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

FRIENDS OF THE WILD SWAN, a
non-profit organization; ROCKY
MOUNTAIN WILD, a non-profit
organization; SAN JUAN CITIZENS
ALLIANCE, a non-profit
organization; WILDEARTH
GUARDIANS, a non-profit
organization; CASCADIA
WILDLANDS, a non-profit
organization; OREGON WILD, a
non-profit organization;
WILDERNESS WORKSHOP, a non-
profit organization; and,

Plaintiffs,

vs.

No.

COMPLAINT

DAVID BERNHARDT, in his official capacity as Secretary of the Interior; the UNITED STATES DEPARTMENT OF THE INTERIOR, a federal department; AURELIA SKIPWITH, in her official capacity as Director of the U.S. Fish and Wildlife Service; and UNITED STATES FISH AND WILDLIFE SERVICE, a federal agency,

Federal-Defendants.

INTRODUCTION

1. Plaintiffs, Friends of the Wild Swan, Rocky Mountain Wild, San Juan Citizens Alliance, WildEarth Guardians, Cascadia Wildlands, Oregon Wild, and Wilderness Workshop bring this civil action against Federal-Defendants (the Service) under section 11(g) of the Endangered Species Act (ESA), 16 U.S.C. § 1540(g), and the Administrative Procedure Act (APA), 5 U.S.C. § 701 *et seq.*, for violations of the ESA.

2. Plaintiffs challenge the Service's December 20, 2017 decision to forego recovery planning for the threatened Canada lynx distinct population segment occurring in the contiguous United States (lynx).

3. This final decision to forego recovery planning was made in response to this Court's order in *Friends of the Wild Swan v. Ashe*, 18 F. Supp. 3d 1077 (D. Mont. 2014). In *Friends of the Wild Swan*, this Court held that the Service's nearly fourteen-year delay in preparing a lynx recovery plan was unreasonable. This Court therefore directed the Service to prepare a lynx recovery plan by January 15, 2018, unless the agency finds that such a plan will not promote the conservation of the species as provided by section 4(f)(1) of the ESA, 16 U.S.C. § 1533(f)(1).

4. Following this Court's decision in *Friends of the Wild Swan*, the Service committed to prepare a recovery plan for lynx by the January 15, 2018 deadline.

5. In December 2017, however, the Service changed course and decided that a recovery plan would not promote the conservation of the species because lynx in the contiguous United States were deemed "recovered" and no longer threatened (at least until 2050). As such, instead of preparing a recovery plan, the Service said it would prepare a proposed rule to delist lynx. This was nearly three-years ago.

6. The Service's December 2017 decision to forego recovery planning because lynx are apparently "recovered" and no longer

threatened has no scientific support and is arbitrary, capricious, an abuse of discretion, and not in accordance with the ESA.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action under 28 U.S.C. § 1331, 16 U.S.C. § 1540(c), and 5 U.S.C. § 704.

8. This Court has the authority to review the Service's action(s) complained of herein and grant the relief requested under the ESA's citizen suit provision, 16 U.S.C. § 1540(g), and the APA, 5 U.S.C. § 706.

9. Plaintiffs exhausted all available administrative remedies.

10. All requirements for judicial review required by the ESA are satisfied. Plaintiffs notified the Service of its intent to file a civil action to rectify the legal violations outlined in this complaint. More than sixty days have elapsed since the Service received Plaintiffs' notice of intent to sue letter (and studies attached to it). On July 15, 2020, Plaintiffs sent each named defendant a notice of intent to sue letter alleging violations of the ESA. Each named defendant received the notice of intent to sue letter on July 20, 2020.

11. All requirements for judicial review required by the APA have also been satisfied.

12. The relief sought is authorized by 28 U.S.C. § 2201, 28 U.S.C. § 2202, 16 U.S.C. § 1540, and 5 U.S.C. § 706.

13. Venue is proper under 16 U.S.C. § 1540(g)(3)(A) and 28 U.S.C. § 1391(e).

14. Plaintiffs have organizational standing and satisfy the minimum requirements for Article III standing to pursue this civil action. Plaintiffs – including their members, supporters, and staff – have suffered and continue to suffer injuries to their interests in lynx and lynx recovery from the decision(s) challenged in this case. This Court can redress these injuries by granting the relief requested. There is a present and actual controversy between the parties.

PARTIES

15. Plaintiff, FRIENDS OF THE WILD SWAN, is a non-profit organization with its principal place of business in Swan Lake, Montana. Friends of the Wild Swan is dedicated to protecting and restoring water quality and fish and wildlife habitat in northwest Montana, including habitat for threatened lynx. Ensuring the survival and recovery of lynx is one of Friends of the Wild Swan's main focus areas. Friends of the Wild Swan has a long history of working to protect

and restore native carnivore species across the West, including lynx. Friends of the Wild Swan brings this action on behalf of itself, its members, and its supporters.

16. Plaintiff, ROCKY MOUNTAIN WILD, is a non-profit organization headquartered in Denver, Colorado. Rocky Mountain Wild is dedicated to ensuring the long-term survival and recovery of native species in the Southern Rockies, including lynx. Rocky Mountain Wild has a long history of working to protect and restore native carnivores, including lynx. Rocky Mountain Wild brings this action on behalf of itself, its members, and its supporters.

17. Plaintiff, SAN JUAN CITIZENS ALLIANCE, is a non-profit organization headquartered in Durango, Colorado. San Juan Citizens Alliance is dedicated to protecting our land, native wildlife species (including lynx), air, water, and character of our rural communities. San Juan Citizens Alliance has a long history of working to protect and restore native carnivores, including lynx. San Juan Citizens Alliance brings this action on behalf of itself, its members, and its supporters.

18. Plaintiff, WILDEARTH GUARDIANS (Guardians), is a non-profit conservation organization dedicated to protecting and restoring

the wildlife, wild places, wild rivers, and the health of the American West. Guardians is specifically committed to ensuring the survival and recovery of lynx. This includes ensuring the survival and recovery of lynx and increasing the population size and range of the species, as well as connectivity between lynx subpopulations in the contiguous United States and between lynx in the United States and lynx in Canada. Guardians has approximately 235,000 active members and supporters across the American West. Guardians maintains an office in Missoula, Montana, where most of its work to conserve lynx occurs. Guardians has a long history of working to protect and restore native carnivore species across the West, including lynx. Guardians brings this action on behalf of itself, its members, and its supporters.

19. Plaintiff, CASCADIA WILDLANDS, is a non-profit organization with approximately 12,000 members and supporters throughout the United States. Cascadia Wildlands works to educate, protect, and restore Cascadia region's wild ecosystems and native species, including lynx. Cascadia Wildlands brings this action on behalf of itself, its members, and its supporters.

20. Plaintiff, OREGON WILD, is a non-profit organization with approximately 10,000 members and supporters throughout Oregon and the Pacific Northwest. Oregon Wild and its members are dedicated to protecting and restoring the Pacific Northwest's wildlands, wildlife (including lynx), and waters as an enduring legacy. Oregon Wild brings this action on behalf of itself, its members, and its supporters.

21. Plaintiff, WILDERNESS WORKSHOP, is a non-profit organization headquartered in Carbondale, Colorado that advocates for public lands and wildlife (including lynx) across Colorado. Wilderness Workshop has more than 800 staff and members, many of whom have particular interests in lynx and lynx recovery. Wilderness Workshop brings this action on behalf of itself, its members, and its supporters.

22. Plaintiffs' members and supporters have standing to pursue this civil action in their own right and their interests in lynx and lynx recovery are germane to their respective organization's purposes.

23. Plaintiffs' members, supporters, and staff are dedicated to ensuring the long-term survival and recovery of lynx in the contiguous United States and ensuring the Service complies with the ESA and

bases all of its decisions – including its decision to forego a recovery plan – on the best available science.

24. Plaintiffs’ members, supporters, and staff understand the importance of recovery planning to species’ conservation under the ESA and the importance of complying with the law, regulations, and policy, and applying the best science when making important decisions about whether and how to prepare a recovery plan. Species with recovery plans are more likely to survive and recover than those without recovery plans. Species and species conservation efforts benefit from having recovery plans.

25. Plaintiffs’ members, supporters, and staff live in or near and/or routinely recreate in or near areas occupied by lynx. Plaintiffs’ members, supporters, and staff enjoy observing—or attempting to observe—and studying lynx, including signs of the lynx’s presence and its prey (including snowshoe hare and red squirrel) and/or photographing lynx in areas where the species is known to den, travel, and occur. The opportunity to view lynx or signs of lynx in the wild by itself is of significant interest and value to Plaintiffs’ members,

supporters, and staff and increases their use and enjoyment of areas where lynx may still exist.

26. Plaintiffs' members, supporters, and staff derive aesthetic, recreational, scientific, inspirational, educational, spiritual, and other benefits from lynx and working to conserve lynx. Plaintiffs' members, supporters, and staff enjoy working to protect and restore lynx in the West. In furtherance of these interests, Plaintiffs' members, supporters, and staff have worked and continue to work to conserve lynx. Ensuring the Service utilizes and applies the best available science, complies with the ESA, and prepares a recovery plan with science-based delisting criteria for lynx that addresses the threats to lynx (and does not prematurely declare the species "recovered" and delist the species) is a key component of Plaintiffs' interests in lynx and in conserving lynx.

27. The Service's decision to forego recovery planning for threatened lynx and related determination that the species is "recovered" and no longer threatened and can be delisted has harmed, is likely to harm, and will continue to harm Plaintiffs' interests in lynx and lynx conservation. Instead of preparing a "roadmap" for recovery and developing objective and measurable delisting criteria for lynx

(which would inform and benefit lynx conservation efforts), the Service is planning to delist lynx and remove all ESA protective measures. This has harmed and will continue to harm Plaintiffs' interests in lynx and lynx recovery.

