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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Grand Canyon Wolf Recovery Project, a non-profit organization; New Mexico Wilderness Association, a non-profit organization; Wildlands Network, a non-profit organization; WildEarth Guardians, a non-profit organization; and Western Watersheds Project, a non-profit organization, Plaintiffs, vs. Deb Haaland, as Secretary of the United States Department of the Interior; the United States Department of the Interior, a federal department; the United States Fish and Wildlife Service, a federal agency; and Martha Williams, as Director of the United States Fish and Wildlife Service, Federal Defendants.	No. **COMPLAINT**

INTRODUCTION

1. The Grand Canyon Wolf Recovery Project, New Mexico Wilderness Association (New Mexico Wild), Wildlands Network, WildEarth Guardians, and Western Watersheds Project (collectively "Plaintiffs") bring this civil action against Federal Defendants (collectively "the U.S. Fish and Wildlife Service" or "the Service"), under Section 11(g) of the Endangered Species Act ("ESA"), 16 U.S.C. § 1540(g), and the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701 *et seq.*, for violations of the ESA and National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321 *et seq.*

2. This case challenges the Service's revised Section 10(j) rule for the management of an experimental population of Mexican wolves in the southwestern United States ("revised 10(j) rule"). The revised 10(j) rule was finalized and published in the Federal Register on July 1, 2022. This case also challenges the Service's related supplemental environmental impact statement ("EIS") and Section 10(a)(1)(A) permit for the revised 10(j) rule.

3. The Service's revised 10(j) rule arbitrarily determined that the experimental population of roughly 200 Mexican wolves in the wild are "not essential" to the continued existence of the endangered subspecies. The revised 10(j) rule also includes provisions that will harm (not help) the recovery of Mexican wolves in the wild. This includes restrictions on the ability of Mexican wolves to naturally disperse into suitable habitat in the southwestern United States (including areas north of Interstate 40), a cap on the size of the population that is well below what is needed for long-term recovery,

an objective for restoring the genetic health of the population that fails to include any genetic metrics, and provisions that allow for too much take and killing of Mexican wolves in the wild. These provisions conflict with the best available science on the long-term recovery needs of endangered subspecies and fail to ensure the conservation of Mexican wolves in the wild in the United States as required by the ESA.

4. Plaintiffs, a coalition of conservation organizations dedicated to ensuring the survival and long-term recovery of Mexican wolves in the southwest United States are thus compelled to pursue this civil action.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action under 28 U.S.C. § 1331, 16 U.S.C. § 1540, and 5 U.S.C. § 704. An actual, present, justiciable controversy exists between Plaintiffs and the Service.

6. This Court has the authority to review the Service's actions and/or inactions complained of herein and grant the relief requested pursuant to 16 U.S.C. § 1540(g), 28 U.S.C. § 2201, 28 U.S.C. § 2202, and 5 U.S.C. §§ 705 & 706.

7. Plaintiffs sent notice of their intent to sue the Service as required by the ESA. More than sixty days have elapsed since the Service received Plaintiffs' notice of intent to sue. Plaintiffs have exhausted any and all administrative remedies.

8. Venue is proper in this Court pursuant to 16 U.S.C. § 1540(g)(3)(A) and 28 U.S.C. § 1391(e). A substantial part of the events or omissions giving rise to Plaintiffs'

claims occurred in this District. Plaintiffs have offices in this District. Plaintiffs have members in this District.

9. This case is properly filed in the Tucson Division of this District pursuant to L.R. Civ. 77.1(a) because the Mexican gray wolf resides within the counties that comprise this Division, the Service conducts Mexican gray wolf management activities within the counties that comprise this Division, Plaintiffs maintain offices with staff in Tucson, Arizona, and Plaintiffs have members who reside and recreate within the counties that comprise this Division.

10. Plaintiffs have organizational standing to pursue this civil action. Plaintiffs satisfy the minimum requirements for Article III standing to pursue this civil action. Plaintiffs – including their members, supporters, and staff – have suffered and continue to suffer injuries to their interests in Mexican wolf conservation and recovery. These injuries are caused, in part, by the Service's revised 10(j) rule and related supplemental EIS and Section 10(a)(1)(A) permit. A favorable ruling from this Court will redress Plaintiffs' injuries. There is a present and actual controversy between the Parties.

PARTIES

11. Plaintiff, GRAND CANYON WOLF RECOVERY PROJECT, is a non-profit corporation founded in 2004, which is headquartered in Flagstaff, Arizona, and is dedicated to bringing back wolves to help restore ecological health in the Grand Canyon region.

12. Plaintiff, NEW MEXICO WILDERNESS ASSOCIATION ("NEW MEXICO WILD"), is a non-profit corporation founded in 1997, which is headquartered in Albuquerque, New Mexico, and is dedicated to the protection, restoration, and continued enjoyment of New Mexico's wildlands and wilderness areas.

13. Plaintiff, WILDLANDS NETWORK, is a non-profit corporation founded in 1991, which is headquartered in Salt Lake City, Utah, and is dedicated to reconnecting, restoring, and rewilding North America so that life, in all its diversity, can thrive.

14. Plaintiff, WILDEARTH GUARDIANS, is a non-profit corporation founded in 1989, which is headquartered in Santa Fe, New Mexico, and is dedicated to protecting and restoring the wildlife, wild places, wild rivers, and health of the American West.

15. Plaintiff, WESTERN WATERSHEDS PROJECT ("WWP"), is a non-profit corporation founded in 1993, which is headquartered in Idaho and has additional offices in Arizona, California, Colorado, Wyoming, Montana, Nevada, and Oregon, and is dedicated to protecting and conserving the public lands and natural resources across the American West.

16. Plaintiffs' members, staff, and supporters are dedicated to ensuring the long-term survival and recovery of the Mexican gray wolf throughout its historic range.

17. Plaintiffs' members, staff, and supporters live and recreate in or near areas occupied by Mexican gray wolves, the Mexican Wolf experimental population area,

and/or suitable Mexican gray wolf habitat outside of these areas for purposes of hiking, backpacking, camping, observing wildlife such as the Mexican gray wolf, bird watching, and other recreational and professional pursuits.

