

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION

NO. 2:20-CV-00075-BO

RED WOLF COALITION,)
DEFENDERS OF WILDLIFE, and)
ANIMAL WELFARE INSTITUTE,)
)
Plaintiffs,)
)
v.)
)
THE UNITED STATES FISH AND)
WILDLIFE SERVICE; AURELIA)
SKIPWITH, in her official capacity as Director)
of the United States Fish and Wildlife Service;)
LEOPOLDO MIRANDA, in his official)
capacity as Regional Director of the United)
States Fish and Wildlife Service Southeast)
Region,)
)
Defendants.)

**PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

[Fed. R. Civ. P. 65]

Pursuant to Rule 65 of the Federal Rules of Civil Procedure, Plaintiffs Red Wolf Coalition, Defenders of Wildlife, and Animal Welfare Institute (collectively, “Conservation Groups”), hereby move this Court for a preliminary injunction requiring the United States Fish and Wildlife Service (“USFWS” or “Service”), USFWS Director Aurelia Skipwith, and USFWS Southeast Regional Director Leopoldo Miranda (collectively, “Defendants”), to periodically release red wolves in the Red Wolf Recovery Area until such time as the Court issues a ruling on the merits of this case.

Defendants have allowed the wild population of red wolves in North Carolina to fall to only seven known animals—a 70% decrease from when this Court found Defendants to be in

violation of the Endangered Species Act two years ago. Since that time, Defendants have adopted and implemented policies that further entrench themselves into knowingly managing for the extinction of the red wolf in the wild. While Defendants have repeatedly acknowledged that the wild population will soon be extirpated without intervention to improve its vital rates—through captive releases and adaptive management of coyotes in the Red Wolf Recovery Area—they have instead bound themselves to a policy prohibiting captive releases, and have failed to reinstate adaptive management.

As set out more fully in the accompanying Memorandum in Support of Plaintiffs’ Motion for Preliminary Injunction, the Conservation Groups meet the standard for preliminary injunctive relief. The Conservation Groups are likely to prevail on the merits of their claims because Defendants’ actions prohibiting the release of captive wolves into the Red Wolf Recovery Area and ceasing to manage for the threat of coyote hybridization are likely to jeopardize the continued existence of the red wolf in the wild, and do not constitute a program for the conservation of the red wolf. Defendants’ actions violate the Endangered Species Act, which requires the Service to ensure that its actions “are not likely to jeopardize the continued existence of” a threatened species, 16 U.S.C. § 1536(a)(2), and to “carry[] out programs for the conservation” of the red wolf. 16 U.S.C. § 1536(a)(1). Furthermore, Defendants have failed to provide a reasoned explanation for their new policy prohibiting the release of captive red wolves into the Red Wolf Recovery Area, which is directly contrary to nearly 30 years of consistent agency practice. The policy is arbitrary and capricious and should therefore be set aside under the Administrative Procedure Act, 5 U.S.C. § 706(2).

Absent an order from this Court temporarily enjoining Defendants’ policy barring the release of captive wolves into the Red Wolf Recovery Area and requiring Defendants to resume

the release of captive red wolves into the Red Wolf Recovery Area, Conservation Groups and their members' interests in viewing and otherwise appreciating red wolves in the wild in North Carolina will suffer irreparable harm. Currently, only seven known wolves remain in the wild, and there has been no reproduction in the wild for the past two years. Maintaining the only wild population of red wolves in the world while this Court has an opportunity to rule on the merits of this case is in the public interest and would not harm Defendants in anyway.

Plaintiffs' requested injunction is narrowly tailored to reinstate the same conduct in which Defendants were previously engaged before the current illegal pattern of conduct came to pass. *See Dominion Video Satellite, Inc. v. EchoStar Satellite Corp.*, 427 F.3d 1253, 1260 (10th Cir. 2005) (finding an injunction to be prohibitory, rather than mandatory, "where the court does not compel the nonmoving party to do something that it was not already doing during the last uncontested period preceding the injunction"). Specifically, the Service released 4 pairs of captive wolves at the initiation of the Alligator River reintroduction program, and the captive population provided for the release of a total of 42 wolves during the first five years of the program. Furthermore, the Service released captive wolves on a regular basis from 1987-2014, and a scientific analysis commissioned by the Service found that regular releases of wolves from captivity were necessary to support the wild population and would not harm the captive population.

The issuance of an injunction reinstating these proven conservation measures to prevent the red wolf from imminently disappearing from the landscape is "necessary both to protect against irreparable harm *in a deteriorating circumstance created by the defendant* and to preserve the court's ability to enter ultimate relief on the merits of the same kind." *In re Microsoft Corp. Antitrust Litig.*, 333 F.3d 517, 526 (4th Cir. 2003) (emphasis added).

Therefore, the Conservation Groups respectfully request that the Court issue preliminary injunctive relief enjoining Defendants' policy prohibiting the release of captive red wolves into the Red Wolf Recovery Area, and ordering Defendants to resume the release of red wolves from the captive population into the Red Wolf Recovery Area in order to provide for the conservation of the red wolf in the wild in northeastern North Carolina. Based on the best available science, and the Service's own analysis and past practice, the Court should order Defendants to:

- 1) Within 30 days, present this Court with a plan to complete the following tasks:
 - a) with the advice and consent of the Red Wolf Species Survival Program, resume the release of captive red wolves into the Red Wolf Recovery Area by releasing at least two pairs of captive red wolves, no later than May 31, 2021, AND release at least four additional captive red wolves, or two pairs, before December 31, 2021; and
 - b) each year thereafter until a final order is issued in this matter, release at least four wolves from the captive population into the Red Wolf Recovery Area; and;
- 2) Every six months from the date of this Order until a final decision on the merits is issued in this matter, submit to the Court a status report documenting:
 - a) the number of red wolves in the Red Wolf Recovery Area, including pups born in the wild;
 - b) the number of red wolves released by USFWS into the Red Wolf Recovery Area and from what source;
 - c) the number of red wolf deaths in the Red Wolf Recovery Area and their sources;
 - d) the number of coyote sterilizations conducted by USFWS in the Red Wolf Recovery Area;

- e) the number of sterilized placeholder coyotes in the Red Wolf Recovery Area; and
- f) USFWS red wolf adaptive management plans and activities in the Red Wolf Recovery Area.

In the alternative, the Conservation Groups request that the Court enjoin Defendants from enforcing their prohibition on the release of captive red wolves into the Red Wolf Recovery Area, and order Defendants to resume releasing captive red wolves into the Red Wolf Recovery Area, at a rate to be determined by a Special Master appointed by this Court.

Respectfully submitted, this the 19th day of November, 2020.

/s/ Ramona H. McGee
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CERTIFICATE OF SERVICE

I hereby certify that on November 19, 2020, I electronically filed the foregoing **PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION** with the Clerk of the Court using the CM/ECF system.

I hereby certify that I have mailed the document to the following non-CM/ECF participants via certified mail:

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I hereby certify that I have caused the United States Attorney for the Eastern District of North Carolina to be served via hand delivery at the following address:

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Respectfully Submitted,

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