28. Plaintiffs' interests have been, are being, and unless the requested relief is granted, will continue to be harmed by the Service's December 2017 decision to forego a recovery plan for lynx and its related finding that lynx are "recovered" and no longer threatened and related plans to delist the species.

29. If this Court issues the relief requested in this complaint, the harm to Plaintiffs' interests will be alleviated and/or lessened.

30. Federal-Defendant, DAVID BERNHARDT, is sued in his official capacity as Secretary of the Interior. As Secretary, Mr. Bernhardt is the federal official with responsibility for all Service officials' actions and/or inactions challenged in this case.

31. Federal-Defendant, the UNITED STATES DEPARTMENT OF THE INTERIOR, is the federal department responsible for applying and implementing the federal laws and regulations challenged in this case.

32. Federal-Defendant AURELIA SKIPWITH is sued in her official capacity as Director of the U.S. Fish and Wildlife Service. As Director, Ms. Skipwith is the federal official with responsibility for all Service officials' actions and/or inactions challenged in this case.

33. Federal-Defendant UNITED STATES FISH AND WILDLIFE SERVICE is an agency within the United States Department of the Interior that is responsible for applying and implementing the federal laws and regulations challenged in this case.

BACKGROUND

Canada lynx

34. Lynx are medium-sized cats with long legs and large, well furred paws and webbed toes.



35. Lynx are highly adapted to environments that receive considerable winter snow. Lynx are restricted to deep-snow environments found in boreal and subalpine forests. Lynx are adapted to cold environments. Lynx are sensitive to changes in snow depth. The lynx's adaptations allow them to occupy habitats that are generally unavailable to other species during the winter months.

36. Lynx are habitat specialists. Lynx require dense boreal and subalpine forests with large amounts of horizontal cover that support abundant snowshoe hares (the lynx's primary prey species). Lynx occur primarily in spruce-fir vegetation types that receive persistent snowfall. Sufficient horizontal cover is an important feature for lynx habitat.

37. Snowshoe hares are the primary prey for lynx across their range. The percentage of diet composed of snowshoe hare varies by geography across their range. Snowshoe hare comprise between 35-97% of lynx diet in different places throughout the species' range. Snowshoe hares are associated with boreal and subalpine forests.

38. Red squirrels are an important secondary food source for lynx. Red squirrels are the main alternate prey during periods of low hare abundance.

39. Lynx and snowshoe hares only persist in areas with long winters and persistent deep snow. Snow depth and the distribution of snowshoe hares are the strongest predictors of where lynx select their home ranges.

40. In the contiguous United States, lynx historically occurred in: (1) the Cascades Range of Washington and Oregon; (2) the Rocky Mountain region of in Montana, Wyoming, Idaho, eastern Oregon, eastern Washington, northern Utah, Colorado, and northern New Mexico; (3) the western Great Lakes region; and (4) the northeastern United States region from Maine southwest to New York.

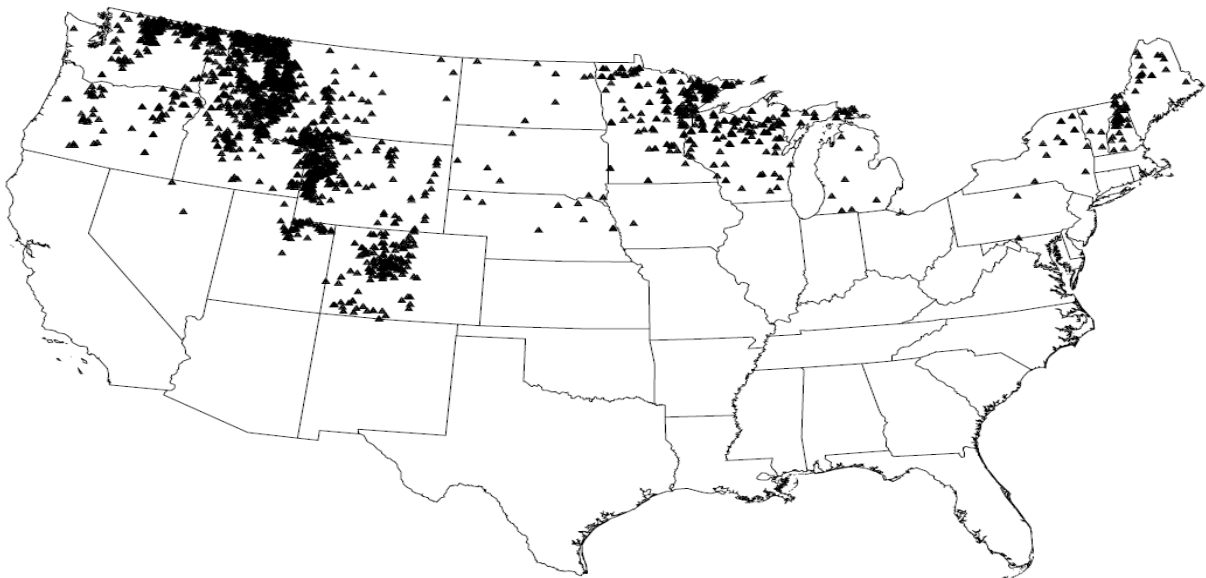


Figure 8.17—Spatial distribution of lynx occurrence data from 1842 to 1998 (Table 8.1).

The listing of lynx as a threatened species under the ESA

42. In January 2000, the Service prepared a Lynx Conservation Assessment and Strategy (LCAS) to evaluate and inform whether lynx in the contiguous United States should be protected under the ESA.

43. The 2000 LCAS identified risk factors for lynx. The 2000 LCAS identified timber projects as a risk factor for lynx. The 2000 LCAS identified wildland fire as a risk factor for lynx. The 2000 LCAS identified recreation is a risk factor for lynx. The 2000 LCAS identified human development is a risk factor for lynx. The 2000 LCAS identified lack of forest plan guidance for lynx as a risk factor for lynx.

44. The 2000 LCAS identified a number of factors affecting lynx mortality (trapping, predator control, incidental shooting, highways), lynx movement (highways and private land development), and other large-scale risk factors, including loss of connectivity and habitat fragmentation.

45. In March 2000, the Service listed lynx as a threatened species under the ESA. The March 2000 listing was premised on the findings included in the 2000 LCAS.

46. In March 2000, the Service determined that lynx were likely to become endangered in the foreseeable future throughout all or a significant portion of its range in the contiguous United States.

47. In March 2000, the Service determined lynx qualified as a threatened species even though it did not have a “clear picture” of the lynx’s current or future status.

48. In March 2000, the Service determined lynx qualified as a threatened species even though it could not determine “with certainty” whether the species’ trend is stable, increasing, or declining.

49. In March 2000, the Service concluded that listing a species based on the best available science does not (and should not) require scientific certainty.

Recovery planning for lynx

50. The ESA requires the Service to prepare a recovery plan for all listed species unless the agency determines such plan would not promote the conservation of the species.

51. The Service produced a document called “Interim Endangered and Threatened Species Recovery Planning Guidance, Version 1.4 (July 2018 Update)” (“Guidance”). This Guidance explains the process by

which the Service is to prepare recovery plans for species listed as threatened or endangered under the ESA.

52. The Service's Guidance states that recovery plans are one of the most important tools for ensuring the survival and recovery of listed species. Recovery plans are one of the most important tools for ensuring the survival and recovery of listed species.

53. The Guidance states that recovery plans are the "road map" to recovery and lay out "where we need to go and how best to get there." Recovery plans are the road map to recovery and lay out where the Service needs to go and how best to get there.

54. The Service's Guidance states that "[r]ecovery is the process by which listed species and their ecosystems are restored and their future is safeguarded to the point that protections under the ESA are no longer needed." Recovery is the process by which listed species and their ecosystems are restored and their future is safeguarded to the point that protections under the ESA are no longer needed.

55. The Guidance notes that "without a plan to organize, coordinate and prioritize the many possible recovery actions, the effort may be inefficient or even ineffective." Without a plan to organize,

coordinate, and prioritize the many possible recovery actions, the effort may be inefficient or even ineffective.

56. The Service's Guidance states that "prompt development and implementation of a recovery plan will ensure that recovery efforts target limited resources effectively and efficiently into the future." Prompt development and implementation of a recovery plan will ensure that recovery efforts target limited resources effectively and efficiently into the future.

57. The Service's Guidance suggests that the agency first prepare a "recovery outline" for listed species and submit the outline to the Regional Office in 60 days of listing and have it approved within 90 days of listing.

58. A recovery outline is "an interim document" that incorporates the best available science on the species and threats (including information from the listing package). Recovery outlines are designed to "get the ball rolling" for the development of a recovery plan and are used to inform ongoing activities, including section 7 consultation.

59. The Service's Guidance states that draft recovery plans should be prepared and submitted for public comment and peer review within

18 months of listing. The Service's Guidance states a final recovery plan should be issued within 30 months (2.5 years) of listing.

60. The Service's Guidance explains there is a four-step process in developing a recovery plan. The first step is to delineate those aspects of the species' biology, life history, and threats that are pertinent to its endangerment and recovery. The second step is to outline and justify a strategy to achieve recovery. The third step is to identify the actions necessary to achieve recovery of the species. The fourth step is to identify goals and criteria by which to measure the species' achievement of recovery.

61. The Service can decide to not prepare a recovery plan for a species only if it makes a final determination under section 4(f)(1) of the ESA a recovery plan would not further the conservation of the species.

