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Center for Biological Diversity,  
Plaintiff

v.

United States Fish and Wildlife Service,  
Defendant.

Civil Action No.:

Complaint for Declaratory and Injunctive  
Relief

**INTRODUCTION**

1. Plaintiff Center for Biological Diversity (“the Center”) brings this case under the Freedom of Information Act (“FOIA”), 5 U.S.C. §§ 552 *et seq.*, to compel the United States Fish and Wildlife Service (“FWS” or “the Service”) to disclose years of

1 information it has collected concerning the import and export of wildlife and plants—  
2 many of which are extremely imperiled species.

3         2. Each year, the United States allows the import of hundreds of millions of  
4 wildlife and plant specimens from around the world. These imports include everything  
5 from python-skin boots, to aquarium fish and turtles destined for the pet trade, to corals,  
6 orchids, bones, skulls, and shells used for home decor, to lions and elephants killed as  
7 hunting “trophies,” as well as zoo and scientific specimens.

8         3. Biodiversity loss is being driven in part by human exploitation of wildlife  
9 and plants, with the United States playing a significant role. Many wildlife and plant  
10 imports are sourced from the wild, and some are extremely rare and imperiled species. For  
11 example, the United States remains the world’s largest importer of corals despite a  
12 precipitous decline in wild coral populations—it imported over 691,000 specimens in  
13 2014. Between 2006 and 2015, the United States imported 21,402 giraffe-bone carvings,  
14 3,008 giraffe-skin pieces and 3,744 giraffe hunting trophies—with giraffe bone  
15 increasingly being used as an ivory substitute for knife and gun handles.

16         4. Likewise, in the midst of a pandemic of likely zoonotic or wildlife origin,  
17 wildlife trade fuels interactions that risk new pathogens infecting people. For example,  
18 between 2010-2014, the United States imported almost 23 million whole animals, parts,  
19 samples and products made from bats, primates and rodents—animals that harbor 75% of  
20 known zoonotic viruses.

21         5. The United States likewise exports a massive volume of wildlife and  
22 wildlife specimens. More than 17 million freshwater turtles were exported from the  
23 United States between 2011 and 2015, most of which were consumed as food or medicine  
24 in Asian markets. Every year, around 80,000 bobcats, river otters, gray wolves, Canada  
25 lynx, and brown bears are killed, and their furs are commercially exported from the United  
26 States to supply the international fur trade. These extreme collection and exportation  
27 practices have already been linked to population declines in several species.

28

1           6.     Trade is the second largest threat to wildlife species, after habitat  
2 destruction. The United States is one of the largest markets for wildlife products in the  
3 world.

4           7.     For wildlife specimens to be imported into or exported from the United  
5 States, the specimens must be cleared by the Service, regardless of whether the imported  
6 or exported specimen is intended for commercial trade, scientific research, breeding,  
7 education, exhibition, personal use, or as a hunting trophy. 50 C.F.R. § 14.52 *but see id.* §  
8 14.55 (listing exemptions). To facilitate clearance, importers and exporters must submit a  
9 wildlife declaration (USFWS Form 3-177) that reports basic data including, *inter alia*, (1)  
10 the date and purpose of the import or export; (2) the species name, country of origin, and  
11 quantity of specimens imported or exported; (3) the port of import or export; and (4) the  
12 names of importers, exporters, and carriers. *Id.* §§ 14.61, 14.63.

13           8.     All this information is recorded by the importer or exporter on the wildlife  
14 declaration, USFWS Form 3-177. The Service inputs data from the wildlife declarations  
15 into its Law Enforcement Management Information Systems (“LEMIS”) database, which  
16 also states whether the Service cleared or refused the import or export for entry.

17           9.     These data are used by the public, including conservation and environmental  
18 organizations, to track which species of wildlife the Service allows to enter and leave the  
19 United States, from where, by and to whom, and in what quantity, in order to analyze  
20 which species may be most affected by trade; to seek international and domestic  
21 protections for such species as needed; monitor illegal trade; and to determine whether the  
22 United States and other countries are meeting legal obligations such as trade quotas.

