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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

16 WILDEARTH GUARDIANS, a non-profit )  
17 organization; FRIENDS OF THE )  
18 BITTERROOT, a non-profit organization; )  
19 FRIENDS OF THE WILD SWAN, a non-profit )  
20 organization; the SWAN VIEW COALITION, )  
21 a non-profit organization, OREGON WILD, )  
22 a non-profit organization, CASCADIA )  
23 WILDLANDS, a non-profit organization; )  
24 the ALLIANCE FOR THE WILD ROCKIES, a )  
25 non-profit organization; the COTTONWOOD )  
26 ENVIRONMENTAL LAW CENTER, a )  
27 non-profit organization; GEORGE )  
28 WUERHNER, an individual; the KOOTENAI )  
ENVIRONMENTAL ALLIANCE, a non-profit )  
organization; FOOTLOOSE MONTANA, a )  
non-profit organization; NATIVE ECOSYSTEMS )  
COUNCIL, a non-profit organization; the )  
WILDLANDS NETWORK, a non-profit )  
organization; and )

COMPLAINT FOR  
DECLARATORY  
AND INJUNCTIVE  
RELIEF

1 the HELENA HUNTERS AND ANGLERS )  
 2 ASSOCIATION, a non-profit organization, )  
 3 )  
 4 Plaintiffs, )  
 5 )  
 6 vs. )  
 7 )  
 8 SALLY JEWELL, in her official capacity as )  
 9 Secretary of the Interior; and the UNITED )  
 10 STATES DEPARTMENT OF THE INTERIOR, a )  
 11 federal department; DANIEL ASHE, in his official )  
 capacity as Director of the U.S. Fish and Wildlife )  
 Service; THE U.S. FISH AND WILDLIFE )  
 SERVICE, a federal agency, )  
 Federal-Defendants. )

INTRODUCTION

12  
 13  
 14 1. Plaintiffs, WildEarth Guardians *et al.*, hereby bring this civil action for  
 15 declaratory and injunctive relief against the above named Federal-Defendants (the  
 16 U.S. Fish and Wildlife Service or “the Service”) pursuant to the citizen suit  
 17 provision of the Endangered Species Act (ESA), 16 U.S.C. § 1540(g), and the  
 18 Administrative Procedure Act (APA), 5 U.S.C. § 706, for violations of the ESA.

19 2. This case challenges the Service’s August 13, 2014, decision to  
 20 withdrawal its proposed rule to list a distinct population segment of the North  
 21 American wolverine (*Gulo gulo lucus*) occurring in the contiguous United States  
 22 (hereinafter “wolverine”) as a threatened species under the ESA.

23  
 24 3. The best available science reveals only 250-300 wolverines remain in the  
 25 contiguous United States and the effective population able to breed and contribute  
 26 to the next generation is dangerously low, likely less than 50. This already small  
 27 population is threatened by climate change and other human disturbances.

1 Wolverine are a cold-climate dependent species that rely on sufficient snowpack  
2 for denning, foraging, and other benefits. Significant decreases in the amount of  
3 available wolverine habitat are anticipated due to increasing temperatures, earlier  
4 spring snowmelt, and loss of deep, persistent snowpack from climate change.

5 4. For these reasons, the Service’s own biologists, the Service’s Assistant  
6 Regional Director for the Mountain-Prairie Region, five out of seven scientists on  
7 the peer-review panel, all nine scientific experts convened by the Service to review  
8 the wolverine science, the American Society of Mammalogists (ASM), the Society  
9 for Conservation Biology (SCB), and fifty-six wildlife ecologists and conservation  
10 biologists are in agreement that wolverine qualify for protective status under the  
11 ESA.  
12

13 5. On August 13, 2014, however, the Service did an about-face, chose to  
14 ignore the findings and recommendation of its own biologists and the broader  
15 scientific community, and published a final decision withdrawing its proposed rule  
16 to list wolverine as a threatened species under the ESA (hereinafter “decision not to  
17 list wolverine”). No new data, research, peer-reviewed papers, or findings were  
18 relied on by the Service in making this decision. Instead, the Service based its  
19 decision on a purported lack of “certain predictions,” “fine-scale data,” and  
20 definitive conclusions. Such predictions, data, and conclusions are impractical,  
21 nearly impossible to obtain for a rare species harmed by climate change, and not  
22 required by the ESA.  
23

24 6. Wherefore, Plaintiffs – a diverse coalition of conservation, hunting, and  
25 animal rights organizations dedicated to ensuring the long-term survival and  
26 recovery of wolverine in the contiguous United States and ensuring the Service  
27

1 bases its listing decisions on sound science – are hereby compelled to bring this  
2 civil action for declaratory and injunctive relief.

### 3 JURISDICTION AND VENUE

4 7. This Court has jurisdiction of this action pursuant to 28 U.S.C. § 1331, 16  
5 U.S.C. § 1540(c), and 5 U.S.C. § 704.

6 8. This Court has the authority to review the Service’s action complained of  
7 herein, and grant the relief requested, pursuant to the ESA’s citizen suit provision,  
8 16 U.S.C. § 1540(g), and the APA, 5 U.S.C. § 706. All requirements for judicial  
9 review required by the ESA, including the requirement of providing sixty days  
10 notice of intent to sue prior to filing a civil action, are satisfied.

11 9. The relief sought is authorized by 28 U.S.C. § 2201 (Declaratory  
12 Judgment), 28 U.S.C. § 2202 (Injunctive Relief), 16 U.S.C. § 1540 (ESA), and 5  
13 U.S.C. § 706 (APA).

14 10. Venue is properly before this Court pursuant to 16 U.S.C. § 1540  
15 (g)(3)(A) and 28 U.S.C. § 1391(e).

16 11. There is a present and actual controversy between the Parties.

### 17 PARTIES

18 12. Plaintiff WILDEARTH GUARDIANS is a non-profit organization  
19 dedicated to protecting and restoring the West’s wild places, rivers, and wildlife,  
20 including wolverine. WildEarth Guardians has over 65,000 members and  
21 supporters and offices in Missoula, Montana, Denver, Colorado, and Santa Fe,  
22 New Mexico.

23 13. Plaintiff, FRIENDS OF THE BITTERROOT, is a non-profit organization  
24 with over 600 members dedicated to protecting the quality of life and native  
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1 wildlife species, including wolverine, in the Bitterroot valley and surrounding  
2 National Forests, including the Bitterroot, Beaverhead-Deerlodge, Salmon, and  
3 Lolo National Forests. Friends of the Bitterroot is also dedicated to ensuring  
4 federal agencies utilize the best available science when making listing decisions  
5 under the ESA.