62. The Service's Guidance explains "[t]here are very few acceptable justifications for an exemption from having a recovery plan."

63. The Service's Guidance lists three possible scenarios in which it may be justifiable to forego the preparation of a recovery plan for a listed species. The first scenario is because delisting is anticipated in the near future because the species is presumed to be extinct or the

species was listed in error. The second scenario is because the species' current and historical ranges occur entirely under the jurisdiction of other countries. The third scenario is because other circumstances exist that are not easily foreseen, but in which the species would not benefit from a recovery plan

64. According to the Service's Guidance, a recovery plan for lynx should have been completed by September 2002 unless the Service determined that preparing a recovery plan would not promote the conservation of the species.

The Service's failure to complete recovery planning for lynx

65. The Service has not prepared a recovery plan for lynx. The Service has not outlined and justified a strategy to achieve recovery for lynx. The Service has not identified the actions necessary to achieve recovery for lynx. The Service has not identified goals and criteria by which to measure the species' achievement of recovery for lynx.

66. The Service did not complete recovery planning for lynx in 2000. The Service did not complete recovery planning for lynx in 2001. The Service did not complete recovery planning for lynx in 2002. The

Service did not complete recovery planning for lynx in 2003. The Service did not complete recovery planning for lynx in 2004.

The 2005 recovery outline

67. In 2005, the Service prepared a recovery outline for lynx. The recovery outline was intended to provide the Service's interim guidance on recovery efforts until a draft recovery plan was completed. In 2005, the Service said it would acquire the necessary information and data to develop demographic delisting criteria for a lynx recovery plan.

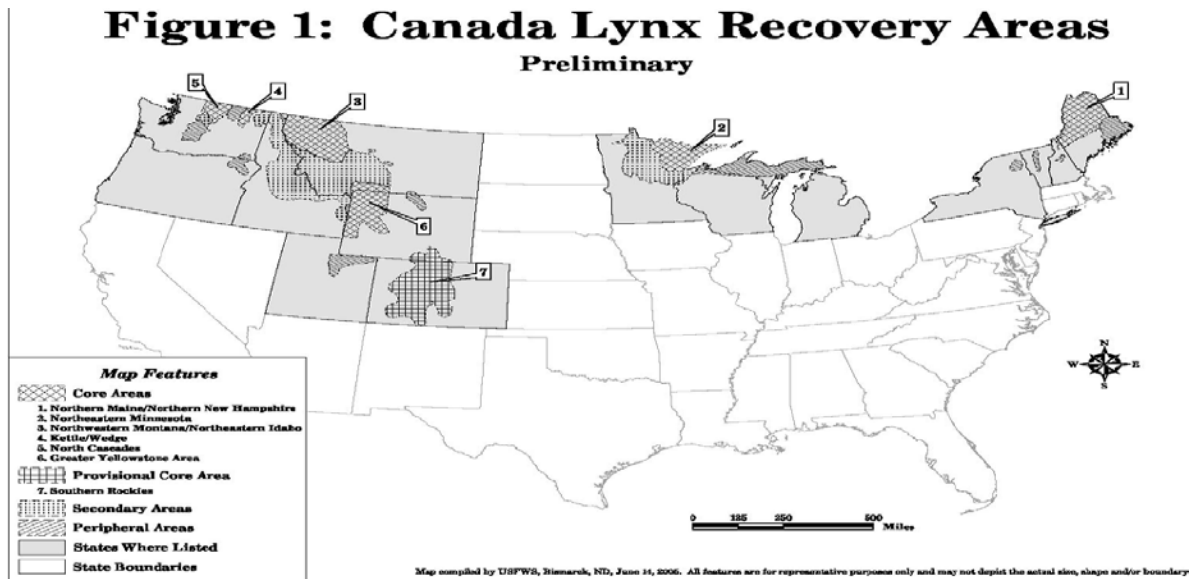
68. In 2005, the Service said the recovery outline presents its "current understanding of historical and current lynx distribution, ecology, population dynamics, and the relative importance of different geographic areas to the persistence of lynx in the contiguous United States."

69. In 2005, the Service identified "core areas" for lynx recovery in the contiguous United States.

70. The "core areas" identified by the Service are areas that meet the following four conditions: (1) verified evidence of long-term historical and current presence of lynx populations; (2) recent (within the past 20 years) evidence of reproduction; (3) contains boreal forest

vegetation types of sufficient quality and quantity to support lynx and snowshoe hares; and (4) snow conditions that are generally fluffy and/or deep enough to favor the lynx's competitive advantage.

71. The “core areas” identified by the Service for lynx include: (1) Northern Maine and New Hampshire; (2) Northeastern Minnesota; (3) Northwestern Montana and Northeastern Idaho; (4) Washington's Kettle Range/Wedge; (5) North Cascades; and (6) Greater Yellowstone Areas. The 2005 recovery outline identified the Southern Rockies as a provisional core area.



72. In 2005, the Service outlined four recovery objectives for lynx: (1) retain adequate habitat of sufficient quality to support long-term persistence of lynx populations in identified “core” areas; (2) ensure

sufficient habitat is available to accommodate long-term persistence of movement between each core area and adjacent populations in Canada or secondary areas; (3) ensure that habitat in secondary areas remains available for lynx occupancy; and (4) ensure that all threats are addressed so that lynx will persist in the contiguous United States “for at least the next 100 years.”

73. The Service has not achieved any of the four recovery objectives for lynx outlined in the 2005 recovery outline.

74. In 2005, the Service outlined seven specific actions (several with multiple parts) needed to achieve the four recovery objectives. These actions include: (1) establishing management commitments in all core areas; (2) maintaining baseline inventories of lynx habitat in each core area; (3) monitoring lynx use in core areas; (4) identifying habitat to facilitate movement between core areas; (5) ensuring that habitat in all secondary areas remain available for lynx; (6) identifying population and habitat limiting factors for lynx; and (7) developing a post-delisting monitoring plan for lynx.

75. The Service has not completed any of the recovery actions needed to attain objectives identified in the 2005 lynx recovery outline.

76. In 2005, the Service indicated it would initiate recovery planning for lynx “in early 2007.” In 2005, the Service said it anticipated “a draft recovery plan would be available for public review in January 2008.” In 2005, the Service said it would provide for a 60-day comment period on a draft recovery plan and, based on this timeframe, issue a final recovery plan by June 2009.

77. The Service did not complete recovery planning for lynx in 2006. The Service did not complete recovery planning for lynx in 2007. The Service did not complete recovery planning for lynx in 2008. The Service did not complete recovery planning for lynx in 2009. The Service did not complete recovery planning for lynx in 2010.

78. In 2010, the Service revised the 2005 recovery outline (instead of initiating recovery planning). In 2010, the Service said it intended to “begin formal recovery planning for lynx in early 2011” and release a draft recovery plan for public review in January 2012, and a final recovery plan for lynx by June 2012.”

79. In January 2011, the Service said it was “currently initiating a recovery planning for lynx.” In May 2011, the Service said it anticipated completing a draft recovery plan by close of fiscal year 2014. In May

2011, the Service said it would issue a final recovery plan by fiscal year 2015.

80. The Service did not complete recovery planning for lynx in 2011. The Service did not complete recovery planning for lynx in 2012. The Service did not complete recovery planning for lynx in 2013.

81. In 2013, the Service's Interagency Lynx Biology team updated and revised the LCAS.

82. The 2013 LCAS recognizes four "first tier" anthropogenic threats to lynx that are "of greatest concern" to the conservation of lynx. These first tier threats include: (1) climate change which is likely to shift the distribution of lynx north, result in changes to snowshoe hare cycles, reduce the amount of available lynx habitat and population size, alter demographic rates, and change predator-prey relationships; (2) vegetation (timber) management; (3) wildland fire management; and (4) habitat fragmentation.

83. The 2013 LCAS identified "second tier" anthropogenic threats to lynx. These second-tier threats include: (1) incidental trapping and illegal shooting; (2) recreation, including winter recreation and new roads and trails; and (3) energy projects and grazing.

Friends of the Wild Swan v. Ashe

84. In 2013, conservation organizations sent a notice of intent to sue letter to the Service regarding its failure to prepare a lynx recovery plan. In response, the Service said it would prepare a recovery plan for lynx “as soon as resources allow” and said it would initiate recovery planning after issuing a final critical habitat rule for lynx.

85. In March 2013, conservation organizations (including some of the Plaintiffs here), filed a civil action against the Service for its failure to prepare a recovery plan for lynx as required by the ESA. During the case, the Service said completing recovery planning for lynx was contingent on publication of a final rule for lynx critical habitat. During the case, the Service said it would initiate recovery planning for lynx after publication of the lynx critical habitat rule and that it did not have the “financial resources” to complete both tasks at the same time.

86. A final decision in the case was issued in May 2014. *See Friends of the Wild Swan v. Ashe*, 18 F. Supp. 3d 1077 (D. Mont. 2014). In *Friends of the Wild Swan*, this Court held that the more than 14-year delay in preparing a recovery plan for lynx was unreasonable. In *Friends of the Wild Swan*, this Court set a January 15, 2018 deadline

for the Service to either issue a final recovery plan for lynx or make a determination under section 4(f)(1) of the ESA that a recovery plan would not promote the conservation of the species.