18. Plaintiffs' members, staff, and supporters enjoy observing, attempting to observe, and studying Mexican gray wolves in the wild, including signs of the Mexican gray wolf's presence in or near areas occupied by Mexican gray wolves, the experimental population area and/or suitable Mexican gray wolf habitat outside of these areas.

19. Plaintiffs' members, staff, and supporters derive aesthetic, recreational, scientific, inspirational, spiritual, educational, and other benefits from these activities and from working to protect and restore Mexican gray wolves in Arizona and New Mexico, as well as in suitable Mexican gray wolf habitat in Colorado and Utah. Plaintiffs' members, staff, and supporters have an interest in knowing that Mexican gray wolves are still present in Arizona and New Mexico. Plaintiffs' members, staff, and supporters also have an interest in ensuring the Service complies with the law, including the ESA, and only makes decisions – including adopting a new, revised 10(j) rule for management of the experimental population of Mexican wolves – that are well-informed and utilize the best available science on the threats to and recovery needs of the Mexican wolf.

20. The interests of Plaintiffs' members, staff, and supporters, as well as the organizational interests of Plaintiffs, have been, are being, and unless the requested relief is granted, will continue to be harmed by the Service's actions and/or inactions

challenged in this civil action. If this Court issues the relief requested, the harm to Plaintiffs' members, staff, and supporters' interests will be redressed and/or alleviated. If this Court issues the relief requested, the harm to Plaintiffs' organizational interests will be redressed and/or alleviated.

21. Defendant DEB HAALAND is sued in her official capacity as Secretary of the United States Department of the Interior. As Secretary, Ms. Haaland is the federal official with responsibility for all Service officials' inactions and/or actions, including those challenged in this complaint.

22. Defendant UNITED STATES DEPARTMENT OF THE INTERIOR is the federal agency responsible for applying and implementing the federal laws and regulations challenged in this complaint.

23. Defendant, the UNITED STATES FISH AND WILDLIFE SERVICE is an agency within the United States Department of the Interior that is responsible for applying and implementing the federal laws and regulations challenged in this complaint.

24. Defendant MARTHA WILLIAMS is sued in her official capacity as Director of the United States Fish and Wildlife Service. As Director, Ms. Williams is the federal official with responsibility for the Service officials' inactions and/or actions challenged in this complaint.

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BACKGROUND

The Mexican wolf

25. The Mexican gray wolf (*Canis lupus baileyi*) ("Mexican wolf") is a small subspecies of gray wolf that historically occurred in portions of the southwestern United States and northern Mexico.

26. Adult Mexican wolves weigh between 50 and 90 pounds and are about 5 to 6 feet in length. Mexican wolves are larger but similar in appearance to coyotes. Mexican wolves are typically a patchy black, brown to cinnamon, and cream color with primarily light underparts.

27. The basic life history of Mexican wolves is similar to that of other gray wolves. Mexican wolves are associated with montane woodlands characterized by sparsely forested terrain where ungulate prey are abundant. Elk, white-tailed deer and mule deer are believed to be the Mexican wolf's primary prey. Mexican wolves also prey

on rabbits and small rodents. Mexican wolves sometimes prey and scavenge on livestock.

28. Mexican wolves historically numbered in the thousands and were distributed across large portions of the Southwest, mostly in mountainous terrain that supports populations of deer and elk.

29. By the mid-1900s government and private eradication efforts effectively wiped out the native Mexican wolf population. By 1925, poisoning, hunting, and trapping efforts drastically reduced the Mexican wolf populations in all but a few remote areas of the southwestern United States.

30. By the 1970s, the Mexican wolf was likely extirpated from the United States. By the 1980s, the Mexican wolf was likely extirpated from Mexico.

31. Mexican wolves are the rarest subspecies of gray wolf in North America. Mexican wolves are one of the rarest mammals in the world.

The listing of Mexican wolves under the ESA

32. In 1975, the Service published a proposed rule to list the Mexican wolf (*Canis lupus baileyi*) as an endangered subspecies of gray wolf. 77 Fed. Reg. 17,590 (April 21, 1975). In the proposed rule, the Service said Mexican wolves were formerly "common in Arizona, New Mexico, southwestern Texas, and much of Mexico" but their numbers substantially declined due to "habitat loss and killing by man." *Id.*

33. In April, 1976, the Mexican wolf was listed as an endangered subspecies of gray wolf under the ESA. 41 Fed. Reg. 17736 (April 28, 1976). Mexican wolves were

listed as endangered in their entire range, which included Mexico and portions of the United States (Arizona, New Mexico, and Texas). *Id.* When the Mexican wolf was listed in 1976, no wild populations were known to remain in the United States or Mexico.

34. In 1977 a survey was conducted to determine the status and distribution of Mexican wolves in the wild. As a result of this effort, several individual Mexican wolves were captured in the wild in Mexico between 1977 and 1980 and these wolves became the basis of a captive breeding program overseen by the Service. All Mexican wolves in existence today are derived from seven individuals from three genetic lineages. Over half of the genetic diversity of these seven founding individuals has been lost.

35. In 1978, the Service reclassified the Mexican wolf and subsumed the subspecies into the larger species listing for gray wolves (*Canis lupus*). Under the 1978 listing, all gray wolves were listed as endangered in the contiguous United States and Mexico, with the exception of gray wolves in Minnesota which were listed as threatened (at the time, the Service considered gray wolves in Minnesota to be a listable entity under the ESA). 43 Fed. Reg. 9,607 (March 9, 1978).

36. The 1978 reclassification and gray wolf listing was made by the Service in order to address the Service's change in understanding about the gray wolf's taxonomy and based on the recognition that "individual wolves sometimes disperse across subspecies boundaries, resulting in intergradation of neighboring populations." 80 Fed. Reg. at 2,488. In the 1978 listing, the Service recognized the need to protect "unlisted subspecies" that "may occur in certain parts of the lower 48 States." 42 Fed. Reg. at

29,527. In the 1978 listing, the Service recognized the need to maintain and manage for individual biological subspecies of gray wolves, including Mexican wolves.

37. In 1980, all known Mexican wolves in existence were in captivity.

38. In 1982, the Service prepared a recovery plan for Mexican wolves. The 1982 Mexican wolf recovery plan did not contain recovery criteria because the status of the species at the time "was so dire that the recovery team could not foresee full recovery and eventual delisting." The 1982 recovery plan focused on the wolf's "immediate survival." The objective of the recovery plan was to start a captive breeding program with the hopes of reestablishing a viable, self-sustaining population of Mexican wolves in the wild.

