

# Exhibit 1

(Civ. No. 03-677 (RMU))

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

THE FUND FOR ANIMALS, et al., )

AND )

FERN BENSON, )  
603 Orange Street, )  
Chico, CA 95928, )

RICHARD CLAPP, )  
46 Outpost Lane, )  
Hilton Head Island, SC 29928, )

SUSAN ELLER, )  
5624 Rock Wren Court, )  
Elk Grove, CA 95758, )

Civ. No. 03-677 (RMU)

BEAU GAST, )  
12535 Ed Core Road, )  
Folsom, LA 70437, )

DEBBIE GENRY, )  
125 Highway 253, )  
Montevallo, AL 35115 , )

ANNE SPEAKMAN, )  
455 Highway 253, )  
Montevallo, AL 35115, )

PAMELA WALKER, )  
6733 South 52nd Street, )  
Omaha, NE 68117, )

Plaintiffs, )

v. )

DALE HALL, et al., )

Defendants. )

SUPPLEMENTAL COMPLAINT

1. This Supplemental Complaint challenges three regulations issued by the U.S. Fish and Wildlife Service (“FWS”) that initiate or expand hunting opportunities at 29 National Wildlife Refuges (“Refuges”) throughout the country. In making its decisions to initiate or expand sport hunting at these Refuges – without analyzing or disclosing the cumulative environmental impacts of these decisions, and despite the fact that the FWS’s own documents state that sport hunting has well documented adverse effects on migratory bird populations, endangered species and other wildlife, fragile Refuge habitats, and Refuge visitors – the FWS has violated the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321, et seq., and the Administrative Procedure Act (“APA”), 5 U.S.C. § 706.

#### **Jurisdiction**

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 706.

#### **Parties**

3. The parties to this Supplemental Complaint include the parties to the original Complaint in this action, and therefore paragraphs 3-70 of the Complaint are hereby incorporated by reference.

4. In addition, plaintiff The Fund for Animals (“the Fund”), on its own behalf and on behalf of its members and supporters, continues to invest considerable organizational resources in the protection of wildlife in the National Wildlife Refuge System. This includes the Fund’s submission of comments on numerous FWS actions within National Wildlife Refuges, including decisions to authorize the sport hunting of migratory birds, upland game, and big game. The Fund also continues to engage in extensive public education and advocacy on behalf of Refuge wildlife.

5. By opening Refuges to hunting without adequately considering and disclosing the environmental impacts of the resulting hunting activity and public use, defendants have deprived the Fund and its members and supporters of their procedural rights, under NEPA, to an Environmental Impact Statement (“EIS”) that fully discloses the effects of, and alternatives to, the defendants’ actions. Defendants have also deprived the Fund of the information that would be developed through an adequate NEPA document, which the Fund would use to educate its members, supporters, and other concerned members of the public about the environmental impacts of expanded hunting in the Refuge System. As a result, the Fund must spend substantial resources pursuing alternative sources of information regarding FWS’s activities related to Refuges.

6. Plaintiff Fern Benson lives near the Sacramento River Refuge in Chico, California. Ms. Benson enjoys visiting natural areas in order to hike, observe wildlife, and take photographs. Ms. Benson visits the Sacramento River Refuge on an annual or semi-annual basis and plans to continue to visit the Refuge in this manner in the future. Ms. Benson would like to visit the Refuge more frequently but is concerned for her safety because of the hunting activities that are allowed to occur there. This concern has diminished her enjoyment of the Refuge and has caused Ms. Benson not to photograph wildlife at the Sacramento River Refuge for fear of being mistaken for an animal and shot at during hunting season. Thus, hunting has limited Ms. Benson’s recreational enjoyment of the Refuge.

7. By opening the Sacramento River Refuge and other Wildlife Refuges to sport hunting without adequately considering and disclosing the environmental impacts of, and alternatives to, expanding hunting, defendants have deprived Ms. Benson of her procedural rights under NEPA to an adequate EIS, and to the environmental information that would be developed through the

preparation of an adequate NEPA document concerning the direct, indirect, and cumulative impacts of hunting on the National Wildlife Refuge System.