87. A final critical habitat rule for lynx was issued in September 2014. In the preamble to the final critical habitat rule for lynx, the Service determined that “climate change is likely to be a significant issue of concern for the future conservation of lynx” in the contiguous United States.” 79 Fed. Reg. 54782, 54811 (September 12, 2014). The Service said climate change is “expected to substantially reduce the amount and quality of lynx habitat in the contiguous United States, with patches of high-quality boreal and subalpine forest habitat becoming smaller, more fragmented, and more isolated.” *Id.* The Service said remaining lynx populations “would likely be smaller than at the present and, because of small populations size and increased isolation, populations would likely be more vulnerable to stochastic environmental and demographic events.” *Id.*

88. The Service did not complete recovery planning for lynx in 2014, after releasing a final critical habitat rule.

89. In 2015, the Service said it was “working on a Lynx Recovery Plan” in a status report to this Court. In 2015, the Service said it will prepare a “Species Status Assessment” (SSA) for lynx by December 2015. In 2015, the Service said after the SSA for lynx was finalized by December 2015, it would “then begin the recovery planning process.” The Service said it intended “to complete a recovery plan . . . by January 15, 2018 in order to meet the court-ordered deadline.” The Service said the SSA should meet its need to complete a five-year status review for lynx.

90. The Service did not complete recovery planning for lynx in 2015.

91. In October 2015, the Service put together a workshop panel of “10 recognized lynx experts” during a formal “Expert Elicitation Workshop” to discuss the latest lynx science and threats to the species. The 2015 Expert Elicitation Workshop recognized lynx remain threatened in the contiguous United States. The 2015 Expert Elicitation Workshop recognized that lynx are likely to become endangered in the foreseeable future throughout all or a significant portion of its range in the contiguous United States.

92. The 2015 Expert Elicitation Workshop recognized that lynx had not “recovered” in the contiguous United States and were unlikely to “recover” in the foreseeable future.

93. The Service did not complete recovery planning for lynx in 2016. The Service did not complete recovery planning for lynx in 2017.

94. In March 2017, the Service issued an “interim decision” and “interim recommendation” to delist lynx because lynx were deemed “recovered” in the contiguous United States and no longer threatened.

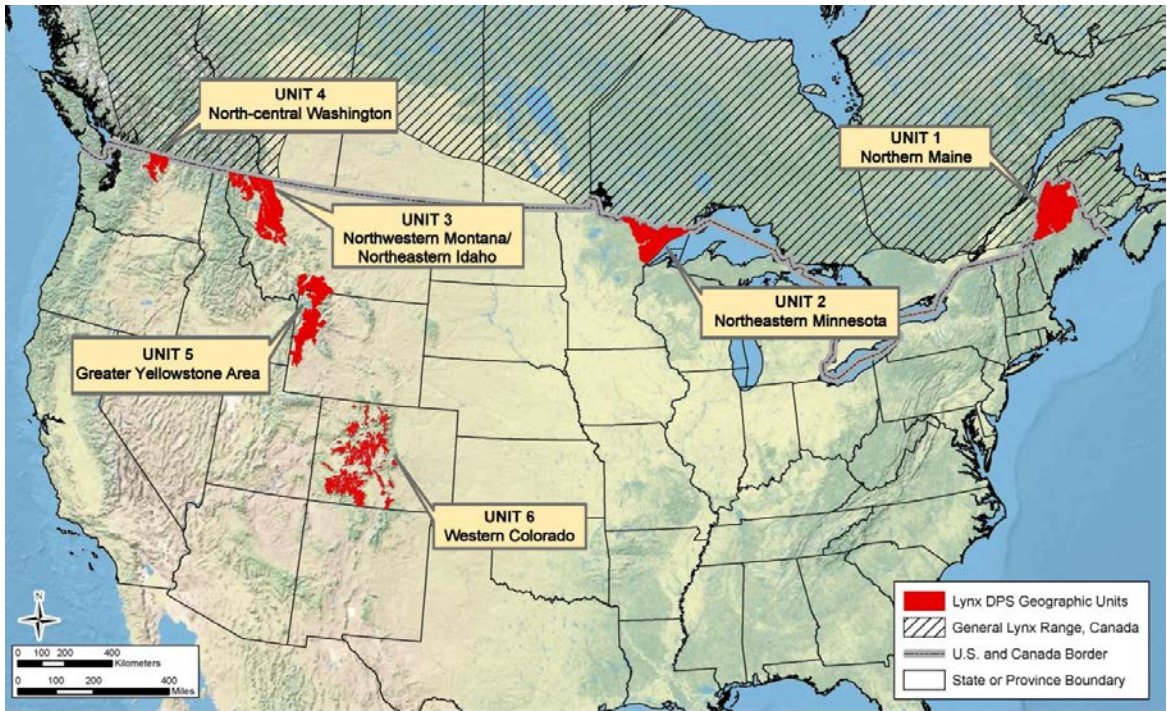
95. In May 2017, the Service said it needed to “finalize” its March 2017 “interim decision” and “interim recommendation” to delist lynx in the five-year status review.

The 2017 Species Status Assessment

96. In October 2017, the Service released a Species Status Assessment (“SSA”) for lynx. The SSA was prepared a by “lynx SSA core team” and other Service staff. The SSA relies on the input and professional opinions provided during the Expert Elicitation Workshop. The SSA relies on the Interagency Lynx Biology Team’s 2013 LCAS.

97. The SSA evaluates the current and possible future conditions for lynx in the contiguous United States in six geographic units that

currently (or recently) support lynx. The six geographic units include: (1) Northern Maine; (2) Northeastern Minnesota; (3) Northwestern Montana/Northeastern Idaho; (4) North-central Washington; (5) Greater Yellowstone Area; and (6) Western Colorado.



98. The six geographic units evaluated in the SSA do not include all of the “core areas” identified in the 2005 recovery outline. The six geographic units evaluated in the SSA do not include the “secondary areas” identified in the 2005 recovery outline. The six geographic units evaluated in the SSA do not include the “peripheral areas” identified in the 2005 recovery outline. The six geographic units evaluated in the SSA do not include areas occupied by lynx at the time of listing, in

March 2000. The six geographic units evaluated in the SSA do not include areas historically occupied by lynx in the contiguous United States.

99. The six geographic units evaluated in the SSA do not include northern New Mexico. Northern New Mexico is part of the lynx's historic range. The six geographic units evaluated in the SSA do not include Oregon. Oregon is part of the lynx's historic range. The six geographic units evaluated in the SSA do not include large portions of Idaho. Idaho is part of the lynx's historic range. Idaho was occupied by lynx in 2000. The six geographic units evaluated in the SSA do not include Utah. Utah is part of the lynx's historic range. The six geographic units evaluated in the SSA do not include portions of Montana that are part of the lynx's historic range. The six geographic units evaluated in the SSA do not include areas in Montana that were occupied by lynx in 2000. The six geographic units evaluated in the SSA do not include portions of Washington that are part of the lynx's historic range. The six geographic units evaluated in the SSA do not include areas in Washington that were occupied by lynx in 2000.

100. The six geographic units evaluates in the SSA do not include all areas occupied by lynx in 2000. The six geographic units evaluated in the SSA include only a portion of the lynx's historical range in the contiguous United States.

101. The SSA acknowledges that lynx populations in the contiguous United States have declined since listing in 2000. Lynx populations in the contiguous United States have declined since listing in 2000.

102. The SSA acknowledges that the lynx's range has contracted in the contiguous United States since 2000. The lynx's range has contracted in the contiguous United States since 2000.

103. The SSA acknowledges that the amount of available lynx habitat in the contiguous United States has declined since 2000. The amount of available lynx habitat in the contiguous United States has declined since 2000.

104. In the SSA, the Service states that it expects that "resident population sizes and distributions in the [contiguous United States] will likely decline largely as a result of projected continued climate warming and associated impacts, which are likely to exacerbate the potential

adverse effects of other stressors.” Resident lynx population sizes in the contiguous United States will likely decline as a result of continued climate warming and associated impacts. Resident lynx distributions in the contiguous United States will likely decline as a result of continued climate warming and associated impacts.

105. The SSA states that while the “timing and extent of climate-mediated impacts are uncertain, continued warming is expected to cause a northward and upslope contraction of the boreal forest, snow conditions, and hare populations that support lynx, along with several other potential impacts.” The SSA states that this in turn will “result in smaller, more fragmented, and more isolated lynx populations [in the contiguous United States] that would be more vulnerable to stochastic demographic and catastrophic events and genetic drift.”

106. The SSA states that climate change has and continues to adversely impact lynx in the contiguous United States. Climate change has adversely impacted lynx in the contiguous United States. Climate change will continue to adversely impact lynx in the future in the contiguous United States.

107. The SSA says that climate warming has and will continue to reduce snow amount, duration and quality (conditions favorable to lynx) and will likely result in increased size, frequency, and severity of wildfires and insect outbreaks in lynx habitat. Climate change may also cause changes in snowshoe hare population cycles and disrupt connectivity between subpopulations in the contiguous United States and between lynx in Canada and the contiguous United States.

108. Climate warming has reduced snow amount in lynx habitat in the contiguous United States. Climate warming has reduced snow duration in lynx habitat in the contiguous United States. Climate warming has reduced snow quality in the contiguous United States.

109. Climate warming will continue to reduce snow amount in lynx habitat in the contiguous United States in the future. Climate warming will continue to reduce snow duration in lynx habitat in the contiguous United States in the future. Climate warming will continue to reduce snow quality in the contiguous United States in the future.

110. Climate change has increased the size, frequency, and severity of wildfires in lynx habitat. Climate change will increase the size, frequency, and severity of wildfires in lynx habitat in the future.