6 14. Plaintiff, FRIENDS OF THE WILD SWAN, is a non-profit organization  
7 with its principal place of business in Swan Lake, Lake County, Montana. Friends  
8 of the Wild Swan is dedicated to protecting and restoring water quality and fish and  
9 wildlife habitat in northwest Montana and ensuring the long-term survival and  
10 recovery of wolverine in the contiguous United States.

11 15. Plaintiff, the SWAN VIEW COALITION is a Montana non-profit  
12 conservation and education organization dedicated to conserving the biological  
13 integrity of Montana's natural ecosystems and ensuring projects and programs on  
14 public lands truly sustain wildlife habitat and protect water quality. The Swan View  
15 Coalition is also dedicated to ensuring the long-term survival and recovery of  
16 wolverine in the contiguous United States and ensuring the U.S. Fish and Wildlife  
17 Service bases listing decisions on the best available science. The Swan View  
18 Coalition is based in Kalispell, Montana.

19 16. Plaintiff, OREGON WILD is a non-profit corporation with  
20 approximately 10,000 members and supporters throughout the state of Oregon and  
21 the Pacific Northwest. Oregon Wild and its members are dedicated to protecting  
22 and restoring Oregon's wildlands, wildlife (including wolverine), and waters as  
23 an enduring legacy.

24 17. Plaintiff, CASCADIA WILDLANDS is an Oregon non-profit  
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1 corporation with approximately 10,000 members and supporters throughout the  
2 United States. Cascadia Wildlands educates, agitates, and inspires a movement to  
3 protect and restore Cascadia's wild ecosystems.

4 18. Plaintiff, THE ALLIANCE FOR THE WILD ROCKIES (the Alliance) is  
5 a non-profit conservation and education organization with approximately 2,000  
6 members. The mission of the Alliance is to protect and restore the ecological and  
7 biological integrity of the Northern Rockies. The Alliance is based in Helena,  
8 Montana.  
9

10 19. Plaintiff, the COTTONWOOD ENVIRONMENTAL LAW CENTER, is  
11 a Montana-based nonprofit conservation organization dedicated to the protection of  
12 people, forests, water, and wildlife in the West, including the wolverine.

13 20. Plaintiff GEORGE WUERTHNER is an ecologist, writer (36  
14 publications), and photographer who has viewed wolverines and wolverine tracks  
15 in the wild. Mr. Wuerthner currently splits his time between Bend, Oregon and  
16 Helena, Montana.

17 21. Plaintiff, the KOOTENAI ENVIRONMENTAL ALLIANCE, is the  
18 oldest non-profit conservation organization in Idaho. Founded in 1972, the  
19 Kootenai Environmental Alliance's mission is to conserve, protect and restore the  
20 environment with particular emphasis on the Idaho Panhandle and the Coeur  
21 d'Alene Basin. The Kootenai Environmental Alliance has over 400 members.  
22

23 22. Plaintiff, FOOTLOOSE MONTANA is a non-profit organization  
24 dedicated to promoting trap free public lands for people, pets, and wildlife, and  
25 ensure the long-terms survival and recovery of native wildlife species in Montana,  
26 including wolverine. Footloose Montana is based in Missoula, Montana.  
27

1 23. Plaintiff, NATIVE ECOSYSTEMS COUNCIL is a non-profit advocacy  
2 organization based in Three Forks, Montana dedicated to protecting and restoring  
3 native ecosystems in the Northern Rockies. In furtherance its this mission, Native  
4 Ecosystems Council's members and staff have been active in wildlife management  
5 in the Northern Rockies region for more than 16 years.

6 24. Plaintiff, WILDLANDS NETWORK is a non-profit organization  
7 established in 1991 whose mission is to reconnect nature in North America. The  
8 Wildlands Network is focused on conserving the wholeness of nature, which  
9 requires protecting the biodiversity of species. The Wildlands Network works to  
10 provide for large core reserves of habitat and the presence of apex predators and  
11 species, including wolverine.

12 25. Plaintiff, HELENA HUNTERS AND ANGLERS ASSOCIATION, is a  
13 non-profit organization dedicated to protecting and restoring fish and native  
14 wildlife populations (including wolverine) and habitat in Montana as a public trust,  
15 vital to our general welfare. Helena Hunters and Anglers Association promotes the  
16 highest standards of ethical conduct and sportsmanship and promotes outdoor  
17 recreational opportunities for all citizens to share equally. Helena Hunters and  
18 Anglers Association is based in Helena, Montana.

19 26. Plaintiffs' members, staff, and supporters are dedicated to ensuring the  
20 long-term survival and recovery of wolverine in the contiguous United States and  
21 ensuring the Service complies with the ESA and bases all listing decisions on the  
22 best scientific and commercial data available.

23 27. Plaintiffs' members and staff live near and/or routinely recreate in  
24 occupied wolverine habitat in the contiguous United States. Plaintiffs' members  
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1 and staff enjoy observing and studying wolverine in the wild, including signs of the  
2 wolverines presence throughout the species' current range. The opportunity to  
3 possibly view a wolverine or signs of wolverine in the wild—by itself—is of  
4 significant interest and value to Plaintiffs' members and staff and increases their  
5 use and enjoyment of public lands.

6 28. Plaintiffs' members and staff derive aesthetic, recreational, scientific,  
7 inspirational, educational, and other benefits from wolverine, recreating in areas  
8 occupied by wolverine, and in working to protect and restore wolverine  
9 populations, sub-populations, and wolverine habitat (both denning and foraging).  
10 In furtherance of these interests, Plaintiffs' members and staff have worked and  
11 continue to work to conserve wolverine in the contiguous United States.

12 29. Plaintiffs' interests have been, are being, and unless the requested relief  
13 is granted, will continue to be harmed by the Service's actions and/or inactions  
14 challenged in this complaint. If this Court issues the relief requested the harm to  
15 Plaintiffs' interests will be alleviated and/or lessened.

16 30. Defendant SALLY JEWEL is sued in her official capacity as Secretary of  
17 the United States Department of the Interior. As Secretary, Ms. Jewell is the  
18 federal official with responsibility for all Service officials' inactions and/or actions  
19 challenged in this complaint.

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

23 32. Defendant DANIEL ASHE is sued in his official capacity as Director of  
24 the U.S. Fish and Wildlife Service. As Director, Mr. Ashe is the federal official  
25 with responsibility for all Service officials' inactions and/or actions challenged in  
26



1 this complaint.

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

## 6 BACKGROUND

### 7 *The wolverine*

8 34. The wolverine is the largest member of the *Mustelidae* (weasel) family.