8. Plaintiff Richard Clapp lives on Hilton Head Island in South Carolina. He is an avid bird watcher and enjoys viewing all wildlife and hiking in nature. Mr. Clapp regularly leads kayak tours along the Black and Savannah Rivers and has taken about 11,000 people on such tours over the past 13 years. Mr. Clapp's kayak trips frequently include visits to the Savannah Refuge, since both the Black and Savannah Rivers run through this area. He plans to continue to take people out on trips in this area and to visit the Savannah Refuge regularly in the future. Mr. Clapp is harmed by the FWS's decision to allow hunting at the Savannah Refuge. One of the primary goals of Mr. Clapp's kayak tours is to provide his guests with bird watching opportunities. Hunting harms Mr. Clapp's and his guests' bird watching opportunities by diminishing the number of birds available for viewing and increasing the skittishness of the remaining birds. Mr. Clapp also fears for the safety of his guests and himself when they are hiking in the Refuge or kayaking nearby and Mr. Clapp views hunters. He has had to ask his guests to return to their kayaks during hiking trips or steer the boaters away from the Refuge upon seeing hunters, because of the safety threats that hunters pose to Mr. Clapp and his guests. Hunting on the Savannah Refuge has also complicated his kayak trips, because not only does Mr. Clapp have to plan for the tides and weather, but he also has to factor into his plans who might be hunting and where, to ensure that he keeps his guests safe. For all these reasons, Mr. Clapp's ability to enjoy the Savannah Refuge has been harmed by hunting at the Refuge. Additionally, Mr. Clapp's ability to enjoy the nearby Pinckney Island, Tybee, Blackbeard Island, and Harris Neck Refuges will also be harmed by hunting at the Savannah Refuge, because

wildlife, such as migratory birds, will frequent the area less because of the hunting. Thus, Mr. Clapp's ability to enjoy viewing wildlife in these areas is also harmed.

9. By opening the Savannah Refuge and other Wildlife Refuges to sport hunting without adequately considering and disclosing the environmental impacts of, and alternatives to, expanding hunting, defendants have deprived Mr. Clapp of his procedural rights under NEPA to an adequate EIS, and to the environmental information that would be developed through the preparation of an adequate NEPA document concerning the direct, indirect, and cumulative impacts of hunting on the National Wildlife Refuge System.

10. Plaintiff Susan Eller lives near the Stone Lakes Refuge in California. She is an avid hiker and observer of wildlife. Ms. Eller and her husband regularly hike at the Stone Lakes Refuge and will continue to do so in the future. Ms. Eller's enjoyment of Stone Lakes has been diminished by hunting on the Refuge. The wildlife and birds that Ms. Eller enjoys observing are more skittish and hard to view as a result of hunting. She has also witnessed impacts from hunters on the habitat that the Refuge provides for migratory birds and other wildlife, as well as trash and other signs of hunters presence. Ms. Eller's enjoyment of Stone Lakes has also been negatively impacted by her fear that she may see dead or wounded animals left by hunters. All of these impacts have disrupted her aesthetic enjoyment of the Refuge.

11. By opening the Stone Lakes Refuge and other Wildlife Refuges to sport hunting without adequately considering and disclosing the environmental impacts of, and alternatives to, expanding hunting, defendants have deprived Ms. Eller of her procedural rights under NEPA to an adequate EIS, and to the environmental information that would be developed through the preparation

of an adequate NEPA document concerning the direct, indirect, and cumulative impacts of hunting on the National Wildlife Refuge System.

12. Plaintiff Beau Gast lives in Folsom, Louisiana and is dedicated to protecting wildlife in the wild. Mr. Gast is on the State Board of Louisiana Wildlife Rehabilitators and follows wildlife issues closely. Mr. Gast also enjoys viewing and photographing wildlife and has visited the Big Branch Marsh Refuge on many occasions to view wildlife and birds and photograph them. He has provided at least one informational presentation at the Big Branch Marsh Refuge during an annual event and plans to continue to visit the Refuge in the future. Mr. Gast has been harmed by hunting at the Big Branch Marsh Refuge because hunting makes the birds and wildlife more skittish and, thus, more difficult for him to observe. Hunting also diminishes Mr. Gast's enjoyment of the Refuge because he is fearful for his safety when visiting the Refuge and photographing wildlife during hunting season. As a wildlife rehabilitator, Mr. Gast is also well aware of the harm hunting inflicts on wildlife, which further diminishes his ability to enjoy recreating in places that allow hunting, because of his fear of seeing dead or wounded animals.

13. By opening Big Branch Marsh Refuge and other Wildlife Refuges to sport hunting without adequately considering and disclosing the environmental impacts of, and alternatives to, expanding hunting, defendants have deprived Mr. Gast of his procedural rights under NEPA to an adequate EIS, and to the environmental information that would be developed through the preparation of an adequate NEPA document concerning the direct, indirect, and cumulative impacts of hunting on the National Wildlife Refuge System.

14. Plaintiff Debbie Genry lives in Montevallo, Alabama adjacent to the Cahaba River Refuge. Ms. Genry enjoys bird and wildlife watching, nature photography, and riding her horses.