111. Climate change has increased the size of wildfires in lynx habitat. Climate change will increase the size of wildfires in lynx habitat in the future. Climate change has increased the frequency of wildfires in lynx habitat. Climate change will increase the frequency of wildfires in lynx habitat in the future. Climate change has increased the severity of wildfires in lynx habitat. Climate change will increase the severity of wildfires in lynx habitat in the future. Climate change has increased the size, frequency, and severity of insect outbreaks in lynx habitat. Climate change will increase the size, frequency, and severity of insect outbreaks in lynx habitat in the future.

112. The SSA states that “climate modeling and expert opinion” concur that continue climate warming will adversely impact lynx in the [contiguous United States] at some point in the future.” Climate warming will adversely impact lynx in the contiguous United States in the future. The long-term persistence of lynx in the contiguous United States is under threat from climate change.

113. The SSA states five of the six geographic units have a “high likelihood” (80-98 percent chance) that they will continue to support a resident population of lynx but only until 2025. A resident population of

lynx in unit 5 (the Greater Yellowstone Area) will likely be extirpated by 2025. The SSA states five of the six geographic units are likely to still support lynx in 2050 but in reduced numbers and distribution.

114. The SSA projects impacts to lynx and lynx habitat in the contiguous United States out to 2100. 2100 is the foreseeable future.

115. The SSA states only geographic unit 3 (Northwest Montana/Northeast Idaho) is likely to support a resident population of lynx by 2100. By 2100, only lynx geographic unit 3 (Northwest Montana/Northeast Idaho) is likely to support a resident population of lynx.

116. The SSA states all other lynx geographic units were deemed to have a 50 percent or greater likelihood of functional extirpation by 2100. By 2100, five out of six lynx geographic units have a 50 percent or greater likelihood of functional extirpation.

117. A draft of the SSA underwent independent peer review and partner review before being utilized by the Service. The Service did not include the peer review comments with the final SSA provided to the public.

118. In the draft SSA submitted for peer review, the Service summarized that “the functional extirpation of resident lynx populations from one or more geographic unit would demonstrate a loss of resiliency, reduced redundancy, and, possibly, reduced representation within the [contiguous United States]. The probability of losses in resiliency, redundancy, and representation puts the Canada lynx [in the contiguous United States] at increasing risk of extirpation through the end of this century.” During peer review, Dr. John Squires stated that this “summary adequately captures the feeling expressed by the SSA panel and is consistent with the biological realities facing the species.” This summary was removed from the final SSA.

The five-year status review

119. In November 2017, the Service completed a five-year status review for lynx. The Service’s findings in the five-year status review are premised on the SSA.

120. The Service’s findings in the five-year status review do not take into account evidence and data on lynx declines in Washington since 2000. The Service’s findings in the five-year status review do not take into account evidence and data on lynx declines in Idaho since

2000. The Service's findings in the five-year status review do not take into account evidence and data on lynx declines in Montana since 2000. The Service's findings in the five-year status review do not take into account evidence and data on lynx declines in Wyoming since 2000. The Service's findings in the five-year status review do not take into account evidence and data on lynx declines in Colorado since 2000.

121. In the five-year status review the Service determined that lynx are likely to "persist" in five of the six geographic units that support lynx up until 2050 (33 years). The Service considers the time period up to 2050 to be the "foreseeable future" for assessing threats to lynx in the contiguous United States.

122. The five-year status review says the Service expects lynx populations in each geographic unit to become smaller and more patchily distributed in the future (2050 and beyond) due largely to projected climate-driven losses in habitat quality and quantity and related factors. The five-year status review says the timing, rate, and extent of habitat loss is uncertain.

123. The five-year status review determined lynx do not meet the definition of an "endangered" species because the risk of extinction of

lynx in all of its range in the contiguous United States is low. The five-year status review did not evaluate the risk of extinction throughout a significant portion of the lynx's range in the contiguous United States.

124. The five-year status review found that lynx in the contiguous United States no longer meet the definition of a “threatened species” and therefore “recovery criteria [that would be included in a recovery plan] is not necessary.”

125. The five-year review only evaluated whether lynx in the contiguous United States are likely to become endangered in the foreseeable future (threatened) to 2050 (33 years) throughout all their range. The five-year review did not evaluate whether lynx are likely to become endangered in the foreseeable future throughout a significant portion of its range. The five-year status review did not evaluate whether lynx are likely to become endangered over the next 80 years, until 2100.

126. The five-year status review directs readers to the SSA for its analysis of the ESA's five threat factors. The five-year status review does not itself analyze the ESA's five threat factors.

127. The five-year status review recommended removing lynx in the contiguous United States from the list of ESA protected species. The five-year status review recommended proceeding with a proposed rule to delist lynx in the contiguous United States.

128. The Service does not have current information on lynx distribution in Washington. The Service does not have current information on lynx population status in Washington. The Service does not have current information on lynx distribution in Idaho. The Service does not have current information on lynx population status in Idaho. The Service does not have current information on lynx distribution in Montana. The Service does not have current information on lynx population status in Montana. The Service does not have current information on lynx distribution in Wyoming. The Service does not have current information on lynx population status in Wyoming. The Service does not have current information on lynx distribution in Colorado. The Service does not have current information on lynx population status in Colorado.

The Service's December 2017 decision to forego a recovery plan

129. In December 2017, the Service decided to forego preparing a lynx recovery plan. The Service said a recovery plan would not promote the conservation of lynx. The Service based its decision to forego preparing a lynx recovery plan on the third scenario in the Service's Guidance, stating other circumstances exist that are not easily foreseen, but in which the species would not benefit from a recovery.

130. The Service's decision to categorize its conclusion that lynx had recovered as an other circumstance that was not easily foreseen means the Service did not foresee that lynx would recover.

131. On December 11, 2017, the Service's Regional Director (Mountain Prairie-Region) sent a memorandum to the acting director recommending that the agency forego recovery planning for lynx. The justification provided by the Regional Director was that a recovery plan was no longer needed because the agency is recommending to "delist the lynx DPS due to recovery as described in the lynx DPS 5-year review" and a finding that lynx "may no longer meet the definition of a threatened species." The Service also announced plans to prepare a proposed delisting rule.

132. In the December 11, 2017 memorandum, the Service explained that all the threats identified “at the time of listing” – including the need for conservation measures in National Forest plans and BLM plans – have been addressed. The Service stated that all five geographic units that currently support lynx in the contiguous United States “are expected to continue to do so through mid-century (2050).” The Service said that lynx are sufficiently “resilient” to sustain species persistence in the five geographic units that support lynx through 2050 and that it had no information that lynx representation would be reduced by mid-century.

133. In the December 11, 2017 memorandum, the Service concluded that lynx “may not meet the definition of a threatened species” and recommended preparing a proposed delisting rule for lynx.

134. The December 11, 2017 memorandum did not address the ESA’s five threat factors in reaching the conclusion that lynx may not meet the definition of a threatened species. The December 11, 2017 memorandum did not address the ESA’s five threat factors in reaching the conclusion that a proposed rule to delist lynx be prepared.

135. On December 20, 2017, James W. Kurth, the Deputy Director of the U.S. Fish and Wildlife Service (Exercising the Authority of the Director), approved the decision to forgo preparing a recovery plan for lynx for the reasons provided.

134. In 2018, the Service said it was preparing a proposed rule to delist lynx based on the SSA, five-year review, and information that has become available since that time. The Service did not articulate what information had become available “since that time.” The Service did not publish a proposed rule to delist lynx in 2018.

135. In 2019, the Service said it was preparing a proposed rule to delist lynx based on the SSA, five-year review, and information that has become available since that time. The Service did not publish a proposed rule to delist lynx in 2019.

136. In 2020, the Service said it was preparing a proposed rule to delist lynx based on the SSA, five-year review, and information that has become available since that time. The Service did not publish a proposed rule to delist lynx in 2020.

137. The Service has been in the “process of preparing a proposed rule to delist lynx” for nearly three years.

138. The Service has not sent a proposed rule to delist lynx to the Federal Register. The Service has not published a proposed rule to delist lynx in the Federal Register. The Service has not conducted a public comment period related to any proposed rule to delist lynx.

139. Lynx remain threatened in the contiguous United States.

140. Lynx have not recovered in the contiguous United States.

Lynx declines since listing in 2000

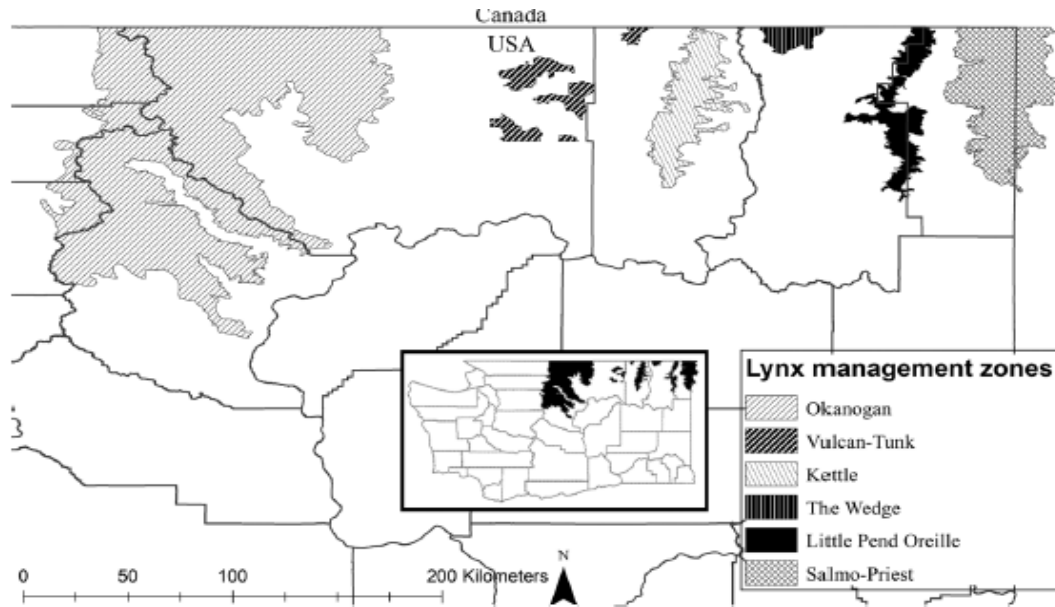
141. The number of lynx in the contiguous United States has declined since 2000. The amount of lynx habitat in the contiguous United States has declined since 2000. The lynx's range has contracted in the contiguous United States since 2000. Lynx are more likely to become endangered in the foreseeable future in the contiguous United states in 2020 than they were in 2000.