9 35. The wolverine resemble a small bear, but with a bushy tail and a broad,  
10 rounded head, short rounded ears, small eyes, and a body custom-built for high-  
11 elevation mountain living.

12 36. The wolverine's large, crampon-clawed feet (each with five toes with  
13 curved, semi-retractile claws used for digging and climbing) are enormous relative  
14 to its body which allow the animal to spread its weight like snowshoes. This gives  
15 wolverines an advantage over most competitors and prey during cold months.

16 37. Wolverines operate at a higher metabolic rate than other animals their  
17 size.

18 38. To hold in heat, wolverines wear a double fur coat which includes a  
19 dense inner layer of air-trapping wool beneath a cover of stout guard hairs which  
20 add extra insulation. These stout guard hairs, which drape from the wolverine, are  
21 textured to resist absorbing moisture and excel at shedding frost (this makes a  
22 wolverine's pelt extremely desirable and valuable).

23 39. A wolverine's weapons include well developed claws, sharp front teeth,  
24 long fangs, and cheek teeth designed for cutting.

25 40. The wolverine's bite force is extremely strong. When a wolverine comes  
26 upon an elk or moose carcass that larger predators have worked over, it can crunch  
27

1 up the skeleton left behind, shattering massive bones that not even a grizzly could  
2 crack.

3 41. Wolverines have robust skulls that protect relatively large brains. A  
4 wolverine's eyes are positioned in the front of the head rather than on the sides  
5 which is a common trait for hunters that rely on accurate depth perception.

6 42. Reproductive rates for wolverines are among the lowest known for  
7 mammals.

8 43. Approximately 40% of all female wolverines are capable of giving birth  
9 at two years old (the average age of reproduction, however, is three years). Female  
10 wolverines become pregnant most years and produce a litter of approximately 3.4  
11 kits on average. It is common, however, for females to forgo reproducing every  
12 year, possibly saving resources to increase reproductive success in subsequent  
13 years. Female wolverines are also known to reabsorb or spontaneously abort litters  
14 prior to giving birth. Breeding generally occurs from late spring to early fall.  
15 Female wolverines undergo delayed implantation until the following winter to  
16 spring, when active gestation lasts from 30 to 40 days.

17 44. Wolverine litters are born from mid-February through March.

18 45. Female wolverines use natal (birthing) dens that are excavated in snow.

19 46. Deep snow that persists into the late spring is needed for wolverine  
20 reproduction.

21 47. No records exist of wolverines denning anywhere but in snow in the  
22 contiguous United States. Wolverines do not den in the absence of snow. This is  
23 true even though there is a wide availability of snow-free denning opportunities  
24 within the species' geographic range.

25 48. Stable snow pack greater than five feet deep appears to be a requirement  
26 for natal denning because it provides security for offspring and buffers cold winter  
27 temperatures.

1 49. The wolverine's natal den consist of tunnels that contain well-used  
2 runways and bed sites and may naturally incorporate shrubs, rocks, and downed  
3 logs as part of their structure. The snow tunnel and complex structures associated  
4 with dens is likely required to protect young from interspecific and intraspecific  
5 predation. A layer of deep snow may also add crucial insulation from cold  
6 temperatures and wind prevalent in denning habitat.

7 50. Female wolverines have been known to abandon reproductive dens when  
8 temperatures warm and snow conditions become wet. This may indicate that the  
9 condition of the snow is important to successful reproduction and that the onset of  
10 spring snowmelt may force female wolverines to move kits into alternate denning  
11 sites with better snow conditions if they are available.

12 51. In Montana, natal dens typically occur above 7,874 feet and are located  
13 on north aspects in avalanche debris, typically in alpine habitats near treeline.

14 52. Once the litter is born, wolverines will continue to use the natal den  
15 through late April and early May (occupancy of such dens varies from 9 to 65  
16 days). As wolverines grow, females move the kits to multiple secondary "maternal"  
17 dens. Researchers think the timing of natal den abandonment may be tied to the  
18 accumulation of water in the dens due to snowmelt, the maturation of offspring,  
19 disturbance, and/or geographic location.

20 53. After using natal and maternal dens, wolverines may also use rendezvous  
21 sites through early July. These sites are characterized by natural (unexcavated)  
22 cavities formed by large boulders, downed logs (avalanche debris), and snow.

23 54. Wolverines do not appear to specialize on specific vegetation or  
24 geological habitat aspects. Instead, wolverines select areas that are cold and receive  
25 enough winter precipitation to reliably maintain deep persistent snow late into the  
26 warm season.

27 55. Wolverines are morphologically, demographically, and behaviorally

1 adapted to cold environments with low productivity and where snow is present  
2 much of the year. This niche results in inherently vulnerable populations due to low  
3 densities and limited capacity for growth.

4 56. Wolverines opportunistically feed on a variety of food sources.  
5 Wolverines scavenge carcasses, prey upon small animals, birds, and ungulates, and  
6 eat fruit, berries and insects.

7 57. Wolverines cache food in snow banks and in boulder fields with icy  
8 water running underneath. Supplies in such caches may keep not just for one month  
9 but from one year to the next. Wolverines also have an excellent sense of smell that  
10 enables them to find food beneath deep snow. During all seasons and regions,  
11 caching food in cold, structured microsites inhibits competition with insects,  
12 bacteria, and other scavengers. Caching is likely a critical behavioral adaptation  
13 because total food resources are relatively limited within the wolverine's niche.

14 58. Wolverines require secure, core areas of habitat that are large and linked  
15 to other sub-populations. Wolverines require a lot of space; the availability and  
16 distribution of food is likely the primary factor in determining wolverine  
17 movements and home range size.

18 59. Female wolverines forage close to den sites in early summer,  
19 progressively ranging further from dens as kits become more independent.

20 60. Wolverines travel long distances over rough terrain and deep snow, and  
21 adult males generally cover greater distances than females. Wolverines' territories  
22 in Montana, for example, range from 193 to 588 square miles for males and 55 to  
23 148 square miles for females. Wolverines often move long distances in short  
24 periods of time when dispersing from natal ranges, into habitats unsuitable for  
25 long-term survival. Such movements make it difficult to estimate total population  
26 size and distinguish between occurrence records that represent established  
27 populations and those that represent short-term occupancy or exploratory

1 movements.

2         61. In the contiguous United States, wolverines exist as a metapopulation. A  
3 metapopulation is a network of semi-isolated populations, each occupying a  
4 suitable patch of habitat in a landscape of otherwise unsuitable habitat.  
5 Metapopulations require some level of regular or intermittent migration and gene  
6 flow among subpopulations, in which individual populations support one another  
7 by providing genetic and demographic enrichment through mutual exchange of  
8 individuals. Individual subpopulations may go extinct or lose genetic viability, but  
9 are then rescued by immigration from other subpopulations, thus ensuring the  
10 persistence of the metapopulation as a whole.