She regularly visits the Cahaba River Refuge to observe wildlife and birds, including herons and hawks, and take nature photographs. She also enjoys bringing her son with her to enjoy the outdoors. She plans to continue her visits to the Refuge regularly in the future. The FWS's decision to allow hunting at the Cahaba River Refuge has harmed Ms. Genry. She fears for her safety and the safety of her son because they may be shot at by a hunter, which diminishes her enjoyment of the Refuge. Hunting has also harmed Ms. Genry's ability to view and photograph wild birds and animals because their numbers have decreased and those who remain are skittish and hard to view due to hunting at the Refuge.

15. By opening the Cahaba River Refuge and other Wildlife Refuges to sport hunting without adequately considering and disclosing the environmental impacts of, and alternatives to, expanding hunting, defendants have deprived Ms. Genry of her procedural rights under NEPA to an adequate EIS, and to the environmental information that would be developed through the preparation of an adequate NEPA document concerning the direct, indirect, and cumulative impacts of hunting on the National Wildlife Refuge System.

16. Plaintiff Anne Speakman also lives in Montevallo, Alabama adjacent to the Cahaba River Refuge. Ms. Speakman enjoys observing birds and animals in the wild. She frequently takes her grandchildren to the Cahaba River Refuge to watch the wildlife and plans to continue to do so regularly in the future. The FWS's decision to allow hunting at the Cahaba River Refuge harms Ms. Speakman. Hunters leave trash and cause other impacts to the Refuge environment, which diminishes Ms. Speakman's aesthetic enjoyment of the Refuge. She also fears for her safety and the safety of her grandchildren when hunting is on-going at the Refuge, which further harms her enjoyment of the area.

17. By opening the Cahaba River Refuge and other Wildlife Refuges to sport hunting without adequately considering and disclosing the environmental impacts of, and alternatives to, expanding hunting, defendants have deprived Ms. Speakman of her procedural rights under NEPA to an adequate EIS, and to the environmental information that would be developed through the preparation of an adequate NEPA document concerning the direct, indirect, and cumulative impacts of hunting on the National Wildlife Refuge System.

18. Plaintiff Pamela Walker lives in Nebraska near the DeSoto Wildlife Refuge. She is a regular bird watcher and enjoys hiking and observing wildlife often with her family members. Ms. Walker visits the DeSoto Refuge to engage in these activities and will continue to do so in the future. She is harmed by the FWS's decision to allow hunting at the Refuge because it puts both her and her family at risk of being harmed by a hunter and she fears she may view dead or wounded animals. Ms. Walker's ability to view birds and other wildlife is also diminished because hunting makes the remaining birds and animals more skittish and the Refuge environment is negatively impacted by hunters. All of these harms from hunting diminish Ms. Walker's aesthetic enjoyment of the DeSoto Refuge.

19. By opening the DeSoto Refuge and other Wildlife Refuges to sport hunting without adequately considering and disclosing the environmental impacts of, and alternatives to, expanding hunting, defendants have deprived Ms. Walker of her procedural rights under NEPA to an adequate EIS, and to the environmental information that would be developed through the preparation of an adequate NEPA document concerning the direct, indirect, and cumulative impacts of hunting on the National Wildlife Refuge System.

20. The defendants to this Supplemental Complaint are the same as the defendants to the Complaint in this action, and therefore paragraphs 71-72 of the Complaint are hereby incorporated by reference.

**Facts Giving Rise To Plaintiffs' Claims**

21. The same statutory and regulatory framework set forth in the original Complaint at paragraphs 73 thru 84 and the factual allegations in paragraphs 85 thru 98 apply to this Supplemental Complaint, and therefore, those paragraphs are hereby incorporated by reference.

22. In addition to the six rules at issue in the original Complaint, between 2003 and 2005, the FWS issued three final rules opening or expanding hunting of migratory birds, upland game, and/or big game at 29 National Wildlife Refuges throughout the country. The number of Refuges in which hunting opportunities were provided has thus increased drastically from the original Complaint, to include seven Refuges in the 2003 rulemaking, ten in the 2004 rulemaking, and thirteen in the 2005 rulemaking for an additional 29 Refuges overall (since the Big Branch Marsh Refuge was affected by both the 2003 and 2004 rules). See 68 Fed. Reg. 57,308 (October 2, 2003) (opening the Wapanocca, Grand Cote, Northern Tallgrass Prairie, Boyer Chute, DeSoto, Big Branch Marsh, and North Platte Refuges to one or more kinds of hunting); 69 Fed. Reg. 54,350 (Sept. 8, 2004) (opening the Waccamaw, Crescent Lake, Mountain Longleaf, Red River, Trinity Rivers, Cross Creeks, Tennessee, Big Oaks, Big Branch Marsh, and Savannah Refuges to one or more kinds of hunting); 70 Fed. Reg. 54146 (Sept. 13, 2005) (opening the Assabet River, Great Meadows, Moosehorn, Oxbow, Silvio O. Conte, Wertheim, Cahaba River, Julia Butler Hansen, Stones Lakes, Glacial Ridge, Squaw Creek, Sacramento River, and Stewart B. McKinney Refuges to one or more kinds of hunting).