39. In accordance with the 1982 Mexican wolf recovery plan, the Service initiated a captive-breeding program "with the capture of the last remaining Mexican wolves in the wild in Mexico and subsequent addition of wolves from captivity in Mexico and the United States." All Mexican wolves alive today descend from the seven founding wolves of the captive-breeding program.

40. In February, 1995 the Service engaged in intra-agency consultation on its plans to reintroduce Mexican wolves from the captive breeding program into the wild within the species' historic range in the southwestern United States.

41. In November, 1996, the Service prepared an environmental impact statement ("EIS") for its proposal to reintroduce Mexican wolves within its historic range in the southwestern United States. The preferred (and chosen) alternative in the

final EIS was to reintroduce a "non-essential experimental" population of Mexican wolves in the southwestern United States and establish an "experimental population area" for the releases.

The 1998 10(j) rule for the reintroduction of Mexican wolves into the wild

42. In 1998, the Service issued a final rule establishing a "non-essential" experimental population of Mexican wolves for reintroduction in Arizona and New Mexico pursuant to Section 10(j) of the ESA ("1998 10(j) rule"). 63 Fed. Reg. 1,752 (January 12, 1998).

43. The 1998 10(j) rule allow for the take of Mexican wolves under certain circumstances.

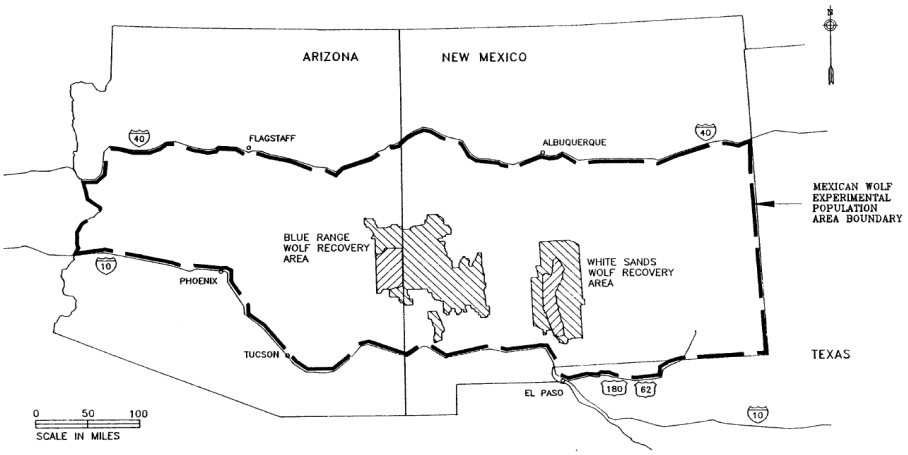
44. In the 1998 10(j) rule, the Service explained that Mexican wolves reintroduced into the wild qualified as "non-essential" experimental because it wanted more management flexibility and "less restrictive" rules on how the population could be managed. 63 Fed. Reg. at 1,754. The Service said management flexibility was needed in order to make "reintroduction compatible with current and planned human activities, such as livestock, grazing, and hunting" and in order to obtain needed "State, Tribal, local, and private cooperation." *Id.*

45. In the 1998 10(j) rule the Service said reintroduced Mexican wolves were deemed "non-essential" experimental (instead of "essential") because only "wolves surplus to the captive breeding program will be released" and "their loss would not jeopardize the continued survival of the subspecies." 63 Fed. Reg. at 1,756.

46. In 1998, the experimental population included roughly 11 wolves in the wild that were released from the captive breeding program. The 11 Mexican wolves in the wild in 1998 comprised 7 percent of all Mexican wolves in the world.

47. In the 1998 10(j) rule, the Service said "non-essential" status was needed to allow for management flexibility determined necessary for wolf recovery and that "essential" status was not "required by section 10(j) regulations" and was not used in the past for reintroductions of other species. 63 Fed. Reg. at 1,756.

48. The 1998 10(j) rule established an experimental population area in Arizona and New Mexico as depicted on this map in the final rule:



49. The purpose of establishing the experimental population area is to establish that any Mexican wolf reintroduced into this area is a member of the "non-essential" experimental population and subject to the provisions of the 1998 10(j) rule. Mexican wolves that travel outside the experimental population area are considered endangered species with full protections under the ESA.

50. In the 1998 10(j) rule, the Service said it would attempt to "promptly capture" Mexican wolves that leave the experimental population area and either "release it within the recovery area, put it into the captive population, or carry out any other management measure" authorized by the 1998 10(j) rule. The Service obtained a Section 10(a)(1)(A) permit under the ESA in order to capture Mexican wolves that leave the experimental population area.

51. In 2005, the Service published a five-year status review for its Mexican wolf reintroduction project.

52. In 2009, the Service received a formal petition to list the Mexican wolf as an endangered subspecies or as a distinct population segment ("DPS") in the United States and designate critical habitat for the subspecies.

53. In 2010, the Service published the Mexican wolf conservation assessment. The conservation assessment was produced in order to update the description and assessment of efforts to recover Mexican wolves and to describe the relevant literature on the subject.

54. In 2011, the Service convened a new Mexican wolf recovery team in order to revise and update the 1982 recovery plan.

55. The Service's 2011 Mexican wolf recovery team was comprised of the leading biologists on Mexican wolf recovery. The Mexican wolf recovery team determined that the long-term conservation and recovery of Mexican wolves in the wild will require roughly 750 individuals and the establishment of a meta-population of

several semi-disjunct but connected and viable subpopulations spanning the subspecies' historic range.

56. In November, 2011 the Service issued a Biological Opinion on the renewal of a Section 10(a)(1)(A) permit for the Mexican wolf recovery program.

57. In 2012, the Service's Mexican wolf recovery team prepared a draft, revised recovery plan for Mexican wolves.

58. In 2012, the Service completed a five-year status review for Mexican wolves. In the 2012 five-year review, the Service recommended that the current status of gray wolves (*Canis lupus*) be revised.