11         62. In the contiguous United States, wolverine historically occurred  
12 throughout the Southern Rockies (Wyoming, Colorado, and northern New  
13 Mexico), California's Sierra Nevada Mountains, parts of the Pacific Northwest  
14 (Oregon and Washington), throughout the Northern Rockies (Montana, Idaho, and  
15 Wyoming), and Utah. Records of wolverine occurrences also exist in parts of the  
16 Great Plains, Great Lakes, Midwest, and Northeastern United States.

17         63. Currently, known functioning populations of wolverines in the  
18 contiguous United States are limited to Washington's North Cascades, the Wallowa  
19 Range in Oregon, and the Northern Rocky Mountains in Idaho, Montana, and  
20 Wyoming.

21         64. Modeled wolverine habitat currently exists in portions of Washington,  
22 Oregon, California, Idaho, Montana, Wyoming, Colorado, Nevada, Utah, and  
23 northern New Mexico.

24         65. The majority (95%) of wolverine habitat currently occupied by the  
25 species in the contiguous lower 48 states is federally owned and managed mostly  
26 by the United States Forest Service.

27

28 PAGE 12 WILDEARTH GUARDIANS v. JEWELL

1 ***Threats to the wolverine.***

2 66. Wolverine are threatened by an already small population size with low  
3 genetic diversity, loss and modification of habitat from climate change, mortality  
4 from trapping, other human disturbances, and the inadequacy of existing regulatory  
5 mechanisms.

6 ***Small population size and low genetic diversity***

7 67. No systematic or accurate population census of wolverines in the  
8 contiguous United States exists so the current population level (total and effective)  
9 and population trends remain unknown.

10 68. Based on the Service's current knowledge of occupied wolverine habitat  
11 and wolverine densities, the Agency estimates the total wolverine population in the  
12 entire contiguous United States to be approximately 250-300 individuals, with the  
13 majority of individuals in Montana, Idaho, and Wyoming. The Service's population  
14 estimate (by state) is as follows: 175 in Montana; 75 in Idaho; 15 in Wyoming; 1 in  
15 Colorado; 10 in Washington; 5 in Oregon; and 1 in California.

16 69. The Service's population estimate is not based on a peer-reviewed paper  
17 or study estimating the total population of wolverine in the contiguous United  
18 States. The Service's 250-300 number is derived primarily from the amount of  
19 modeled wolverine habitat that exists in the contiguous United States (in the  
20 absence of field surveys) which, according to the best available science, is not the  
21 most reliable or appropriate method for predicting wolverine numbers. Peer-  
22 reviewed expressly warn against estimating wolverine abundance based on  
23 available habitat assumed densities, without actual field surveys. The total  
24 wolverine population in the contiguous United States could be less than 200  
25 individuals.

26 70. The Service estimates that approximately 175 wolverines occupy  
27 Montana. Other wolverine researchers say a more realistic estimate of the number

1 of wolverines in Montana is likely 100 to 150 individuals.

2 71. Biologists draw a distinction between a species' total or absolute  
3 population size and the "effective" size of a population, which is the number of  
4 individuals that actually contribute offspring to the next generation. To determine  
5 the effective population size, biologists take the overall count, subtract  
6 nonbreeding animals (immature, infertile, or prevented from mating by dominant  
7 individuals), then subtract the adult females that skipped breeding that year because  
8 they were nursing young or replenishing their energy reserves. Then subtract the  
9 mothers whose offspring of that year failed to survive to breeding age.

10 Effective population size is important because it determines rates of loss of genetic  
11 variation and the rate of inbreeding.

12 72. The estimated effective population of wolverine in Montana, Idaho, and  
13 Wyoming is 35 individuals. The estimated effective population of wolverine in the  
14 entire contiguous United States is less than 50.

15 73. The Service notes that the effective population size of wolverines in the  
16 contiguous United States is exceptionally low and below what is thought to be  
17 adequate for short-term maintenance of genetic diversity and population viability.

18 74. Concern over low effective population size was highlighted in a peer-  
19 reviewed study which determined that without immigration from other populations  
20 at least 400 breeding pairs of wolverines would be necessary to sustain the long-  
21 term genetic viability of the contiguous United States population.

22 ***Loss and modification of habitat from climate change***

23 75. The best available science reveals climate change will decrease the  
24 amount of available wolverine habitat and increase fragmentation between areas of  
25 suitable wolverine habitat in the contiguous United States. This will result in a  
26 smaller and more isolated population of wolverines in contiguous United States.

27 76. The wolverines' reliance on late spring snow for denning and consistent

1 snowpack and cold sites for food storage, as well as evidence revealing the species  
2 rarely occurs where the average maximum daily temperature in August exceeds 70  
3 degrees, makes the species sensitive to climate change.

4 77. Peer-reviewed, climate change models predict that warming temperatures  
5 and changes in precipitation will result in reduced snowpack and permanent loss of  
6 wolverine habitat in the contiguous United States.

7 78. By 2045, the best available science estimates that 23 percent of current  
8 wolverine habitat in the contiguous United States will be lost due to climate  
9 warming. That loss expands to 63 percent of wolverine habitat by the time interval  
10 between 2070 and 2099.

11 79. The best available science reveals changes in climate are likely to result  
12 in permanent loss of a significant portion of wolverine habitat within the  
13 foreseeable future. Given the spatial needs of wolverines and the limited  
14 availability of suitable habitat, this projected loss of wolverine habitat will likely  
15 result in a loss of wolverine numbers that is greater than the overall loss of habitat  
16 area.

17 80. The best available science reveals that as habitat patches become smaller  
18 and more isolated, they are likely to lose the ability to support wolverines. Loss of  
19 wolverine habitat also increases habitat fragmentation as islands of wolverine  
20 habitat become smaller and intervening areas between wolverine habitat become  
21 larger. This habitat alteration will result in the loss of genetic diversity due to  
22 inbreeding within a few generations. Further, isolation of wolverines on small  
23 habitat islands with reduced connectivity to other populations would also increase  
24 the likelihood of sub-populations being lost due to demographic stochasticity,  
25 impairing the functionality of the wolverine metapopulation in the contiguous  
26 United States.

27 81. The best available science reveals climate change will have direct and



1 indirect effects to wolverine populations in the contiguous United States including  
2 reducing the number of wolverines that can be supported by the available habitat  
3 and reducing the ability of wolverines to travel between patches of suitable habitat.  
4 This reduction in connectivity is likely to affect metapopulation dynamics making  
5 it more difficult for subpopulations to recolonize areas where wolverines have been  
6 extirpated and to bolster the genetics or demographics of adjacent subpopulations.