23. As with the six rules currently under review, see Complaint ¶¶ 99-100, many of the newly opened Refuges provide habitat for wildlife, including dozens of threatened and endangered species such as the Indiana bat, piping plover, least tern, flatwoods salamander, giant garter snake, shortnose sturgeon, and Red-cockaded woodpecker. A majority of the Refuges where hunting was opened or expanded between 2003 and 2005 are also located in one of the migratory bird flyways. For example, thirteen of the Refuges are located in the Mississippi Flyway (Cahaba River, Mountain Longleaf, Wapanocca, DeSoto, Big Oaks, Grand Cote, Red River, Big Branch Marsh, Squaw Creek, Northern Tallgrass Prairie, Glacial Ridge, Cross Creeks, and Tennessee), and eight are in the Atlantic Flyway (Stewart B. McKinney, Savannah, Assabet River, Great Meadows, Oxbow, Moosehorn, Silvio O Conte, Wertheim, and Waccamaw).

24. Additionally, many of the newly opened Refuges are in the same regions of the country. Throughout the South and Southeast Regions the FWS opened or expanded hunting at eleven Refuges, while seven Refuges in the Northeast were impacted by the three rules. Several States had two or more Refuges where one or more kinds of hunting was allowed including Alabama, California, Louisiana, Massachusetts, Minnesota, Nevada, and Tennessee.

25. Despite the numerous direct, indirect, and cumulative environmental impacts of expanded Refuge sport hunting described in the FWS's 1993 draft EIS – including impacts on threatened and endangered species, migratory birds, soil and water quality, wetlands, and Refuge visitor safety – and notwithstanding the high concentration of new hunting activities within the environmentally sensitive Mississippi flyway, the FWS did not prepare an EIS for any of the final rules expanding sport hunting, nor did they even prepare an Environmental Assessment (“EA”) to determine whether an EIS might be necessary. Instead, each of the final rules asserts that the FWS's

decision to initiate or expand hunting at dozens of Refuges is “categorically excluded” from the requirements of NEPA under the CEQ regulations – which allow federal agencies to avoid preparation of an EIS or an EA for those actions which do not “individually or cumulatively have a significant effect on the human environment.” 40 C.F.R. § 1508.4; see 68 Fed. Reg. at 57,315; 69 Fed. Reg. at 54,361; 70 Fed. Reg. at 54,157-158.

26. Although the final rules assert that the FWS prepares individual NEPA documents for each Refuge, the NEPA documents prepared by the FWS provide little or no analysis of the numerous “well documented” adverse environmental impacts of expanded sport hunting identified in the FWS’s 1993 draft EIS – including “disturbance to feeding or resting waterfowl, trampling of low ground vegetation and soil compaction and/or erosion,” “abandonment of nest sites and subsequent reduced productivity or survival,” “reduced use of preferred habitat,” “negative effect[s] on refuge System biodiversity,” “alter[ed] the behavior and distribution of game birds,” “[d]isturbance to nongame species and their habitat,” threats to the “safety and health of all recreationalists,” and “direct and indirect effects” to threatened and endangered species. FWS, Draft Environmental Impact Statement, Refuges 2003: A Plan for the Future of the National Wildlife Refuge System at 1-10-11; 4-13-14; 4-183-245 (Jan. 15, 1993).

27. Nor do the individual NEPA documents referenced in the FWS’s final rules address the “cumulative impacts” that were predicted in the 1993 draft EIS from a system-wide expansion of sport hunting – including cumulative effects on air and water quality, migratory wildlife populations, available habitat, social and economic values, Refuge visitors, and cultural resources – or the fact that having “[m]ore acreage open to hunting would make wildlife more wary and more difficult to observe by those who visit refuges to observe wildlife,” that wildlife taken through

hunting “would not be available for viewing by other users,” and that expanded sport hunting “would increase incidents involving the illegal taking of cultural resource materials.” *Id.* at 4-245. Nor has the FWS prepared any environmental analysis under NEPA of the direct, indirect, and cumulative impacts of the agency’s decision to substantially increase the number of Refuges open to sport hunting within the environmentally sensitive Mississippi flyway.