23           10.    The LEMIS data are also used by journalists to promote public knowledge  
24 about the impacts of trade on species and the environment, and by scientists to research  
25 and write about the impacts of trade on species, to study diseases and their emergence, and  
26 to research the laundering and trafficking of wildlife.

27           11.    Similarly, export data are used to track trade in species that originated in the  
28 United States and to ensure compliance by exporters with all legal obligations.

1 12. Without the customarily provided LEMIS data, the public cannot identify  
2 which species are being traded, where they are coming from or going to, and for what  
3 purpose—all of which impairs efforts to seek effective protections for affected species.  
4 Given the significant role of U.S. demand for wildlife and plants and their products and  
5 that the United States is the only country globally that tracks in detail all wildlife crossing  
6 its borders, the LEMIS data are globally unique and critical to the conservation of species.

7 13. For years, the Service routinely released data from its LEMIS database to  
8 the public when requested under FOIA, providing, among other information, quantity,  
9 names of foreign and U.S. importers and exporters, country of origin, and other details.

10 14. However, more recently, the Service has failed to disclose any LEMIS data.

11 15. The agency is now allowing submitters of the information to object to  
12 disclosure of LEMIS data on the ground that this information is exempt from disclosure  
13 under Exemption 4 of FOIA, which protects “trade secrets” and “confidential commercial  
14 information.” 5 U.S.C. § 552(b)(4). But despite its solicitation of such objections, the  
15 Service still has not released any of the LEMIS data since 2016.

16 16. The Service’s failure to make this critical information publicly available  
17 greatly impairs the Center’s ability to carry out its work to conserve and protect foreign  
18 species. Accordingly, the Center seeks an order compelling prompt disclosure of the  
19 information.

#### 20 **JURISDICTION AND VENUE**

21 17. Jurisdiction over this action is conferred by FOIA, 5 U.S.C. § 552(a)(4)(B).

22 18. Venue is proper in the District of Arizona pursuant to 5 U.S.C. §  
23 552(a)(4)(B), because the Center has its principal place of business in this judicial district.

24 19. Assignment of this case to the Tucson Division of this Court is appropriate  
25 because Plaintiff has its principal place of business in Pima County. Local Rule 77.1(a),  
26 (c).

1 **PARTIES**

2 20. Plaintiff Center for Biological Diversity (“the Center”) is a 501(c)(3) non-  
3 profit conservation organization with over 89,000 members. Its headquarters are in  
4 Tucson, Arizona, and it maintains several other offices across the country and in Mexico.  
5 Through science, policy, and environmental law, the Center advocates for the protection  
6 of threatened, endangered, and rare species and their habitats throughout the United States  
7 and abroad. The Center’s International Program specifically focuses on protecting foreign  
8 imperiled species, including from unsustainable commercial trade and on raising  
9 awareness regarding the risk of disease to humans from wildlife exploitation.

10 21. The Center is the requester of the information at issue. The organization  
11 and its members are harmed by the Service’s failure to disclose the information that is  
12 responsive to the Center’s FOIA Requests. This violation of law precludes the Center  
13 from understanding the type, quantity, purpose, and other important information about  
14 wildlife and plant imports and exports that the Service allows into and out of the United  
15 States.

16 22. Import and export information is critical to the Center and its International  
17 Program’s operations. Center staff use the data to: (a) track which species are being used  
18 most in trade; (b) determine the volume of trade in particular species in order to evaluate  
19 whether trade is a threat to the conservation of a particular species; (c) ascertain the  
20 purpose of commercial trade—including, for example, whether trade is for medicinal,  
21 decorative, fashion, or pet and aquarium purposes; (d) determine the country of origin of  
22 the species; and (e) for other purposes. This information and the Center’s subsequent  
23 analyses of it help to inform and prioritize the Center’s organizational strategy, including  
24 determining which species may require additional study, scientific research, advocacy for  
25 domestic and international protections, and increased public education.