7 ***Mortality from trapping***

8 82. Over the last hundred years, trapping has been the primary cause of  
9 wolverine mortality in the contiguous United States. Trapping is believed to have  
10 played a role in the historic decline of wolverines in North America in the late  
11 1800s and early 1900s.

12 83. Trapping is the driving force behind local extirpations of wolverine  
13 populations in the contiguous United States. Trapping accounts for a high  
14 proportion of wolverine mortality, affecting even populations that are locally  
15 protected.

16 84. Wolverines are vulnerable to trapping due to their habit of ranging  
17 widely in search of carrion, which would bring them into frequent contact with  
18 poison baits and traps set for other species. Montana authorizes the trapping of  
19 wolverines and trapping for other species in occupied wolverine habitat. Other  
20 states within the wolverine's range in the contiguous United States authorize  
21 trapping for other species within occupied wolverine habitat.

22 85. Because of their scavenging nature, wolverines come readily to man-  
23 made baits and are thus vulnerable to skilled trappers. Females with newborn  
24 young are limited in their ranging and foraging capacities and, as such, are  
25 especially vulnerable to baited traps.

26 86. The best available science reveals that human caused mortality of  
27 wolverine from trapping can harm local populations of wolverine in a number of

1 ways. According to the Service, human caused mortality is likely additive to  
2 natural mortality due to the low reproductive rate and relatively long life  
3 expectancy of wolverines. Trapped wolverine populations likely live at densities  
4 that are lower than carrying capacity, and may need to be reinforced by recruits  
5 from untrapped populations to maintain population viability and persistence.

6 87. Wolverines are susceptible to trapping due to reduced levels of gene  
7 flow, low reproductive rates and need for large areas of undisturbed habitat.

8 88. According to Forest Service biologists, no other type of human activity  
9 has the same potential to cause populations to become dangerously small or locally  
10 extirpated as trapping. According to Forest Service biologists, decisions concerning  
11 wolverine trapping are critical to the persistence of extant populations and to the  
12 recolonization of depleted populations, especially those in isolated mountain  
13 ranges.

14 89. The Service found that trapping wolverines could have “significant  
15 negative effects” on wolverine populations inhabiting small mountain ranges.

16 ***Other human disturbances***

17 90. Other human disturbances that adversely impact wolverine in the  
18 contiguous United States include roads, rural sprawl and development (in  
19 important travel corridors or linkage zone), timber management on National Forest  
20 lands, and winter recreation.

21 91. The best available science reveals that winter recreational activities have  
22 the potential to disrupt and limit the use of wolverine natal denning areas.

23 92. The best available science reveals some concern regarding the effects of  
24 winter recreation in areas favored by females for reproductive denning. Preliminary  
25 data analyses suggest wolverine may respond to winter recreation by changing the  
26 behavior of denning females and causing significant additive energetic effects on  
27 wolverines.

1 ***Inadequacy of existing regulatory mechanisms***

2 93. None of the existing Federal or State regulatory mechanisms in place are  
3 designed to address the threat of modification of wolverine habitat due to the loss  
4 of snowpack from climate change.

5 94. Approximately 94% of the currently occupied wolverine habitat in the  
6 contiguous United States is in Federal ownership, with the vast majority on  
7 National Forest lands. Land and Resource Management Plans Forest that dictate  
8 the management of these lands rarely mention wolverine and do not include  
9 specific goals, objectives, or standards for properly managing the species.

10 ***The Service's determination that wolverine warrant protection under the ESA.***

11 95. On December 14, 2010, the Service determined that the addition of  
12 wolverines to the ESA's list of threatened and endangered wildlife was warranted.  
13 The Service's warranted decision was based on the best scientific and commercial  
14 information available, consideration of the ESA's five factors in assessing whether  
15 wolverines warrant listing, and made in accordance with Section 4 of the ESA, 16  
16 U.S.C. § 1533, and the ESA's implementing regulations, 50 C.F.R. § 424.

17 96. In the Service's December 14, 2010, warranted finding, the Agency  
18 found that wolverines "inhabit habitats with near-arctic conditions wherever they  
19 occur" and that, in the contiguous United States, wolverine habitat is restricted to  
20 high-elevation areas in the West. The Service also determined that wolverines are  
21 dependent on deep persistent snow cover for successful denning and they  
22 concentrate their year round activities in areas that maintain deep snow into the  
23 spring and cool temperatures throughout the summer.

24 97. In the Service's December 14, 2010, warranted finding, the Agency  
25 recognizes that empirical proof that a threat to wolverines exists is not required for  
26

1 listing under the ESA. The Service explains that the combination of exposure and  
2 some corroborating evidence of how the species is likely impacted suffices under  
3 the ESA.

4 98. The Service arrived at a “warranted” for listing determination for  
5 wolverine due to the current status of wolverines in the contiguous United States,  
6 which the Service noted exists as a small (250-300 individuals) and generally  
7 depauperate (3 of 13 haplotypes) metapopulation with limited dispersal between  
8 subpopulations. This information, when combined with information about the  
9 primary threat of climate change and secondary threats indicated that wolverines  
10 are likely to lose 63 percent of their current habitat area over the next century.

11 99. In the Service’s December 14, 2010, warranted finding, the Agency  
12 determined that climate changes are predicted to reduce wolverine habitat and  
13 range by 23 percent over the next 30 years and 63 percent over the next 75 years,  
14 rendering remaining wolverine habitat significantly smaller and more fragmented.

15 ***The Service’s proposed rule to list the wolverine.***

16 100. On February 4, 2013, the Service published notice of a proposed rule to  
17 list wolverine as a threatened species under the ESA (78 Fed. Reg. 7864). The  
18 Service determined that habitat loss due to increasing temperatures and reduced  
19 late spring snowpack due to climate change is likely to have a significant negative  
20 population-level impact on wolverine populations in the contiguous United States.  
21 The Service determined that in the foreseeable future, wolverine habitat is likely to  
22 be reduced to the point that the wolverine in the contiguous United States is in  
23 danger of extinction.

24 101. The Service’s February 4, 2013, proposed rule to list wolverine was  
25 based on the best scientific and commercial data available.  
26  
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1 102. In the February 4, 2013, proposed rule to list wolverine, the Service  
2 found that deep, persistent, and reliable spring snow cover is the best overall  
3 predictor of wolverine occurrence in the contiguous United States. The Service  
4 found that deep, persistent snow correlates well with wolverine year-round habitat  
5 use across wolverine distribution in North America at both regional and local  
6 scales. The Service states that while they are uncertain why spring snow cover so  
7 accurately predicts wolverine habitat use, it is likely related to wolverines' need for  
8 deep snow during the denning period and wolverines' use of a cold, low  
9 productivity niche by using food caching in cold habitats to survive food-scarce  
10 winters that other carnivores cannot.

