

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

NATURAL RESOURCES DEFENSE )  
COUNCIL, INC., )  
40 West 20th Street, 11th Floor )  
New York, NY 10011-4231 )

CENTER FOR BIOLOGICAL )  
DIVERSITY, )  
P.O. Box 710 )  
Tucson, AZ 85702 )

and )

FRIENDS OF MINNESOTA SCIENTIFIC )  
AND NATURAL AREAS, )  
2854 Cambridge Lane )  
Mound, MN 55364 )

*Plaintiffs,* )

v. )

UNITED STATES FISH & WILDLIFE )  
SERVICE, )

MARTHA WILLIAMS, in her official )  
capacity as the Acting Director of the U.S. )  
Fish & Wildlife Service, )

and )

UNITED STATES DEPARTMENT OF )  
THE INTERIOR, )

*Defendants.* )

Civil Case No. 21-00770  
ECF Case

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

## INTRODUCTION

1. This action challenges the failure of the U.S. Fish & Wildlife Service, Acting Director Martha Williams, and the U.S. Department of the Interior (collectively, the Service) to designate critical habitat for the endangered rusty patched bumble bee (the bee). Despite a statutory mandate that such habitat must generally be designated when a species is listed as endangered, and notwithstanding ample evidence that habitat safeguards would be beneficial for—and indeed necessary to—the bee’s survival and recovery, the Service refused to designate critical habitat on the basis that doing so would be “not prudent.”

2. Once common throughout the midwestern and northeastern United States, northward into Canada, the bee has disappeared from the vast majority of its native range and now stands on the brink of extinction, owing to habitat loss and destruction, pesticide use, disease, parasites, and climate change.

3. As a result, in 2017, the Service listed the bee as an “endangered species” under the Endangered Species Act (ESA). Endangered Species Status for Rusty Patched Bumble Bee, 82 Fed. Reg. 3186, 3205 (Jan. 11, 2017).

4. The bee’s listing triggered the Service’s duty to designate critical habitat for the bee “to the maximum extent prudent and determinable.” 16 U.S.C. § 1533(a)(3)(A)(i). However, despite continued threats to the bee from habitat loss and degradation, in September 2020 the Service determined that designating critical habitat for the bee would be “not prudent” and declined to protect any critical habitat for the bee. Determination That Designation of Critical Habitat is

Not Prudent for the Rusty Patched Bumble Bee, 85 Fed. Reg. 54,281, 54,284 (Sept. 1, 2020).

5. But the ESA allows the Service to withhold critical-habitat designation as “not prudent” only in those rare instances where designation would not benefit a species.

6. In withholding designation as “not prudent” for reasons other than lack of benefit to the bee, the Service stretched this narrow exception far beyond its legal limits, and ignored abundant evidence that protecting habitat facilitates the species’ survival and recovery. If permitted to stand, the Service’s unlawfully broad interpretation of the “not prudent” exemption may also deprive countless other vulnerable species of crucial habitat protections.

7. Plaintiffs seek an order setting aside the Service’s decision not to designate critical habitat for the bee and requiring the Service to designate such habitat within one year.

### **PARTIES**

8. Plaintiff Natural Resources Defense Council, Inc. (NRDC) is a non-profit membership organization dedicated to safeguarding the earth—its people, its plants and animals, and the natural systems on which all life depends. Promoting and enforcing strong protections for endangered and threatened species is central to NRDC’s work to protect wildlife and ecosystems.

9. NRDC is headquartered in New York, NY, and has additional offices in Washington, DC; Chicago, IL; Santa Monica and San Francisco, CA; Bozeman, MT; and Beijing, China.

10. NRDC brings this lawsuit on behalf of its hundreds of thousands of members nationwide. Many of these members regularly observe, visit, study, or otherwise enjoy threatened and endangered species, including the bee. Leaving the habitat of such species without critical-habitat protection harms the interests of these members in viewing listed species in the future.

11. For example, NRDC member Clay Bolt of Livingston, Montana, is a professional photographer, documentarian, and leader in the conservation field who has on several occasions photographed the bee in its habitat. Mr. Bolt plans to continue visiting the bee's habitat, including areas in Wisconsin, Minnesota, and Appalachia, to seek out and photograph the bee. Mr. Bolt plans to use these photographs to publish a field guide to bumble bees of the Americas.

12. Mr. Bolt derives aesthetic, recreational, and economic benefits from the bee's continued existence and his visits to the bee's habitat. Those interests are threatened by the Service's decision not to designate critical habitat for the bee under the ESA.

13. Additionally, NRDC member Jason Taylor is the Executive Director of the Bur Oak Land Trust (the Land Trust), which owns and maintains twelve properties spanning about 500 acres, predominantly in Johnson County, Iowa. Mr. Taylor developed a personal and professional interest in the bee in 2018, soon after

he learned it was listed as a federal endangered species, and he identified one in the prairie he planted in his backyard. As a result, he began developing habitat restoration projects for the bee on Land Trust properties and continues to train volunteers to identify the bee throughout Johnson County. These volunteers have identified rusty patched bumble bee populations on five Land Trust properties.

14. Mr. Taylor also regularly visits the Coralville Reservoir, a federally owned recreational area in Johnson County. He visits Coralville Reservoir about twice a month and searches for the bee every time he visits. Although he has not been successful yet, one of his goals for 2021 is to spot the bee at Coralville Reservoir. The Land Trust owns two properties adjacent to Coralville Reservoir, Turkey Creek and Big Grove Nature Preserves, each containing rusty patched bumble bee populations. Mr. Taylor and the Land Trust seek to preserve land surrounding the Coralville Reservoir because the Reservoir creates a natural corridor home to myriad native species, from bobcats to bees. Mr. Taylor values the Coralville Reservoir and these surrounding nature areas as important recreational fixtures of the community.

15. Through his work at the Land Trust and regular visits to Coralville Reservoir and other areas of Johnson County to search for the bee, Mr. Taylor derives professional and recreational benefits from the bee and its habitat. Mr. Taylor is concerned that continued failure to designate critical habitat for the bee will result in the bee's extinction.

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