26 23. The Center collects, distills, and distributes the data to keep its members  
27 and the public in general informed about the need for critical species protection and the  
28 impacts of the U.S. market on wildlife. The Center further depends on the data when

1 producing reports, petitions, and other educational and advocacy documents that detail for  
2 its members and the public the impact of wildlife trade on specific species, as well as the  
3 impact on human and wildlife health. The Center also relies on LEMIS data to inform  
4 Congressional representatives and their staffs about the need to develop and enact  
5 legislation monitoring and restricting wildlife trade.

6 24. The Center’s interests and activities are adversely affected by the Service’s  
7 failure to disclose the requested LEMIS data. This injury will be redressed if the Court  
8 orders the Service to disclose the requested records.

9 25. Defendant United States Fish and Wildlife Service (“the Service”) is a  
10 federal governmental agency within the meaning of FOIA, 5 U.S.C. § 552(f)(1), and has  
11 possession and control of the records at issue.

## 12 **STATUTORY FRAMEWORK AND**

### 13 **FACTS GIVING RISE TO PLAINTIFF’S CLAIM**

#### 14 **A. The Freedom of Information Act**

15 26. The Freedom of Information Act (“FOIA”) ensures both an open  
16 government and government accountability through transparency. FOIA requires that  
17 “each agency, upon any request for records . . . shall make the records promptly available  
18 to any person.” 5 U.S.C. § 552(a)(3).

19 27. To ensure prompt disclosure of information, FOIA imposes strict deadlines  
20 on federal agencies for responding to FOIA requests. Specifically, upon receiving a FOIA  
21 request, an agency has 20 working days to respond to the request. 5 U.S.C. §  
22 552(a)(6)(A)(i). A requester may file an administrative appeal of an agency’s failure to  
23 disclose requested records, and an agency must make a determination on any such appeal  
24 within 20 working days. *Id.* § 552(a)(6)(A)(ii). A requester is deemed to have exhausted  
25 its administrative remedies and may seek immediate judicial review of the matter if the  
26 agency fails to comply with any of these statutory deadlines. *Id.* § 552(a)(6)(C)(i).

27 28. Under FOIA, an agency may withhold information only if it qualifies under  
28 one of nine narrowly-construed statutory exemptions. 5 U.S.C. § 552(b)(1)–(9). The

1 agency bears the burden of proving that the information qualifies for an exemption and  
2 may therefore be lawfully withheld. *Id.* § 552(a)(4)(B). If the agency determines that a  
3 portion of a responsive record is exempt from disclosure, the agency must nonetheless  
4 disclose “[a]ny reasonably segregable portion” of the record after redacting the exempt  
5 information, and the agency must explain why the redacted portions were withheld. *Id.* §  
6 552(b).

7 29. Under FOIA Exemption 4, an agency may withhold “trade secrets and  
8 commercial or financial information obtained from a person and privileged or  
9 confidential.” 5 U.S.C. § 552(b)(4).

10 30. Information that is not a trade secret is not considered “confidential” within  
11 the meaning of FOIA Exemption 4 unless the government can demonstrate that the  
12 information is commercial and both customarily and actually treated as confidential by the  
13 submitter, and the information was submitted to the agency pursuant to an assurance that  
14 it would not be publicly disclosed. *Food Mktg. Inst. v. Argus Leader Media*, -- U.S. --, 139  
15 S. Ct. 2356, 2366, 204 L. Ed. 2d 742 (2019).

16 **B. The LEMIS Data**

17 31. Pursuant to the Service’s authority under several statutes that govern and  
18 restrict importation of wildlife into the United States—including the ESA, the Lacey Act,  
19 16 U.S.C. §§ 3371-3378, 18 U.S.C. § 42, the Migratory Bird Treaty Act, 16 U.S.C. §§  
20 703-712, the African Elephant Conservation Act, 16 U.S.C. §§ 4201-4246, and the Wild  
21 Bird Conservation Act, 16 U.S.C. §§ 4901-4916—the Service’s regulations require that a  
22 Service officer “must clear all wildlife imported into the United States prior to release  
23 from detention by Customs officers,” with limited exemptions. 50 C.F.R. §§ 14.52(a),  
24 14.55.