11 103. In the February 4, 2013, proposed rule to list wolverine, the Service  
12 recognized that there are always "scientific uncertainties" on many aspects of  
13 climate change, including the role of natural variability in climate. The Service  
14 stated that to date, McKelvey et al. (2011) is "the most sophisticated analysis  
15 regarding climate change effects to wolverines" and "represents the best scientific  
16 information available regarding the impacts of climate change to wolverine  
17 habitat."

18 104. In the February 4, 2013, proposed rule to list wolverine, the Service  
19 found that McKelvey et al. (2011) was the best available science on projecting the  
20 future impacts of climate change on wolverine habitat for four reasons: (1) the  
21 habitat projections were based on global climate models that are thought to be the  
22 most reliable predictors of future climate available; (2) they conducted  
23 downscaling analyses to infer geographic climate variation at the scale relevant to  
24 wolverine habitat; (3) they used a hydrologic model to predict snow coverage  
25 during the spring denning period; and (4) they used the habitat model developed by  
26 Copeland et al (2010) to relate projected climate changes to wolverine habitat.

27 105. In the February 4, 2013, proposed rule to list wolverine, the Service

1 recognized that, when working in concert with climate-change, low population  
2 numbers and human cause mortality from trapping pose a threat to wolverine in  
3 the contiguous United States.

4 106. In the February 4, 2013, proposed rule to list wolverine, the Service  
5 states that other factors and threats may, when considered in the context of climate  
6 change, become threats due to the cumulative effects they have on wolverine  
7 populations.

8 ***The peer review panel.***

9 107. The Service asked a group of seven experts to review the science  
10 behind the Service's proposed rule to list the wolverine. Five of the seven  
11 reviewers supported the conclusion that the proposed listing decision was both  
12 logical and supported by the best available science.

13 108. Dr. John Squires found that the Service's February 4, 2013, proposed  
14 rule to list wolverine "provided a logical and transparent rationale for the proposed  
15 listing" that was supported "with a clear presentation of the most relevant  
16 literature."

17 109. Dr. Michael Schwartz found the Service's February 4, 2013, proposed  
18 rule to be "logical and informative" and "an excellent piece of work."

19 110. William Zielinski, Research Ecologist with the Forest Service's Pacific  
20 Southwest Research Station found the Service's February 4, 2013, proposed rule to  
21 be logical and, in particular, found "the evidence for the effects of climate change  
22 on wolverine winter (and summer) habitat" and the "fact that the additional threats  
23 of trapping (managed and incidental) and small population size may add  
24 cumulative weight to the overarching threat of climate change" to be "strong."

25 111. Jeff Copeland, one of the leading wolverine biologists at the U.S. Forest  
26 Service's Rocky Mountain Research Station in Montana, reviewed the Service's  
27 proposed listing rule and supported the Service's finding that wolverine warranted

1 listing under the ESA.

2 112. Keith Aubry, a Research Wildlife Biologist with the Forest Service's  
3 Pacific Northwest Research Station, reviewed the Service's February 4, 2013,  
4 proposed rule to list wolverines and found it to be "logical and supported by the  
5 evidence." He found the Service's findings to be "careful, thoughtful, and  
6 scientifically defensible."

7 113. Two of the seven peer reviewers – Dr. Audrey Magoun and Bob Inman  
8 – disagreed with the Service's findings in the February 4, 2013, proposed rule to  
9 list wolverines.

10 ***The independent science panel convened by the Service.***

11 114. On April 3-4, 2014, the Service and partners from state wildlife  
12 agencies convened a panel of nine experts in climate change, wolverines and other  
13 mammalian carnivores, habitat modelers, and population ecologists to discuss  
14 climate-related issues and possible future population trends for wolverines. The  
15 objective of the panel of nine experts was to better understand the strength of the  
16 relationships between climate change, wolverine habitat, and future wolverine  
17 population trends through dialogue.

18 115. The nine panelists concluded unanimously that the scientific  
19 conclusions in the proposed listing rule regarding the threats to the species from  
20 climate change were well supported.

21 116. The nine panelists agreed on the importance of deep snow for  
22 wolverines at the denning scale, including that patches of deep snow are important  
23 for refrigeration of food caches and thermal protection for kits and contiguous deep  
24 snow may be important as a barrier for other mammalian carnivores. Most of the  
25 panelists also agreed that McKelvey et al. (2011)'s snow cover projections are  
26 "about right" in the short term but underestimated the severity of snow loss in the  
27 long term. The panelists also believed that the impacts of climate change on

1 wolverine habitat may be greater than or less than the projections in McKelvey et  
2 al. (2011) but concluded there was no indication that McKelvey et al. (2011)  
3 showed systematic error resulting in a one-sided bias.

4 117. Nine out of nine panelists expressed pessimism for the long-term  
5 (roughly end of the century) future of wolverines in the contiguous United States  
6 because of the effects of climate change on habitat.

7 ***The Assistant Regional Director's memo***

8 118. In May, 2014, the Service's Assistant Regional Director, Ecological  
9 Services, for the Mountain-Prairie Region, Theresa Rabot, drafted a memorandum  
10 summarizing the conclusions of the Service's scientists in the Montana field office  
11 who had worked on the listing determination for wolverine.

12 119. The Assistant Regional Director's memorandum reaffirms the Service's  
13 findings in the Service's February 4, 2013, proposed rule. The Assistant Regional  
14 Director concluded that "relying on Copeland et al. (2010) and McKelvey et al.  
15 (2011) as the best available scientific information regarding the effects of climate  
16 change on wolverine habitat remains scientifically justified."

17 120. The Assistant Regional Director's memorandum states that in the  
18 Service's review, it has been "unable to obtain or evaluate any other peer reviewed  
19 literature or other bodies of evidence that would lead us to a different conclusion.  
20 While we recognize there is uncertainty associated with when population effects  
21 may manifest themselves, any conclusion that there will not be population effects  
22 appears to be based on opinion and speculation. In our opinion that would not  
23 represent the best available scientific and commercial data available."

24 ***Review and input on the proposed listing rule from other scientists.***

25 121. On July 31, 2014, the American Society of Mammalogists (ASM) and  
26 the Society for Conservation Biology (SCB) sent the Service a letter supporting the  
27 listing of wolverine under the ESA. The ASM and SCB believe that the best



1 available science on wolverine and threats to the species supports listing.