The reclassification of Mexican wolves as an endangered subspecies

59. In June, 2013, the Service published a proposed rule to re-classify Mexican wolves as an endangered subspecies.

60. By December, 2013 the experimental population of Mexican wolves in the wild was estimated to be roughly 83.

61. In November, 2014 the Service issued a Biological Opinion on proposed revisions to the 1998 10(j) rule, the issuance of a new Section 10(a)(1)(A) permit, and funding provided to the Mexican wolf recovery program.

62. In January, 2015, the Service issued a final rule reclassifying the Mexican wolf as a distinct subspecies of gray wolf. The revised 2015 listing removed the Mexican wolf from the broader gray wolf listing. The revised listing identified the Mexican wolf as a distinct subspecies qualifying for "endangered" status by itself.

63. In the January, 2015 final rule, the Service declined to list the Mexican wolf as a DPS. The Service said Mexican wolves qualify as a subspecies throughout its range. The Service determined that Mexican wolves qualified as an endangered subspecies throughout all of its range and that listing the entire subspecies means that "all members of the taxon are afforded the protections of the [ESA] regardless of where they are found." 80 Fed. Reg. at 2,510.

The 2015 10(j) rule

64. In 2015, the Service finalized a new experimental population rule for Mexican wolves under Section 10(j) of the ESA ("2015 10(j) rule").

65. The 2015 10(j) rule was necessitated by the Service's "related action" to reclassify Mexican wolves as an endangered subspecies. 80 Fed. Reg. at 2,512.

66. The Service prepared an EIS for the 2015 10(j) rule. The Service obtained a Section 10(a)(1)(A) permit for the 2015 10(j) rule in order to capture (take) Mexican wolves that travel outside the experimental population area (north of Interstate 40).

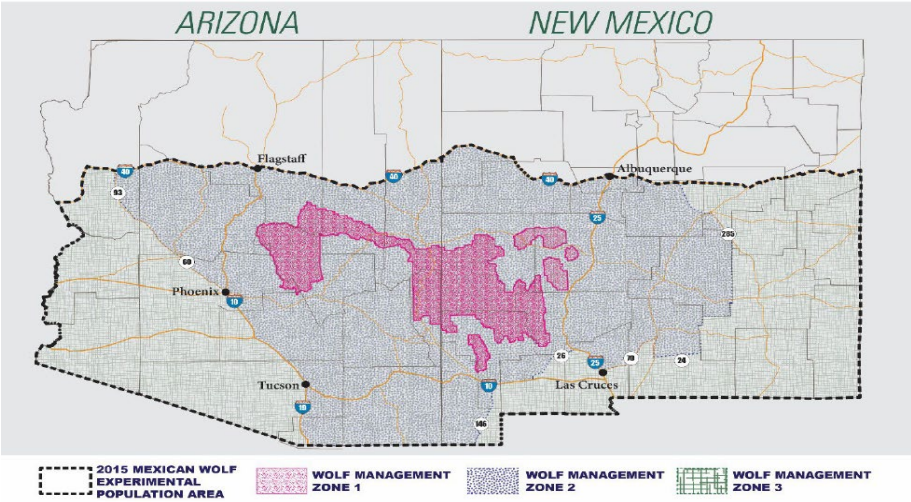
67. The Service engaged in formal, intra-agency consultation on the 2015 10(j) rule in accordance with Section 7 of the ESA. The Service obtained a Biological Opinion on the 2015 10(j) rule and related Section 10(a)(1)(A) permit. The Biological Opinion determined that the 2015 10(j) rule and related Section 10(a)(1)(A) permit was not likely to jeopardize the existence of Mexican wolves in the wild in the United States.

68. The 2015 10(j) rule determined that Mexican wolves released into the experimental population area should retain their status as "non-essential" experimental. In the 2015 10(j) rule, the Service said it will not reconsider the Mexican wolf's "non-essential" experimental status. The Service said nothing in the 2015 10(j) rule changes the Mexican wolf's status as "non-essential" experimental.

69. In 2015, there were 75 Mexican wolves in the wild which made up roughly 25 percent of all Mexican wolves in the world. The wild packs of these wolves in the wild had up to four generations of experience establishing territories and raising pups.

70. In the 2015 10(j) rule, the Service said the if the entire experimental population in the wild died it would not appreciably reduce the prospects for future survival of the subspecies in the wild because the captive population could produce more surplus wolves for reintroduction.

71. The 2015 10(j) rule expanded the boundary of the experimental population area. The experimental population area is defined at 50 C.F.R. § 17.84.(k)(3) and is depicted on the following map:



72. The 2015 10(j) rule prohibits Mexican wolves from traveling outside the experimental population area. The 2015 10(j) rule prohibits Mexican wolves from traveling north of Interstate-40. The 2015 10(j) rule prohibits Mexican wolves from traveling west into California. The 2015 10(j) rule prohibits Mexican wolves from traveling east into Texas. The 2015 10(j) rule prohibits Mexican wolves from traveling south into Mexico.

73. Mexican wolves in Mexico are outside the experimental population area. It is extremely difficult for Mexican wolves to travel south from the experimental population area into Mexico due to the international boundary and border wall and/or fencing.

74. In 2015, seven Mexican wolves (two-adults and five pups) were thought to exist in the wild in Mexico. In 2015, the Service said seven Mexican wolves in Mexico does not quality as a "population," which requires at least two breeding pairs that each successfully raise at least two young annually for two consecutive years.

75. The 2015 10(j) rule included a population objective. The 2015 10(j) rule capped the population at 300-325 wolves in the wild in the experimental population area, with a minimum of one to two effective migrants per generation entering the population. Mexican wolves in Mexico are not included in the population objective. Mexican wolves in Mexico are listed as an endangered species under the ESA.

76. The 2015 10(j) rule allows for the take of Mexican wolves in the experimental population area under certain circumstances. Mexican wolves in the

captive breeding program are not considered to be part of the experimental population (until they are released into the wild). Mexican wolves in the captive breeding program are listed as endangered species under the ESA.

77. In 2018, in *Center for Biological Diversity v. Jewell*, 2018 WL 1586651 (D. Ariz., Mar. 31, 2018), this Court held that the Service's 2015 10(j) rule violated the ESA because it failed to further the conservation of Mexican wolves in the wild.