25 32. To facilitate clearance, importers and exporters must submit a wildlife  
26 declaration form (Form 3-177) that reports specific data, including, *inter alia*, (a) the date  
27 and purpose of the import or export; (b) the species name, country of origin, and quantity  
28 of specimens imported or exported; (c) relevant permit and document numbers that apply

1 to the import; and (d) the names of importers, exporters, and carriers involved in the  
2 import or export. 50 C.F.R. §§ 14.61, 14.63.

3 33. The Service then inputs data from these declarations into the LEMIS  
4 database. The agency also denotes in the database whether the Service cleared or refused  
5 the import for entry or the export for exit and if not, whether the item was confiscated or  
6 abandoned.

7 34. Some wildlife and plant species are also subject to import and export  
8 prohibitions, restrictions, or permitting requirements imposed by various statutes. For  
9 example, the ESA prohibits the importation of all endangered and many threatened-listed  
10 species, although the Service may grant import permits for “scientific purposes” or to  
11 “enhance the species’ propagation or survival.” 16 U.S.C. §§ 1538(a), 1539(a)(1)(A); 50  
12 C.F.R. § 17.31. Section 10 of the ESA requires the Service to publish notice and seek  
13 public comment on each such endangered species import permit application, 16 U.S.C. §  
14 1539(a), and Section 10 also states that all information received by the Service as part of  
15 such an application “shall be available to the public as a matter of public record at every  
16 stage of the proceeding.” *Id.* § 1539(c).

17 35. Pursuant to the requirements of Section 10, the Service routinely discloses  
18 to the public importer/exporter names, quantity, country of origin, location of wild capture  
19 or breeder name and location, and shipping details for live specimens, as well as the full  
20 permit application and any granted permit.

21 36. In addition, the United States is also a Party to the Convention on  
22 International Trade in Endangered Species of Fauna and Flora (“CITES”). 27 U.S.T.  
23 1087, 993 U.N.T.S. 243, and additional import and export prohibitions, restrictions, and  
24 permitting requirements apply to species listed under the CITES. *Id.*; 16 U.S.C. § 1538(c).

25 37. CITES requires all Parties to maintain detailed records of trade in CITES  
26 specimens, including the names and addresses of exporters and importers, quantity of  
27 wildlife traded, and other information. CITES, art. VIII ¶ 6. Parties must submit to the  
28 CITES Secretariat an annual report summarizing those records. CITES, art. VIII ¶ 7(a).



1 The Secretariat then publishes some of these data on its publicly accessible CITES Trade  
2 Database.

3 38. Additionally, with some exceptions, vessels that enter the United States  
4 must submit a manifest to the U.S. Customs and Border Patrol (“CBP”), including a cargo  
5 declaration. 19 U.S.C. § 1431(a); 19 C.F.R. § 4.7(a). Vessel cargo information is compiled  
6 daily in CBP’s Automated Manifest System (“AMS”) and “is available to interested  
7 members of the public on CD-ROM”—including vessel name, arrival date, description of  
8 goods, manifest quantity, manifest units, piece count, weight, bill of lading number, and  
9 the importer’s name and address, unless the importer expressly seeks confidential  
10 treatment of its name and address through a regulatory process. 19 C.F.R. § 103.31(e).  
11 AMS data released to the public regularly contain names of importers, quantity, and  
12 carrier names.

13 39. Accredited members of the press are also permitted to examine vessel  
14 manifests, 19 C.F.R. § 103.31(a)(3), and private sector media services then make the data  
15 available to the public for a fee. For example, the Journal of Commerce’s Port Import  
16 Export Reporting Service (“PIERS”) collects and analyzes U.S. seaborne imports from  
17 vessel manifest documents.