2 122. The ASM and SCB offered to assist the Service with additional external  
3 review of the relevant wolverine and climate science, if necessary.

4 123. On July 31, 2014, fifty-six wildlife ecologists and conservation  
5 biologists sent a letter to the Service supporting the listing of wolverine and stating  
6 that the February 4, 2013, proposed rule was based on the best available science,  
7 including numerous peer-reviewed scientific studies demonstrating the wolverine's  
8 dependence of snowpack and studies projecting the continued and extensive loss of  
9 snowpack across the wolverine's range due to climate change.

10 ***The Service's about-face decision to withdraw its proposed rule to list wolverine.***

11 124. On August 13, 2014, the Service issued a final decision withdrawing its  
12 proposed rule to list wolverine as a threatened species under the ESA. The Service  
13 based this decision on its new conclusion that the factors affecting the wolverine  
14 identified in the February 4, 2013, proposed rule "are not as significant as believed  
15 at the time of the proposed rule's publication.

16 125. In the Service's August 13, 2014, decision not to list wolverine, the  
17 Service states that McKelvey et al. (2013) is the "most sophisticated analysis of  
18 impacts of climate change at a scale specific to the range of the wolverine."

19 126. In the Service's August 13, 2014, decision not to list wolverine, the  
20 Service says it re-evaluated the best scientific data available and reaching its  
21 conclusion that climate change will not result in significant reductions in wolverine  
22 habitat in the foreseeable future. The Service's decision not to list wolverine was  
23 not based on any new data, research, or peer reviewed papers that emerged after  
24 publication of the proposed rule to list wolverine on February 4, 2013.

25 127. In the Service's August 13, 2014, decision not to list wolverine, it  
26 acknowledges that there is significant evidence that the climate within the range of  
27 wolverine is warming and will affect snow patterns and associated wolverine

1 habitat. The Service maintains that wolverine’s response to such changes,  
2 however, is too uncertain to warrant listing because it does not know how the  
3 effects of climate change will “precisely” impact wolverine populations.

4 128. The ESA, the Service’s implementing regulations, and the Service’s  
5 policy documents do not require “experimental evidence” and does not preclude  
6 the use of predictive modeling approaches that are supported by the scientific  
7 literature. The National Research Council (NRC) recommends, in its reported  
8 entitled “Science and the Endangered Species Act,” greater use of predictive  
9 modeling techniques such as population viability analysis in ESA decision making.

10 129. The Service’s August 13, 2014, decision not to list wolverine ignores  
11 the predictive modeling approaches used to project future effects of climate change  
12 on snow cover and the loss of habitat components for wolverine.

13 130. The Service based its August 13, 2014, decision not to list wolverine on  
14 the finding that wolverines are believed to be “expanding both within the area  
15 currently inhabited by wolverines as well as into suitable habitat not currently  
16 occupied and/or occupied by a few individuals.”

17 131. The Service based its August 13, 2014, decision not to list wolverine on  
18 the finding that sufficient habitat for wolverine will likely remain to maintain the  
19 wolverine population at the current level of abundance even if climate change  
20 reduces snowpack.

21 132. The Service based its August 13, 2014, decision not to list wolverine on  
22 the finding that “den sites are not currently limiting wolverines” and there is not  
23 “sufficient information to predict if and when any limitation will occur in the  
24 future.” The Service also concluded that “support for the obligate relationship  
25 between wolverine and deep snow at an individual wolverine’s home range” or the  
26 wolverines range in general “is lacking.” The Service states it does not have  
27 “sufficient information to suggest that deep snow is required by wolverines through

1 their home ranges” beyond the level of the individual den site.

2 133. The Service based its August 13, 2014, decision not to list wolverine on  
3 the finding that it does not have “sufficient information” to understand the “specific  
4 response” of wolverine to future effects of changes in climate. The Service  
5 determined that “no data” reliably suggests that the anticipated changes are such  
6 that the viability of wolverine populations in the contiguous United States will be  
7 at risk.

8 134. In the Service’s August 13, 2014, decision not to list wolverine, the  
9 Service maintains the best available science does not indicate that human  
10 disturbance from winter recreational activities, land development, transportation  
11 corridors, and timber management pose a threat to wolverine in the contiguous  
12 United States.

13 135. In the Service’s August 13, 2014, decision not to list wolverine, the  
14 Service maintains the best available science does not indicate that mortality from  
15 trapping (including incidental trapping) poses a threat to wolverine in the  
16 contiguous United States.

17 136. In the Service’s August 13, 2014, decision not to list wolverine, the  
18 Service concluded that demographic stochasticity and loss of genetic diversity due  
19 to small population and effective population size is not a threat to wolverine in the  
20 contiguous United States.

21 137. In the Service’s August 13, 2014, decision not to list wolverine, the  
22 Service concluded that the combination of climate change, human disturbances,  
23 mortality from trapping, and small population and effective population size does  
24 not pose a cumulative threat to wolverine in the contiguous United States.

25 138. The Service’s August 13, 2014, determination that wolverine do not  
26 warrant listing under the ESA conflicts with the recommendations of the Service’s  
27 Montana Ecological Services Office in Helena, Montana, the recommendation from

1 the Assistant Regional Director, Ecological Services for the Mountain-Prairie  
2 Region, the findings of five of the seven members of the peer review panel, the  
3 findings of the April, 2014, scientific panel, the peer-reviewed papers from Forest  
4 Service's the Rocky Mountain Research station, and the recommendations of the  
5 ASM, SCB, and the fifty six wildlife ecologists and conservation biologists who  
6 signed the July 31, 2014, letter to the Service.

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COUNT I  
ESA VIOLATION  
(failure to utilize the best available science)

139. Plaintiffs incorporate by reference all preceding paragraphs.

140. Pursuant to Section 4(b)(1)(A) of the ESA, 16 U.S.C. § 1533(b)(1)(A),  
the Service's implementing regulations, and the Service's 2011 policy on scientific  
integrity, the Service must make all listing decisions "solely on the basis of the best  
scientific and commercial data available. . ." (hereinafter "best available science").

141. The Service's August 13, 2014, decision not to list wolverine was not  
based on the best available science on wolverine and threats to wolverine.

142. The Service's failure and/or refusal to utilize the best available science  
when deciding not to list wolverine violates of Section 4 of the ESA, 16 U.S.C. §  
1533, 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).