142. The Service does not know how many lynx are in the contiguous United States. The Service does not know how many lynx are in each geographic unit in the contiguous United States.

Declines in Washington since 2000

143. Washington is part of the lynx's historic range. Washington was occupied by lynx in 2000. Washington is divided into six lynx

management zones based on historic lynx data and habitat. The six lynx management zones in Washington include: (1) Okanogan; (2) Vulcan-Truck; (3) Kettle Range; (4) the Wedge; (5) Little Pend Oreille; and (6) Salmo-Priest.



144. In 2000, Washington contained approximately 12,579 sq. km of lynx habitat. In 2000, it was estimated that Washington's lynx habitat could support up to approximately 238 lynx.

145. In 2000, all six lynx management zones in Washington were occupied by lynx. In 2000, the Okanogan lynx management zone was occupied by lynx. In 2000, the Vulcan-Truck lynx management zone was occupied by lynx. In 2000, the Kettle Range lynx management zone was occupied by lynx. In 2000, the Wedge lynx management zone was

occupied by lynx. In 2000, the Little Pend Oreille lynx management zone was occupied by lynx. In 2000, the Salmo-Priest lynx management zone was occupied by lynx.

146. In 2000, the Kettle Range contained the second largest block of lynx habitat in Washington. In 2000, the Kettle Range was considered a “stronghold for lynx” in Washington. In 2000, the Kettle Range supported a resident, breeding population of lynx.

147. Lynx numbers have declined in Washington since 2000. Lynx range has contracted in Washington since 2000. Lynx habitat has been reduced in Washington since 2000.

148. Wildfires in Washington have resulted in a decrease in lynx populations since 2000. Wildfires in Washington have decreased available lynx habitat in Washington since 2000. All six lynx management zones in Washington occur in fire-prone landscapes. Since the 1980s, there has been a significant increase in large-wildfire frequency in the six lynx management zones. Wildfires can lead to a loss and degradation of forest cover. Wildfires can lead to a loss of snowshoe hare populations. Lynx habitat likely does not recovery from wildfires in Washington for roughly 35-40 years.

149. By 2017, the loss of lynx habitat in Washington due to forest fires reduced estimates of available lynx habitat to 3,800 sq. km. By 2017, it was estimated that Washington's lynx habitat could only support approximately 38-61 lynx.

150. In 2020, only the Okanogan lynx management zone in Washington likely supported a resident population of lynx.

151. In 2020, the Kettle Range lynx management zone in Washington is likely no longer a "stronghold" for lynx. The Kettle Range lynx management zone in Washington likely no longer supports a resident, breeding population of lynx (just individuals).

152. In 2020, the Vulcan-Trunk lynx management zone in Washington no longer supports a resident population of lynx. Recent (2016 and 2017) surveys for lynx in the Vulcan-Trunk lynx management zone failed to detect any lynx presence. In 2020, the Wedge lynx management zone in Washington no longer supports a resident population of lynx. Recent (2016 and 2017) surveys for lynx in the Wedge lynx management zone failed to detect any lynx presence. In 2020, the Little Pend Oreille lynx management zone in Washington no longer supports a resident population of lynx. In 2020, the Salmo-Priest

lynx management zone in Washington no longer supports a resident population of lynx.

153. In 2020, lynx distribution in Washington is largely restricted to the northern portions of the Okanogan lynx management zone. There is a lack of lynx population redundancy in Washington. Future forecasts reveal there is a strong potential for retraction of suitable lynx habitat in Washington.

154. The SSA acknowledges that since listing, lynx have likely been extirpated or significantly reduced in size in Washington. Since listing, lynx have been extirpated in portions of Washington. Since listing, lynx populations have been reduced in size in Washington. Since listing, lynx habitat has been reduced in size in Washington.

155. The Service does not have current information on lynx distribution in Washington. The Service does not have current information on lynx population status in Washington.

156. Lynx in Washington are currently at risk of extirpation. Lynx in Washington are likely to become endangered in the foreseeable future.

Declines in Idaho since 2000

157. Lynx presence is well documented in Idaho's panhandle region. In 1998, a survey for lynx detected lynx presence in the Priest Lake, Bonners Ferry, and Sandpoint areas of northern Idaho.

Additional lynx records of lynx were detected in the Salmon, Upper Snake, and Bear River watersheds of Idaho. Other areas of Idaho have consistent historical records of lynx.

156. In 2000, large portions of Idaho's Clearwater National Forest were deemed occupied by lynx. In 2000, large portions of Idaho's Panhandle National Forest were deemed occupied by lynx. In 2000, large portions of Idaho's Targhee National Forest were deemed occupied by lynx.

157. Lynx numbers have declined in Idaho since 2000. Lynx range has contracted in Idaho since 2000. Lynx habitat has been reduced in Idaho since 2000.

158. Lynx in Idaho are currently at risk of extirpation. Lynx in Idaho are likely to become endangered in the foreseeable future.

Declines in Montana since 2000

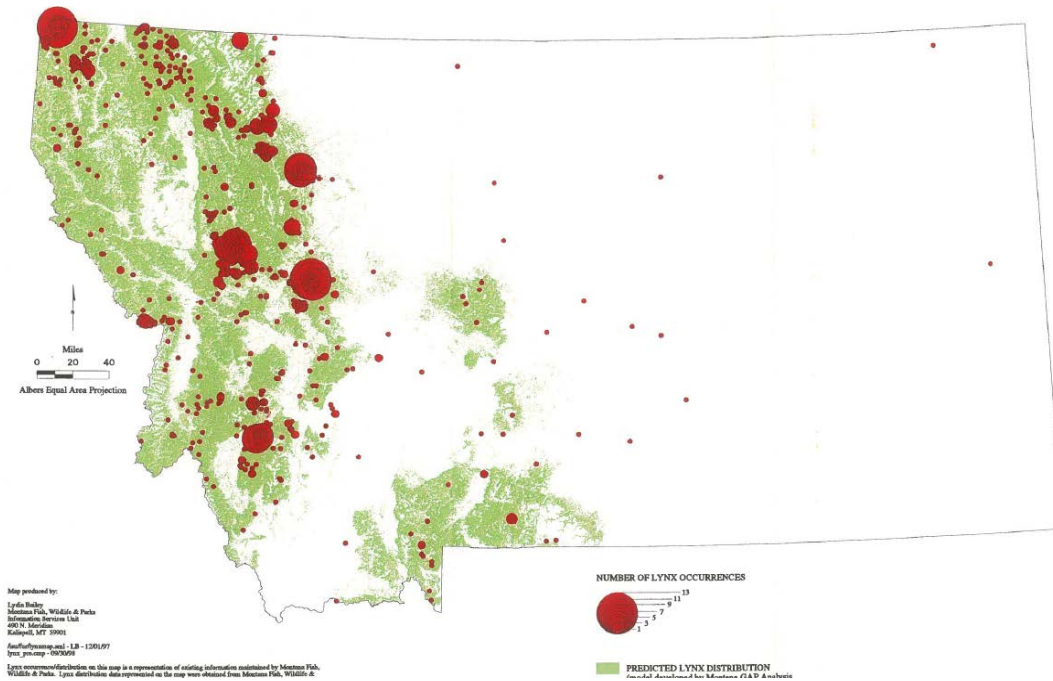
159. Most of western Montana was considered occupied lynx habitat in 2000. From 1963 to 1967, 819 lynx were trapped and killed in Montana. During a four-year period from 1972 to 1976, 973 lynx were trapped and killed in Montana. During the 1972-1973 trapping season, 300 lynx were trapped and killed in Montana in a single season.

160. In 1977, the Montana Department of Fish Wildlife and Parks estimated the lynx population in Montana to be between 1,750 and 2,400 individuals. Montana's estimated lynx population in 1982 was 942 individuals. Montana's estimated lynx population in 1994 was 700-1,050 individuals.

161. In 1998, Montana reported to the Service that "lynx occurrence data for the state indicate [lynx] distribution is widespread and occurs throughout the majority of predicted lynx habitat in Montana." Montana said this finding is premised solely on the "best available scientific information."

162. In 1998, Montana said its lynx population was "not declining" and is "at least stable" with "indications of an increase."

163. In 1998, Montana reported to the Service that the state is “well-occupied” by lynx. Montana submitted map to the Service documenting verified lynx presence in Montana from trapping records and mortality reports:



164. In 1998, lynx occupied large portions of western Montana. In 1998, lynx were detected in large portions of western Montana.

165. Lynx numbers have declined in Montana since 2000. Lynx range has contracted in Montana since 2000. Lynx habitat has been reduced in Montana since 2000.