78. In *Center for Biological Diversity*, this Court held that the 2015 10(j) rule only provided for the short-term survival of the subspecies and failed to further the long-term recovery of the Mexican wolf in the wild. In *Center for Biological Diversity*, this Court held that the Service's determination that Mexican wolves reintroduced into the wild qualify as "non-essential" experimental status was arbitrary and capricious. In *Center for Biological Diversity*, this Court remanded the 2015 10(j) rule back to the Service with instruction to prepare a new, revised 10(j) rule that complies with the ESA.

The revised 2022 10(j) rule

79. In June, 2022 the Service's Mexican wolf recovery program sent a letter and a biological assessment to the Service (New Mexico Ecological Services Field Office) requesting informal consultation for planned revisions to the 2015 10(j) rule.

80. The Service's June, 2022 letter and biological assessment only sought consultation on aspects of the 2015 10(j) rule that the agency planned to revise in response to this Court's 2018 order in *Center for Biological Diversity*. The Service said

that features of the 2015 10(j) rule that are not under revision were not consulted on (because they were already considered in the 2014 biological opinion).

81. The Service's June, 2022 biological assessment stated that many features of the existing 2015 10(j) rule "are not under revision" and will be maintained as established by the 2015 10(j) rule. The Service said the biological assessment is "narrow in scope" due to the "narrow scope of the proposed action." The Service said it would not "re-consult" on features included in the 2015 10(j) rule that are not under revision and "were already considered" in the 2014 consultation and biological opinion. The Service said the biological assessment does not include the issuance of a Section 10(a)(1)(A) permit as part of the proposed action and that it would consult on that permit separately.

82. In July, 2022 the Service published a new, revised 10(j) rule (hereinafter "revised 10(j) rule"). In July, 2022 the Service published a final supplemental EIS for the revised 10(j) rule. In July, 2022, the Service stated that it obtained a new Section 10(a)(1)(A) permit for the revised 10(j) rule. However, the Service is currently operating under the Section 10(a)(1)(A) permit issued for the 2015 10(j) rule.

83. The revised 10(j) rule maintains the same experimental population area as the 2015 10(j) rule.

84. The revised 10(j) rule maintains the same prohibitions on the travel of Mexican wolves outside the experimental population area as the 2015 10(j) rule.

85. The revised 10(j) rule prohibits Mexican wolves from traveling north of Interstate 40. Mexican wolves that travel north of Interstate 40 will be captured and removed.

86. The revised10(j) rule modified the 2015 10(j) rule's population objective for Mexican wolves in the wild. The revised 10(j) rule establishes a population objective of an average of at least 320 Mexican wolves in the wild in the United States. The rule states: "based on end-of-year counts, [the Service] will manage to achieve and sustain a population average greater than or equal to 320 wolves in Arizona and New Mexico. This average must be achieved over an 8-year period, the population must exceed 320 Mexican wolves each of the last 3 years of the 8-year period, and the annual growth rate averaged over the 8-year period must demonstrate a stable or increasing population, as calculated by a geometric mean." 87 Fed. Reg. 39,373.

87. The revised10(j) rule modified the number of releases of captive Mexican wolves to the wild. The revised 10(j) rule establishes a genetic objective for the experimental population. The revised 10(j) rule states: the Service "and designated agencies will conduct a sufficient number of releases into the [experimental population area] from captivity to result in at least 22 released Mexican wolves surviving to breeding age." 87 Fed. Reg. 39,373.

88. The revised10(j) rule modified the provision for take of Mexican wolves on non-Federal land. The revised10(j) rule modified the provision for take of Mexican

wolves on Federal land. The revised10(j) rule modified the provision for take of Mexican wolves in response to allegedly unacceptable impacts to wild ungulates.

89. The revised 10(j) rule states that take of Mexican wolves on Federal and non-Federal land and in response to unacceptable impacts of wild ungulates will only be allowed on a conditional, annual basis according to certain provisions and benchmarks that pertain to the minimum number of wolves released into the wild.

90. The revised10(j) rule re-examined whether to designate Mexican wolves released into the experimental population area "essential" or "nonessential."

91. The revised 10(j) rule designated Mexican wolves in the experimental population area as a "nonessential" experimental population. The Service said Mexican wolves released into the experimental population area are "not essential under [50 C.F.R.] § 17.81(c)(2)." 87 Fed. Reg. at 39,372.

92. As part of the revised 10(j) rule, the Service developed a Section 10(a)(1)(A) permit that allows for certain activities with Mexican wolves to occur both inside and outside of the experimental population area. The Service said that if Mexican wolves travel outside the experimental population area, it intends to capture and return them to the experimental population area or place them in captivity. 87 Fed. Reg. 39,353.

FIRST CAUSE OF ACTION
(Violation of ESA – arbitrary "nonessential" determination)

93. Plaintiffs incorporate all preceding paragraphs.

94. Section 10(j) of the ESA allows for the release of an "experimental population" of an endangered species or a threatened species if the Secretary

determines that such release will further the conservation of such species. 16 U.S.C. § 1539(j)(2)(A).

95. Under Section 10(j) of the ESA, an "'experimental population" means any population (including any offspring arising solely therefrom) authorized for release, but only when and at such times as, the population is wholly separate geographically from non-experimental populations of the same species. 16 U.S.C. § 1539(j)(1). Experimental populations are generally treated as "threatened" species under the ESA. 16 U.S.C. § 1539(j)(2)(C). Threatened status under the ESA gives the Service substantial flexibility to craft a special management rule under Section 4(d) of the ESA for management of the species.

96. Before authorizing the release of an experimental population under Section 10(j) the Service is required to identify the population and determine, solely on the basis of the best available information, whether or not such experimental population is "essential" to the continued existence of an endangered species or a threatened species. 16 U.S.C. § 1539(j)(2)(B).

97. Under the ESA, experimental populations that are "not essential" to the continued existence of the species are treated as a species proposed for listing (unless within a National Wildlife Refuge or with the National Park System) and do not qualify for critical habitat designation. 16 U.S.C. § 1539(j)(2)(C).

98. Under the ESA, an "essential" experimental population means a population whose "loss would be likely to appreciably reduce the likelihood of the survival of the

species in the wild. All other experimental populations are to be classified as nonessential." 50 C.F.R. § 17.80(b).