COUNT II  
ESA VIOLATION  
(failure to properly apply the five listing factors)

143. Plaintiffs incorporate by reference all preceding paragraphs.

144. Pursuant to Section 4(a)(1) of the ESA, 16 U.S.C. § 1533(a)(1), and the  
Service's implementing regulations, Service is required to determine whether a

1 species is threatened or endangered because of any of the following factors: (A) the  
2 present or threatened destruction, modification, or curtailment of the species' range;  
3 (B) overutilization for commercial, recreational, scientific, or educational purposes;  
4 (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms;  
5 and (E) other man-made factors affecting the species' continued existence. These  
6 factors are listed in the disjunctive so any one or combination of them can be  
7 sufficient for a finding that a species qualifies as threatened or endangered.

8 145. In deciding not to list wolverine, the Service failed to carefully consider  
9 and adequately apply Section 4(a)(1)'s five listing factors in accordance with the  
10 ESA and the Service's implementing regulations. The Service failed to analyze  
11 whether each factor, individually, or a combination of the various factors together  
12 (the cumulative impact), qualify wolverine for listing as a threatened or endangered  
13 species.

14 146. The Service's failure and/or refusal to properly consider and apply  
15 Section 4(a)(1)'s five listing factors in deciding not to list the wolverines violates  
16 Section 4 of the ESA, 16 U.S.C. § 1533, and is "arbitrary, capricious, an abuse of  
17 discretion, or otherwise not in accordance with law" and/or constitutes "agency  
18 action unlawfully withheld or unreasonably delayed." 5 U.S.C. §§ 706 (2)(A), 706  
19 (1).

20 COUNT III  
21 ESA VIOLATION  
(misapplication of the ESA's terms)

22 147. Plaintiffs incorporate by reference all preceding paragraphs.

23 148. Pursuant to Section 4 of the ESA, 16 U.S.C § 1333, the Service must  
24 base all listing decisions solely on the basis of the "best available science." The  
25 term "best available science" does not mean the best "possible" science and does  
26 not require certain science, definitive conclusions, scientific census, or even data  
27

1 on all aspects of a species' biology.

2 149. Pursuant to the ESA, a species is "threatened" if it is "likely to become  
3 an endangered species within the foreseeable future throughout all or a significant  
4 portion of its range." 16 U.S.C. § 1532(20). The term "likely to become" means  
5 something less than 100% certainty. A 51% chance (more likely than not) suffices.  
6 The term "foreseeable future" extends so far as reasonably "reliable" predictions  
7 can be made. Reliable predictions are not certain predictions. Predictions are  
8 reliable if they provide a reasonable degree of confidence in the prediction, in light  
9 of the conservation purposes of the ESA. The phrase "significant portion of its  
10 range" means, among other things, a major geographical area in which the species  
11 is no longer viable but once was. The task of defining the phrase includes  
12 quantifying of the species' historic range and an evaluation of whether the lost  
13 habitat amounts to a "significant portion" of that range.  
14

15 150. Pursuant to the ESA, a species is "endangered" if it is "in danger of  
16 extinction throughout all or a significant portion of its range." 16 U.S.C. § 1532(6).  
17 The term "in danger of extinction" does not mean or require a high risk of  
18 extinction.  
19

20 151. In deciding not to list wolverine, the Service failed to properly define  
21 and apply the ESA's statutory terms and phrases. The Service failed to properly  
22 define and apply the "best available science," "threatened," and "endangered" and  
23 the terms and phrases included therein, including "likely to become," "foreseeable  
24 future," "in danger of extinction," and "a significant portion of its range."

25 152. The Service's failure and/or refusal to properly define and apply the  
26 ESA's statutory terms and phrases in deciding not to list the wolverines violates the  
27

1 ESA and is “arbitrary, capricious, an abuse of discretion, or otherwise not in  
2 accordance with law ” and/or constitutes “agency action unlawfully withheld or  
3 unreasonably delayed.” 5 U.S.C. §§ 706 (2)(A), 706 (1).

4 153. The Service’s failure and/or refusal to properly define and apply the  
5 phrase “significant portion of its range” in its July 1, 2014, Final Policy (79 Fed.  
6 Reg. 37577) also violates the ESA and is “arbitrary, capricious, an abuse of  
7 discretion, or otherwise not in accordance with law ” and/or constitutes “agency  
8 action unlawfully withheld or unreasonably delayed.” 5 U.S.C. §§ 706 (2)(A), 706  
9 (1).

11 **COUNT IV**  
12 **ESA and APA VIOLATION**  
(insufficient data and no rational connection between facts and decision)

13 154. Plaintiffs incorporate by reference all preceding paragraphs.

14 155. Pursuant to the ESA and APA, 5 U.S.C. § 706, the Service’s listing  
15 decision on wolverine must be supported by reliable and sufficient evidence and  
16 there must be a rational connection between the facts found and the decision made.

17 156. The Service’s decision not to list wolverine is not supported by reliable  
18 and sufficient evidence, is premised on contorted and manipulated data, and there  
19 is no rational connection between the evidence in the record, including the peer-  
20 reviewed studies on wolverine and threats to the species, and the Service’s decision  
21 not to list the species. The Service’s decision not to list wolverine therefore  
22 violates the ESA and is “arbitrary, capricious, an abuse of discretion, or otherwise  
23 not in accordance with law ” and/or constitutes “agency action unlawfully withheld  
24 or unreasonably delayed.” 5 U.S.C. §§ 706 (2)(A), 706 (1).

REQUEST FOR RELIEF

157. Plaintiffs incorporate by reference all preceding paragraphs.

158. WHEREFORE, Plaintiffs respectfully request that this Court grant the following relief:

A. Issue a declaratory judgment that the Service's August 13, 2014, decision not to list wolverine violated the ESA 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" under the APA;

B. Issue an order setting aside the Service's August 13, 2014, decision not to list wolverine and remanding this matter back to the Service for further analysis and action consistent with the ESA and this Court's memorandum opinion and order;

C. Issue an order reinstating the wolverine's status as a candidate species, in accordance with the Service's February 4, 2014, proposed rule, (78 Fed. Reg. 7864) pending a new listing decision;

D. Issue a declaratory judgment that the Service's July 1, 2014, Final Policy (79 Fed. Reg. 37577) defining "significant portion of its range" violates the ESA and is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" under the APA;

E. Issue an order vacating or setting aside the Service's July 1, 2014, Final Policy (79 Fed. Reg. 37577) defining "significant portion of its range."

F. Retain continuing jurisdiction of this matter until the Service fully remedies the violations of law complained of herein;

G. Issue such injunctive relief as Plaintiffs may subsequently request;

H. Grant Plaintiffs their costs and expenses of litigation, including reasonable attorneys' fees pursuant to 16 U.S.C. § 1540(g);

I. Grant such other relief that this Court deems necessary, just, and proper.



Respectfully submitted this 20<sup>th</sup> day of October, 2014.

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