp to satisfy its duty to insure its Wildlife Damage Management Activities in Idaho do not jeopardize ESA-listed species or adversely modify their critical habitats; and order Wildlife Services to comply with the requirements of the ESA by promptly reinitiating consultation with FWS over its Wildlife Damage Management Activities in Idaho.

F. Issue such temporary restraining order(s), preliminary injunction(s) and/or permanent injunctive relief as may be requested hereafter by Plaintiffs;

G. Award Plaintiffs their reasonable costs, litigation expenses, and attorney's fees associated with this litigation pursuant to the ESA, 16 U.S.C. § 1540(g)(4), the Equal Access to Justice Act, 28 U.S.C. § 2412 *et seq.*, and all other applicable authorities; and

H. Grant such further and other relief as the Court deems just and proper to remedy Defendants' violations of law and protect the public interest and the wildlife of Idaho.

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Dated this 11th day of February, 2015.

Respectfully submitted,

s/_Lauren M. Rule_____
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