18 **C. The Center’s FOIA Requests**

19 40. On January 31, 2019, the Center submitted a FOIA Request to the U.S. Fish  
20 and Wildlife Service for LEMIS data generated between January 1, 2016, through  
21 December 31, 2018. Specifically, the Center sought access to the information recorded in  
22 the following LEMIS database columns:

- 23 (a) Control number,
- 24 (b) Species name (including species code, genus, species, subspecies, specific  
25 name, and generic name),
- 26 (c) Wildlife description,
- 27 (d) Quantity/unit/number of cartons,
- 28 (e) Country of origin,

- 1 (f) Country of import/export,
- 2 (g) Purpose code,
- 3 (h) Source code,
- 4 (i) Action (cleared or refused),
- 5 (j) Disposition,
- 6 (k) Date of import/export,
- 7 (l) Whether specimen is an import or export,
- 8 (m) Port,
- 9 (n) Transport mode,
- 10 (o) U.S. importer/exporter name, and
- 11 (p) Foreign importer/exporter name.
- 12

13 41. When the Center did not receive a response to this request as required by  
14 FOIA, by letter dated July 11, 2021, it sent the agency an appeal of the constructive denial  
15 of its January 31, 2019, request.

16 42. On April 2, 2020, the Center submitted an additional FOIA request to the  
17 Service for the same categories of LEMIS data generated between January 1, 2019, and  
18 December 31, 2019.

19 43. On February 4, 2021, the Center submitted another FOIA request to the  
20 Service for the same categories of LEMIS data generated between January 1, 2020, and  
21 December 31, 2020.

22 44. Although the statutory timeframe for responding to these FOIA requests  
23 has long since expired, the Service still has not provided Plaintiff with a substantive  
24 response to its requests, nor has it provided Plaintiff with any of the requested  
25 information.

26 45. In May 2021, the Service issued notice to submitters of the wildlife  
27 declaration forms from which the LEMIS data are generated, allowing the submitters to  
28

1 object to the disclosure of the LEMIS data requested by the Center and other requesters  
2 pursuant to Exemption 4 of FOIA. That notice required submitters to file their objections  
3 with the agency by no later than June 11, 2021.

4 46. The Center still has not been provided with any of the LEMIS data it  
5 requested under FOIA.

6 47. Prior to 2013, the Service routinely released all LEMIS data including  
7 quantity, country of origin, and foreign importer/exporter name data to requesters through  
8 FOIA.

9 48. The Service did not provide importers and exporters an assurance of  
10 confidentiality when it collected the information at issue in this case. On the contrary, the  
11 version of Form 3-177 that was used for some of the data informs these individuals that  
12 the information collected “may be subject to disclosure under the Freedom of Information  
13 Act,” and a newer version of Form 3-177, that applies to some of the other information at  
14 issue, similarly states that the collected information is “used to respond to requests under  
15 the Freedom of Information Act.”

#### 16 **PLAINTIFF’S CLAIM FOR RELIEF**

17 49. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set  
18 forth herein.

19 50. Plaintiff has a statutory right of access to the LEMIS data it requested under  
20 FOIA, and there is no lawful basis for Defendant’s withholding of this information.

21 51. The Service’s failure to disclose the LEMIS data responsive to the Center’s  
22 FOIA Requests violates FOIA, 5 U.S.C. § 552(a)(3), and injures Plaintiff in the manner  
23 described herein.

#### 24 **RELIEF REQUESTED**

25 **WHEREFORE**, Plaintiff respectfully requests that the Court grant the following relief:

26 (1) Declare that Defendant’s failure to provide the requested records violates  
27 FOIA, 5 U.S.C. § 552(a)(3);  
28

1 (2) Order Defendant to promptly provide Plaintiff with all information that is  
2 responsive to its FOIA Requests;

3 (3) Award Plaintiff its attorneys' fees and litigation expenses pursuant to 5  
4 U.S.C. § 552(a)(4)(E); and

5 (4) Grant such other and further relief as the Court may deem just and proper.  
6

7  
8 Respectfully submitted,

9 /s/ Tanya Sanerib  
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27 *Application for pro hac vice admission*  
28 *forthcoming*

*Attorneys for Plaintiffs*