99. Under the ESA, an essentiality finding under Section 10(j) of the ESA must be "based solely on the best scientific and commercial data available" and be based on a "supporting factual basis." 50 C.F.R. § 17.80(c)(2).

100. In the revised 10(j) rule the Service determined that the experimental population of Mexican wolves in the wild in the United States which includes roughly 200 wolves is "not essential" to the continued existence of Mexican wolves in the wild.

101. In the revised 10(j) rule, the Service justified its "nonessential" determination for Mexican wolves on the grounds that if the entire population of Mexican wolves in the wild was lost, it would be able to rely on the captive breeding program for additional releases. The Service said this was an "important factor" in its non-essentiality finding. 87 Fed. Reg. at 39,353.

102. The best available science reveals the experimental population of roughly 200 Mexican wolves in the wild in the United States are essential to the continued existence of Mexican wolves in the wild.

103. The best available science reveals the experimental population of roughly 200 Mexican wolves in the wild are uniquely adapted to living in the wild. The experimental population of roughly 200 Mexican wolves in the wild have genetic variation and more adapted genotypes that, if lost, would appreciably reduce the likelihood of the subspecies survival in the wild. The experimental population of 200

Mexican wolves in the southwestern United States are the only experimental population of Mexican wolves. The experimental population of roughly 200 Mexican wolves is the only population in the wild in the United States.

104. The captive breeding population includes roughly 387 Mexican wolves. The Service said that as of 2021 it had 387 wolves in the captive breeding program at 62 facilities. The Service does not state or know how many of the 387 wolves in captivity are capable of being released into the wild. In 2021, there were roughly 200 Mexican wolves in the wild in the United States.

105. The captive breeding program for Mexican wolves is unable to replace the experimental population of roughly 200 Mexican wolves in the wild. The captive breeding population of Mexican wolves is aging and has lost much of its genetic diversity. The Service never studied or analyzed or evaluated whether the captive breeding program of Mexican wolves could replace the experimental population of roughly 200 Mexican wolves in the wild. There is not a single scientific study or paper or data supporting the Service's conclusion that the captive breeding program could replace the experimental population of roughly 200 Mexican wolves in the wild. The Service has never undertaken a scientific analysis of whether Mexican wolves in the captive breeding program are able to replace the experimental population of roughly 200 Mexican wolves in the wild. The Service has not requested the Species Survival Plan ("SSP") undertake a scientific analysis of whether Mexican wolves in the captive breeding program are able to replace the experimental population of roughly 200

Mexican wolves in the wild. The Founder Genome Equivalent ("FGE") of Mexican wolves in the captive breeding program is 2.89. Under the ESA, the Service cannot rely on Mexican wolves in the captive breeding program (or zoos) to comply with the ESA's substantive protections.

106. The Service's determination that the experimental population of roughly 200 Mexican wolves are "not essential" to the continued existence of Mexican wolves in the wild was based on non-biological and political factors.

107. In the revised 10(j) rule, the Service said an additional rationale for its "non-essential" determination is the existence of a second population of Mexican wolves that has been established in Mexico. The Service said "around 45 wolves" exist in the wild in Mexico.

108. The Service's determination that the experimental population of roughly 200 Mexican wolves are "not essential" to the continued existence of Mexican wolves in the wild is based on the existence of a small, isolated population of Mexican wolves in Mexico.

109. The Service stated that the isolated population of Mexican wolves in Mexico is not viable. Mexican wolves in Mexico are not protected under the ESA. The Service has no management or regulatory authority over Mexican wolves in Mexico. Mexican wolves in Mexico cannot replace the experimental population in the United States. The ESA's prohibition on take only applies to listed species in the United States. The Service said Mexican wolves have "Federal legal protection" from the Mexican

government. 87 Fed. Reg. at 39,352. The Service assumes the Mexican wolf population in Mexico is "protected" by the Mexican government. There are no surveys of the number of wolves in the wild in Mexico. The population of Mexican wolves in Mexico has low genetic variation. The population of Mexican wolves in Mexico is isolated and in a completely separate jurisdiction. The population of Mexican wolves in Mexico cannot be considered an additional population for recovery purposes. The Service never studied or analyzed or evaluated whether the isolated population of Mexican wolves in Mexico is viable over the long-term. The best available science reveals the isolated population of Mexican wolves in Mexico is unlikely to survive over the long-term.

110. The Service's determination that the experimental population of roughly 200 Mexican wolves in the United States is "not essential" to the continued existence of the species in the wild "is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law." 5 U.S.C. § 706(2)(A).

SECOND CAUSE OF ACTION
(Violation of ESA – failure to conserve)

111. Plaintiffs incorporate all preceding paragraphs.

112. Section 10(j) of the ESA allows "the release … of any population … of an endangered species or a threatened species if the Secretary determines that such release will further the conservation of such species." 16 U.S.C. § 1539(j)(2)(A). The ESA defines "conservation" as "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 chapter are no longer necessary." 16 U.S.C. § 1532(3).

113. The Service's revised 10(j) rule fails to further the conservation of Mexican wolves in the wild.

114. The revised 10(j) rule includes a population objective of only 320 Mexican wolves in the wild in the experimental population area. The best available science reveals a connected metapopulation of at least 750 Mexican wolves is required in order to ensure the long-term conservation of Mexican wolves in the wild in the United States.

115. The revised 10(j) rule includes a genetic objective of 22 released wolves surviving to breeding age. The genetic objective in the revised 10(j) rule does not require breeding. The genetic objective in the revised 10(j) rule only requires a certain number of releases into the wild. The genetic objective does not measure effective migration. The genetic objective does not include any genetic metrics. The genetic objective does not measure FGE. The genetic objective does not measure gene diversity. The genetic objective does not measure mean inbreeding. The genetic objective does not measure population mean kinship. The genetic objective in the revised 10(j) rule only measures the Service's effort in attempting to improve the genetic diversity of the wild population and does not measure the results of that effort. The best available science reveals the genetic objective will not ensure the genetic threats to Mexican wolves are addressed, which is needed to further the long-term conservation of the

subspecies. The revised 10(j) rule fails to include a genetic metric to ensure the genetic objective is met. The genetic objective in the revised 10(j) rule fails to further the conservation needs of the species.