166. Wildfires in Montana have resulted in loss of lynx populations since 2000. Wildfires in Montana have decreased available

lynx habitat in Montana since 2000. Lynx habitat has been reduced by fire on the Lolo National Forest. Lynx habitat has been reduced by fire on the Flathead National Forest. Lynx habitat has been reduced by fire on the Helena-Lewis and Clark National Forest. Lynx habitat has been reduced by fire across areas of the Bob Marshall Wilderness complex.

167. In 2017, wildfires burned over 150,000 acres of the best lynx habitat in Montana. Lynx in Montana are threatened by increases in fire intensity, frequency, and spatial extent.

168. Vegetation (timber) management projects have decreased available lynx habitat in Montana since 2000. Lynx habitat in Montana is disproportionately restricted to lands open to timber production. Large scale forest thinning near Seeley Lake, Montana since 2000 has reduced lynx numbers in the region.

169. The Garnet Range in Montana supported a resident, breeding population of lynx in 2000. The Garnet Range was occupied by lynx in 2000. The Garnet Range no longer supports a resident, breeding population of lynx. The Garnet Range is no longer occupied by lynx.

170. The Greater Yellowstone Area of Montana supported a resident, breeding population of lynx in 2000. The Greater Yellowstone

Area of Montana was occupied by lynx in 2000. The Greater Yellowstone Area of Montana no longer supports a resident, breeding population of lynx.

171. Lynx in Montana currently persist as small populations with relatively few individuals. Lynx in Montana have a heightened risk to environmental and demographic factors.

172. Lynx in Montana are currently at risk of extirpation. Lynx in Montana are likely to become endangered in the foreseeable future.

Declines in Wyoming since 2000

173. There are photo records of lynx in Wyoming since the 1920's. In 2000, the Service acquired additional evidence of lynx reproduction in Wyoming. Portions of Wyoming, including the Wyoming Range, support some of the highest snowshoe hare densities in the contiguous United States. The Wyoming Range includes the best lynx habitat in Wyoming.

174. In 2000, lynx presence was documented in western Wyoming from the Yellowstone Area through the Wyoming Range and Wind River Range and in the Bighorn Mountains.

175. In 2000, lynx reproduction was documented in the Wyoming Range. Wyoming was repeatedly re-colonized by dispersing lynx from Colorado.

176. Lynx numbers have declined in Wyoming since 2000. Lynx range has contracted in Wyoming since 2000. Lynx habitat has been reduced in Wyoming since 2000. Lynx experienced significant range contraction in Wyoming in 2010. Lynx populations declined significantly in 2010.

177. Threats to lynx in Wyoming that included fire, vegetation manipulation, conflicting wildlife management demands (mule deer-spruce fir cutting in aspen), and energy development.

178. Wildfires in Wyoming have resulted in loss of lynx populations since 2000. Wildfires in Wyoming have decreased available lynx habitat in Wyoming since 2000. Lynx habitat has been reduced by fire on the Wyoming Range. Lynx habitat has been reduced by oil and gas development in the Wyoming Range. Lynx habitat is increasingly fragmented in the Wyoming Range.

179. The Greater Yellowstone Area of Wyoming supported a resident, breeding population of lynx in 2000. The Greater Yellowstone

Area of Wyoming was occupied by lynx in 2000. The Greater Yellowstone Area of Wyoming no longer supports a resident, breeding population of lynx. The Greater Yellowstone Area of Wyoming is no longer occupied by lynx.

180. Lynx in Wyoming currently persist as small populations with relatively few individuals. Lynx in Wyoming have a heightened risk to environmental and demographic factors. Lynx in Wyoming are threatened by increases in fire intensity, frequency, and spatial extent.

181. Lynx in Wyoming are currently at risk of extirpation. Lynx in Wyoming are likely to become endangered in the foreseeable future.

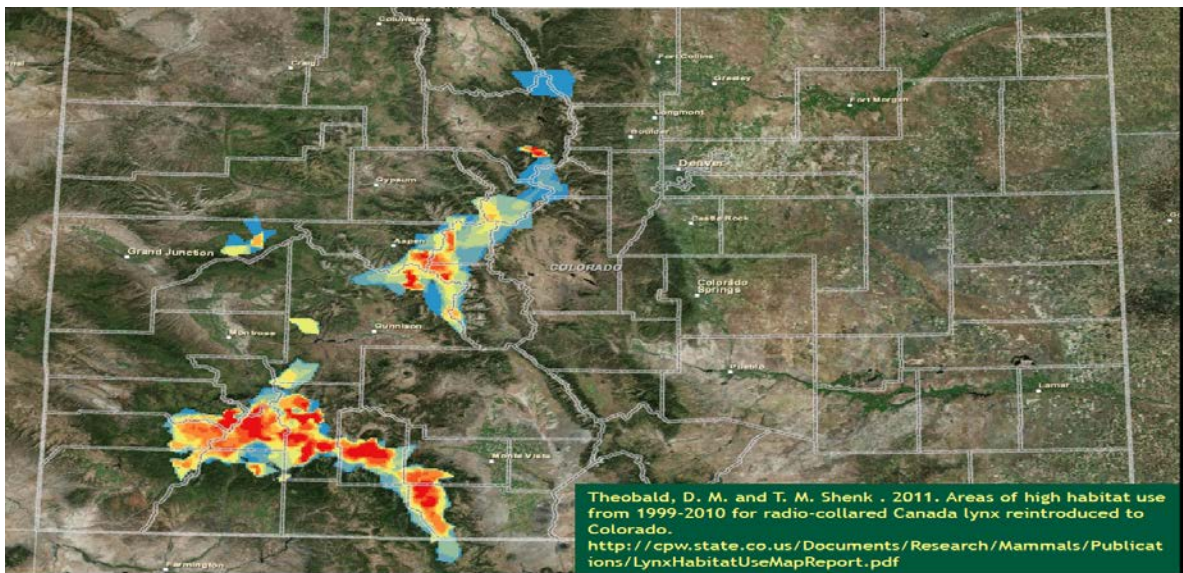
Declines in Colorado since 2000

182. Lynx historically occupied the Southern Rocky Mountains, including Colorado. Lynx were likely extirpated from Colorado and the Southern Rocky Mountains by the early 1970s. No verified records of lynx in Colorado exist between 1974 and 1999 (when lynx were reintroduced).

183. In 1999, the Colorado Division of Wildlife initiated a lynx reintroduction program. From 1999-2006, 218 lynx were released in the San Juan Mountains of southwestern Colorado.

184. The first lynx den and evidence of successful reproduction of was first documented in 2003. From 1999 to 2010, the Colorado Division of Wildlife documented 48 lynx dens in Colorado. Lynx reintroduced into Colorado primarily used high-elevation spruce-fir and aspen vegetation types as habitat. This habitat type occurs throughout Colorado and in southern Wyoming and northern New Mexico.

185. Lynx in Colorado use two large areas of habitat found in the San Juan Mountain range and the Collegiate Peaks ranging north of Monarch Pass to Vail Pass. Other, small areas were also used by lynx, including habitat near Grand Mesa, in the West Elks (just north of Black Canyon of the Gunnison), and an area centered around Rocky Mountain National Park.



186. The lynx population in Colorado was estimated to be approximately 150-200 individuals in 2010. Lynx numbers have declined in Colorado since 2010. Lynx range has contracted in Colorado since 2010. Lynx habitat has been reduced in Colorado since 2010.

187. Wildfires in Colorado have resulted in loss of lynx populations since 2010. Wildfires in Colorado have decreased available lynx habitat since 2010. Wildfires in the San Juan Mountains have decreased the amount of available lynx habitat in Colorado.

188. Large-scale beetle kill has impacted and changed the amount of available lynx habitat in Colorado since 2010. As of 2016, the spruce-beetle outbreak influenced approximately 95 percent of the Rio Grande National Forest. The Rio Grande National Forest is where 85 percent of the lynx were released. The Rio Grande National Forest is part of the core use area for lynx in Colorado. The Rio Grande National Forest is central to lynx recovery efforts in Colorado.

189. In the Southern Rockies, lynx are at greater risk due to reduced hare abundance and much lower red squirrel densities in beetle-impacted forests. In the Southern Rockies, lynx will be at greater

risk for decades due to increased vulnerability to reduced hare abundance and red squirrel densities in beetle-impacted forests.

190. Threats to lynx in Colorado include climate change, bark beetle outbreaks, fire, increased human recreation, and vulnerability to vehicle collisions and disturbance from highways. Lynx in Colorado currently persist as small populations with relatively few individuals. Lynx in Colorado have a heightened risk to environmental and demographic factors.

191. There is no official estimate of the number of lynx remaining in Colorado. Estimates range from as few as 40 to as many as 200 but no abundance estimation techniques have been employed. Between 2015 and 2017, lynx researchers trapped ten lynx in the San Juan Mountains on the Rio Grande National Forest. Those researchers explained that those ten individual lynx likely included most individuals present in the study area. The current lynx population remaining in Colorado's San Juan Mountains (the core recovery area) is estimated to be less than 50 individuals.

192. Lynx in Colorado are currently at risk of extirpation. Lynx in Colorado are likely to become endangered in the foreseeable future.

FIRST CAUSE OF ACTION
(Violation of the ESA –invalid reason to forego
recovery planning)

193. Plaintiffs incorporate all preceding paragraphs.

194. A recovery plan for listed species is required unless the Service determines “that such a plan will not promote the conservation of the species.” 16 U.S.C. § 1533(f)(1).