28. On August 31, 2006, the Court ruled that the FWS failed to comply with the cumulative impacts requirements of NEPA in expanding hunting on Refuges pursuant to the six rules challenged in the original Complaint. As a result, the FWS undertook a new NEPA process that included the “Environmental Assessments for these [new 2003, 2004, and 2005] openings or expansions [that] are not materially different from those the Court adjudged to be inadequate.” This post-hoc NEPA process is irrelevant to the legality of the rules that were issued before the process was completed and, in any event, the new NEPA process suffers from substantially the same flaws as the FWS’s original NEPA documents.

#### **Claim for Relief**

29. By issuing three final rules amending 50 C.F.R. § 32 to initiate or expand sport hunting at thirty-two Refuges – without preparing any NEPA document to address the serious environmental impacts caused by these decisions – defendants have violated NEPA and the CEQ’s implementing regulations, abused their discretion, and acted arbitrarily and capriciously in violation of the APA.

30. In particular, defendants have violated NEPA and the CEQ’s implementing regulations by: (1) failing to analyze and disclose the substantial biological, aesthetic, and recreational impacts that will result from the FWS’s decisions, such as “disturbance to feeding or

resting waterfowl, trampling of low ground vegetation and soil compaction and/or erosion,” “abandonment of nest sites and subsequent reduced productivity or survival,” “reduced use of preferred habitat,” “negative effect[s] on refuge System biodiversity,” “alter[ed] the behavior and distribution of game birds,” “[d]isturbance to nongame species and their habitat,” threats to the “safety and health of all recreationalists,” “direct and indirect effects” to threatened and endangered species, the effects of diverting scarce Refuge financial resources from critical wildlife and infrastructure needs to recreational use management, reduced opportunities for viewing birds and other wildlife, and the impacts on members of the public who may witness prolonged suffering and death of wildlife; (2) failing to consider potential alternatives concerning competing and conflicting potential uses of Refuge biological and financial resources; (3) failing to provide any analysis of whether the agency’s decisions are “significant” under the CEQ regulations because they may affect “[u]nique characteristics of the geographic area such as proximity to ... wetlands ... or ecologically critical areas,” “are likely to be highly controversial,” “adversely affect an endangered or threatened species,” “establish a precedent for future actions,” “represent a decision in principle” concerning the FWS’s management of wildlife in the Refuge System, or have significant cumulative effects within the Refuge System; and (4) otherwise disregarding the requirements of NEPA and the CEQ regulations.

31. By attempting to “categorically exclude” from NEPA review three final agency rules opening or expanding sport hunting at 29 Wildlife Refuges – even though these decisions cannot rationally be described as actions that do not “individually or cumulatively have a significant effect on the human environment,” 40 C.F.R. § 1508.4 – defendants have violated NEPA and the CEQ’s

implementing regulations, abused their discretion, and acted arbitrarily and capriciously in violation of the APA.

32. By opening or expanding sport hunting at thirteen Refuges within the Mississippi Flyway and seven in the Atlantic Flyway – without preparing any NEPA document to address the serious environmental impacts caused by this decision, including cumulative effects on air and water quality, migratory birds and other wildlife populations, available habitat, social and economic values, Refuge visitors, and cultural resources within these Flyways – defendants have violated NEPA and the CEQ’s implementing regulations, abused their discretion, and acted arbitrarily and capriciously in violation of the APA.

33. By failing to preparing a single NEPA document that considers the cumulative and synergistic effects of several closely related agency actions concerning public use of the Refuge System – including cumulative effects on air and water quality, migratory birds and other wildlife populations, available habitat, social and economic values, Refuge visitors, and cultural resources – defendants have violated NEPA and the CEQ’s implementing regulations, abused their discretion, and acted arbitrarily and capriciously in violation of the APA.

34. These violations of NEPA and the APA have caused and will continue to cause plaintiffs’ injuries as described in paragraphs 3-20.

**WHEREFORE**, plaintiffs respectfully request that this Court enter an Order:

- (1) Declaring that defendants are violating the National Environmental Policy Act and the CEQ implementing regulations;
- (2) Setting aside the Service’s 2003, 2004, and 2005 Final Rules opening Refuges to sport hunting;

- (3) Awarding plaintiffs their costs and attorneys' fees, and other disbursements for this action, including expert witness fees;
- (4) Granting plaintiffs such other and further relief as this Court may deem just and proper.

Respectfully submitted,

/s/ Tanya M. Sanerib  
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