116. The revised 10(j) rule places a temporary restriction on three forms of regulated take – take on non-Federal land, take on Federal land, and take in response to allegedly unacceptable impacts to wild ungulate populations – until the rule's genetic objective is met. The best available science reveals these restrictions will not further the conservation of Mexican wolves in the wild. These three restrictions on take are only temporary and may be lifted well before delisting criteria are met. These three restrictions do not address the removal of Mexican wolves from the wild in response to conflicts with livestock and illegal killings which are the leading threat facing the species' recovery in the wild. These temporary restrictions on take fail to further the conservation needs of the species.

117. The revised 10(j) rule maintains the same geographic boundaries of the experimental population area and restrictions on movement outside the geographic boundaries as the 2015 10(j) rule. The revised 10(j) rule prohibits Mexican wolf movement and dispersal north of Interstate 40. The revised 10(j) rule states that any Mexican wolf that naturally roams north of Interstate 40 in Arizona and New Mexico will be captured and returned to the experimental population area or placed in captivity. The geographic boundaries of the 10(j) rule also prevent the intentional translocation or introduction of wolves into suitable habitat north of Interstate 40.

118. The best available science reveals that prohibiting Mexican wolf movement and dispersal outside the experimental population area, including north of Interstate-40, will not further the conservation of the subspecies in the wild. The best available science says that Mexican wolves need to establish satellite populations in suitable habitat north of Interstate 40. The revised 10(j)'s prohibition on Mexican wolf dispersal and movement outside the experimental population area and north of Interstate 40 fails to further the conservation of the subspecies.

119. The Service's adoption of a revised 10(j) rule that fails to further the conservation needs of Mexican wolves in the wild and is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" and/or constitutes "agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. §§ 706 (2)(A), 706 (1).

THIRD CAUSE OF ACTION
(Violation of ESA – failure to utilize best available science)

120. Plaintiffs incorporate all preceding paragraphs.

121. Pursuant to the ESA, the Service's implementing regulations, and Service policy, the Service's revised 10(j) rule for the Mexican wolf must be based solely on the best scientific and commercial data available ("best available science"). 16 U.S.C. § 1536(a)(2); 16 U.S.C. § 1539(j)(2)(B); 50 C.F.R. § 17.81(c)(2); 50 C.F.R. § 402.14(d).

122. The revised 10(j) rule does not utilize the best available science. The revised 10(j) rule's nonessential determination, population objective, genetic objective, temporary restrictions on take, geographic boundary restrictions (including prohibition

on travel north of Interstate 40) conflict with the best available science on the threats to and conservation needs of Mexican wolves in the wild.

123. The Service's failure to utilize the best available science when adopting the revised 10(j) rule is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" and/or constitutes "agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. §§ 706 (2)(A), 706 (1).

FOURTH CAUSE OF ACTION
(Violation of ESA – Section 7 consultation)

124. Plaintiffs incorporate all preceding paragraphs.

125. Section 7 of the ESA requires the Service to engage in intra-agency consultation on how its proposed action(s) – here, the Service's revised 10(j) rule and related Section 10(a)(1)(A) permit – may affect listed species, including Mexican wolves. 16 U.S.C. § 1536(a)(2). Section 7 of the ESA requires the Service to conference on all species proposed for listing under the ESA. 16 U.S.C. § 1536(a)(4.)

126. Under Section 7 of the ESA, the Service must ensure that its revised 10(j) rule, including the revised rule's "nonessential" determination (which allows the Service to forgo critical habitat designation and Section 7 consultation in most situations), take provisions, population objective, genetic objective, and prohibitions on dispersal outside the experimental population area (including north of Interstate 40), as well as the Service's related Section 10(a)(1)(A) permit, is not likely to jeopardize the continued existence of Mexican wolves in the wild. 16 U.S.C. § 1536(a)(2). Section 7 of the ESA imposes a substantive duty on the Service to ensure the revised 10(j) rule and related

Section 10(a)(1)(A) permit does not jeopardize the continued existence of Mexican wolves. *Id.*

127. Under Section 7 of the ESA, if the Service's revised 10(j) rule and related Section 10(a)(1)A) permit may adversely affect Mexican wolves, then the Service must prepare a biological opinion to determine whether the action is likely to jeopardize the continued existence of the listed species. 16 U.S.C. § 1536(b)(3); 50 C.F.R. § 402.14. A biological opinion must be based solely on the best available science and carefully review and analyze the environmental baseline, the effects of the action, and the cumulative effects of the action. 50 C.F.R. § 402.14.

128. Under Section 7 of the ESA, if the Service issues a "no jeopardy" finding in its biological opinion, it must specify reasonable and prudent measures, and terms and conditions, to minimize the impact of any incidental take resulting from the action. 50 C.F.R. § 402.14. The Service must also specify the amount or extent, and effects, of any incidental take that is anticipated by the proposed action. *Id.*

129. In November, 2014 the Service prepared a biological opinion (and conference opinion) for the 2015 10(j) rule and related Section 10(a)(1)(A) permit. The 2014 biological opinion was prepared for the Service's revisions to Mexican wolf management included in 2015 10(j) rule, the issuance of a new Section 10(a)(1)(A) permit to take Mexican wolves (both inside the experimental population area and outside it), and funding to implement the Mexican wolf activities in the experimental

population area. The Service's 2014 biological opinion concluded that the proposed actions were not likely to jeopardize the continued existence of Mexican wolves.

130. In June, 2022, the Service reinitiated Section 7 consultation for the revised 10(j) rule. The Service prepared a biological assessment which it said was "narrow in scope" and only addressed revisions made to the 2015 10(j) rule, including: (1) a modification of the population objective; (2) a modification of the genetic objective; and (3) a temporary restriction on the issuance of take permits (under various scenarios). The Service said all other features of the 2015 10(j) rule will remain and are not under revision such that the agency will continue to rely on the 2014 biological opinion (issued for the 2015 10(j) rule and related Section 10(a)(1)(A) permit).

131. The 2014 biological opinion's "no jeopardy" finding for Mexican wolves (both inside and outside the experimental population area) failed to utilize the best available science on threats to and the long-term conservation needs of Mexican wolves. The 2014 biological opinion failed to properly define and analyze all aspects of the "proposed action" or "action area" for the 10(j) rule. The 2014 biological opinion never evaluated how the non-essential experimental designation may affect Mexican wolves or Mexican wolf recovery. The 2014 biological opinion failed to properly define and evaluate the environmental baseline. The 2014 biological opinion failed to properly define and evaluate all effects of the action, including the prohibition on dispersal and movement outside the experimental population area and north of Interstate 40 and the capture and removal of Mexican wolves in this area. The 2014 biological opinion failed

to properly define and evaluate the cumulative effects of the proposed action. The 2014 biological opinion failed to utilize the best available science on Mexican wolf threats and needs for long-term survival and recovery in the wild.

132. The Service's decision to rely on the 2014 biological opinion when consulting on the revised 10(j) rule and related Section 10(a)(1)(A) permit is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" and/or constitutes "agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. §§ 706 (2)(A), 706 (1).

133. The Service's failure to comply with Section 7 of the ESA when consulting on the revised 10(j) rule and related Section 10(a)(1)(A) permit is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" and/or constitutes "agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. §§ 706 (2)(A), 706 (1).

FIFTH CAUSE OF ACTION
(Violation of NEPA – effects)

134. Plaintiffs incorporate all preceding paragraphs.

135. NEPA requires the Service to adequately disclose, consider, and analyze the direct and indirect effects and cumulative impacts of its revised 10(j) rule and related Section 10(a)(1)(A) permit. 42 U.S.C. §§ 4332(2)(C)(i)–(v); 40 C.F.R. §§ 1502.14(a), 1502.16, 1508.7, 1508.8, 1508.14. Direct effects are caused by the action and occur at the same time and place. 40 C.F.R. § 1508.8. Indirect effects are caused by the action and occur later in time or farther removed in distance, but are

reasonably foreseeable. *Id.* Cumulative impacts are the impacts on the environment that result "from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions." 40 C.F.R. § 1508.7.

136. The Service's supplemental EIS for the revised 10(j) rule fails to take a hard look at the direct, indirect, and/or cumulative impacts of the rule on the subspecies' survival and long-term conservation (recovery). The Service failed to take a hard look at the direct, indirect, and/or cumulative impacts of the Service's "experimental, nonessential" determination for Mexican wolves in the experimental population area. The Service failed to take a hard look at the direct, indirect, and/or cumulative impacts of the population objective of 320 Mexican wolves in the wild. The Service failed to take a hard look at the direct, indirect, and/or cumulative impacts of the genetic objective of 22 released Mexican wolves surviving until breeding age. The Service failed to take a hard look at the direct, indirect, and/or cumulative impacts of the temporary restrictions on three regulated forms of take – take on non-Federal land, take on Federal land, and take in response to allegedly unacceptable impacts to a wild ungulate herd. The Service failed to take a hard look at the direct, indirect, and/or cumulative impacts of the prohibiting Mexican wolf movement and dispersal outside the experimental population area, including north of Interstate 40.

137. The Service's failure to take a hard look at the direct, indirect, and/or cumulative impacts of the revised 10(j) rule is "arbitrary, capricious, an abuse of

discretion, or otherwise not in accordance with law" and/or constitutes "agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. §§ 706(2)(A), 706(1).

SIXTH CAUSE OF ACTION
(Violation of NEPA – alternatives)

138. Plaintiffs incorporate all preceding paragraphs.

139. NEPA requires agencies consider and evaluate a reasonable range of alternatives in an EIS. 42 U.S.C. § 4332(C)(iii). The Service must rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated. 40 C.F.R. § 1502.14(a).

140. The Service's supplemental EIS for the revised 10(j) rule failed to consider and evaluate several viable and reasonable alternatives that would have met the purpose and need for the proposed action (revising the 10(j) rule to further the conservation of Mexican wolves in the wild). The Service's supplemental EIS for the revised 10(j) rule narrowly defined the purpose and need and included limiting criteria to eliminate reasonable alternatives from consideration.

141. In the supplemental EIS for the revised 10(j) rule, the Service failed to consider and evaluate (or eliminated from further consideration) a reasonable alternative that would have modified the northern Interstate 40 boundary for the experimental population area and/or the prohibition on Mexican wolf dispersal and movement outside this boundary.

142. In the supplemental EIS for the revised 10(j) rule, the Service failed to consider and evaluate (or eliminated from further consideration) a reasonable alternative that includes no take/removal provisions for natural wolf predation on wildlife, including elk/deer; an alternative that allows for take only in cases where a wolf has threatened human safety; an alternative that does not allow for take for wolf predation on livestock on public lands while the permittee/agent is not present and aware of wolf presence; and an alternative that includes a provision, to the extent feasible, that allows for replacement of wolves unlawfully killed in the wild.

143. In the supplemental EIS for the revised 10(j) rule, the Service failed to consider and evaluate (or eliminated from further consideration) a reasonable alternative that considers designation of Mexican wolves in the experimental population as "experimental, essential."

144. The Service's failure to consider and evaluate a reasonable range of alternatives is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" and/or constitutes "agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. §§ 706(2)(A), 706(1).

REQUEST FOR RELIEF

Plaintiffs request this Court:

A. Declare that the Service's revised 10(j) rule and related supplemental EIS and Section 10(a)(1)(A) permit violate the law as described above;

B. Set aside and remand the challenged portions of the Service's revised 10(j) rule and related supplemental EIS and Section 10(a)(1)A) permit for further analysis and action consistent with the law and this Court's memorandum opinion and order;

C. Issue such other relief, including injunctive relief, as Plaintiffs may subsequently request;

D. Retain continuing jurisdiction of this matter until the Service fully remedies the violations of law described in this complaint;

E. Award Plaintiffs their costs, attorneys' fees, and other expenses pursuant to the ESA, 16 U.S.C. § 1540(g), and/or the Equal Access to Justice Act, 28 U.S.C. § 2412;

F. Grant Plaintiffs such other and further relief as this Court deems just and equitable.

Respectfully submitted this 3rd day of October, 2022.

/s/ Matthew K. Bishop
Matthew K. Bishop
applicant for pro hac vice

/s/ Kelly E. Nokes
Kelly E. Nokes
applicant for pro hac vice

Attorneys for Plaintiffs