195. Under the Service’s Guidance, there are “very few acceptable justifications” for forgoing preparing a recovery plan and any decision to do so must be “well documented” by the agency. Guidance at 2.2.1. The Service’s Guidance lists three potential justifications for forgoing recovery planning: (1) delisting is anticipated in the near future because the species is presumed to be extinct or the species was listed in error; (2) the species’ current and historic ranges occur entirely under the jurisdiction of other countries; or (3) other circumstances that are not easily foreseen exist which reveal the species would not benefit from a recovery plan. *Id.*

196. In its December 2017 decision to forego recovery planning for lynx, the Service determined that such a plan would not promote the conservation of the species under justification (3) – “other

circumstances” that are not easily foreseen. The Service said its plans to prepare a proposed delisting rule for lynx based on its determination that the species is “recovered” and no longer meets the definition of a threatened species is an “other circumstance” that is not easily foreseen.

197. A finding that lynx are “recovered” and no longer threatened and announcing plans to prepare a proposed delisting rule is not valid reason to forgo recovery planning. Finding lynx to be “recovered” and no longer threatened (whether final, interim, or recommended findings) and announcing plans to prepare a proposed delisting rule are not valid “other circumstances” that are not easily foreseen.

198. The Service’s decision to forego recovery planning for lynx conflicts with its own guidance and is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the ESA. 5 U.S.C. § 706 (2)(A).

SECOND CAUSE OF ACTION
(Violation of the ESA – arbitrary recovery finding)

199. Plaintiffs incorporate all preceding paragraphs.

200. Under the ESA, the Service can only remove a species from the list of threatened or endangered species on the basis of the best available science. 16 U.S.C. § 1533(c); 50 C.F.R. § 424.11. A species may

be delisted only if the best available science substantiates that the species is either extinct, the species' original classification was made in error, or the species is recovered. 50 C.F.R. § 424.11(d).

201. Under the ESA, a species is only "recovered" if the best available science reveals it no longer qualifies as an endangered or threatened species, i.e., if the species is not likely to become endangered in the foreseeable future. 50 C.F.R. § 424.11(d)(2). An analysis of the ESA's five threat factors is required before delisting a species and declaring the species "recovered." 16 U.S.C. § 1533(c)(2).

202. The Service decided to forego recovery planning because it determined lynx to be "recovered" and no longer threatened in the contiguous United States.

203. The Service's determination that lynx are "recovered" and no longer threatened is premature. The Service has not achieved the 2005 recovery outline's recovery objectives. The Service has not achieved any of the benchmarks included in the 2005 recovery outline. The Service has not taken any of the steps necessary to achieve recovery as outlined in the 2005 recovery outline. The Service has not completed the actions identified in the 2005 recovery outline to achieve the four recovery

objectives. The Service has yet to prepare a lynx recovery plan that includes objective and measureable delisting criteria. The Service has yet to prepare, publish, and submit for public comment (and peer review) a proposed rule to delist lynx. The Service has not undertaken an adequate and comprehensive threats assessment as required by section 4(a)(1) of the ESA, 16 U.S.C. § 1533(a)(1).

204. The Service's determination that lynx are "recovered" and no longer threatened conflicts with the SSA. The SSA does not include a recovery finding. The SSA does not include information, data, or evidence to support a recovery finding. The SSA does not evaluate, analyze, and apply the ESA's five threat factors. The SSA determined lynx are not recovered and are not likely to be recovered into the foreseeable future. The SSA only discusses lynx persistence, not recovery. The SSA acknowledges that lynx remain threatened and that climate change has and continues to adversely impact lynx and lynx habitat. The SSA determined that lynx persistence is possible, but not in all areas and only for a short period of time (roughly 30 years).

205. The Service's determination that lynx are "recovered" and no longer threatened conflicts with the best available science. The best

available science reveals lynx in the contiguous United States are not recovered. The best available science reveals lynx remain threatened. The best available science reveals lynx in the contiguous United States are likely to become endangered in the foreseeable future. The best available science reveals the lynx's range has contracted in the contiguous United States since 2000. The best available science reveals lynx population numbers have decreased in the contiguous United States since 2000. The best available science reveals lynx subpopulations are smaller and more isolated in the contiguous United States since 2000. The best available science reveals there is less connectivity and movement between lynx subpopulations in the contiguous United States and between lynx in the United States and Canada since 2000. The best available science reveals threats to lynx have not been addressed so that lynx populations will persist in the contiguous United States into the foreseeable future. Threats to lynx from climate change are on the increase. Cumulative threats to lynx are on the increase.

206. The Service's determination that lynx are "recovered" and no longer threatened conflicts with the agency's own findings. In 2014, the

Service determined that “climate change is likely to be a significant issue of concern for the future conservation of lynx” in the contiguous United States.” 79 Fed. Reg. 54782, 54811 (September 12, 2014). The Service said climate change is “expected to substantially reduce the amount and quality of lynx habitat in the contiguous United States, with patches of high-quality boreal and subalpine forest habitat becoming smaller, more fragmented, and more isolated.” *Id.* The Service said remaining lynx populations “would likely be smaller than at the present and, because of small populations size and increased isolation, populations would likely be more vulnerable to stochastic environmental and demographic events.” *Id.* In 2014, the Service determined that Colorado and the Southern Rocky Mountains are unlikely to support a resident lynx population over the long-term. 79 Fed. Reg. at 54788. The Service said climate change projections suggest lynx habitat in Colorado and the Southern Rocky Mountains (like elsewhere) will make lynx habitat even “more marginal, patchy, and isolated, and, therefore, even less capable of supporting lynx populations over time.” *Id.* at 54789.

207. The Service's determination that lynx are "recovered" and no longer threatened is outdated. Since December 2017, new data, evidence, and scientific papers reveal lynx population numbers have declined in Washington, Idaho, Montana, Wyoming, and Colorado since 2000. Since December 2017, new data, evidence, and scientific papers reveal lynx habitat and range has declined in Washington, Idaho, Montana, Wyoming, and Colorado since 2000.

208. The Service's determination that lynx are "recovered" and no longer threatened is based on improper metrics.

209. The Service applied the wrong timeframe. The Service's "recovery" determination for lynx only evaluated the potential threats that existed "at the time of listing" in March 2000. This is the wrong timeframe by which to evaluate recovery. The Service must evaluate the status of lynx now, at the present time (not at the time of listing).

210. The Service failed to recognize the distinction between persistence and recovery. The Service's "recovery" determination for lynx only discusses lynx persistence (survival), not recovery. Persistence is not recovery.

211. The Service applied the wrong baseline. The Service’s “recovery” determination for lynx only evaluates the potential loss of lynx habitat and lynx numbers as they existed in 2017, at the time of the SSA. The Service never evaluated the loss of the lynx’s historical range, habitat, and population numbers. The Service never evaluated the loss of the lynx’s range, habitat, and population numbers as it existed at the time of listing (March 2000). The Service never evaluated loss of the lynx’s range, habitat, and population numbers as it existed at the time of the 2005 recovery outline, including “core areas” identified in the recovery outline.

212. The Service’s determination that lynx are “recovered” and no longer threatened is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the ESA. 5 U.S.C. § 706 (2)(A).

**THIRD CAUSE OF ACTION
(Violation of the ESA – foreseeable future)**

213. Plaintiffs incorporate all preceding paragraphs.

214. Under the ESA, a species is only “recovered” if the best available science reveals it no longer qualifies as an endangered or threatened species, i.e., if the species is not likely to become endangered

in the foreseeable future throughout all or a significant portion of its range. 50 C.F.R. § 424.11(d)(2).

215. The term “foreseeable future” is not defined in the ESA.

216. In December 2017, the Service relied on and applied the 2009 Solicitor’s Opinion’s definition of “foreseeable future.” The 2009 Opinion explains that foreseeable future is the timeframe over which the best available science allows the Service to predict future threats for a particular species.

217. The Service failed to properly identify and evaluate threats to lynx within the foreseeable future.

218. When determining that lynx are “recovered” and no longer threatened, the Service identified 2050 (33 years) as the “foreseeable future.” 2050 is not the “foreseeable future.” The Service can reasonably and reliably predict threats to lynx beyond 2050.

219. The foreseeable future for lynx extends to at least 2100. The best available science allows the Service to predict current and future threats to lynx and lynx habitat (including threats from climate change) to at least 2100. The SSA evaluates threats to lynx to 2100. The SSA considers 2100 to be within the foreseeable future.

220. The Service's determination that lynx are "recovered" and no longer threatened based on its identification of 2050 as the "foreseeable future" is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the ESA. 5 U.S.C. § 706 (2)(A).

**FOURTH CAUSE OF ACTION
(Violation of the ESA – significant portion of its range)**

221. Plaintiffs incorporate all preceding paragraphs

222. Under the ESA, a species is only "recovered" if the best available science reveals it no longer qualifies as an endangered or threatened species, i.e., if the species is not likely to become endangered in the foreseeable future throughout all or a significant portion of its range. 50 C.F.R. § 424.11(d)(2).

223. When determining that lynx are "recovered" and no longer threatened, the Service failed to evaluate whether lynx are recovered and no longer threatened in "significant portion" of the lynx's range in the contiguous United States. The Service never discussed or evaluated whether lynx should remain listed in a "significant portion" of its range in the contiguous United States.

224. Lynx are not recovered in a significant portion of its range in the contiguous United States. Lynx remain threatened in a significant portion of its range in the contiguous United States.

225. The Service's determination that lynx are "recovered" and no longer threatened in the absence of evaluating "significant portion of its range" is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the ESA. 5 U.S.C. § 706 (2)(A).

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request this Court:

A. Declare the Service has violated and continues to violate the law as alleged above;

B. Declare that the Service's December 20, 2017 decision to forego a recovery plan for lynx in the contiguous United States is arbitrary, capricious, an abuse of discretion, and not in accordance with the ESA;

C. Declare that the Service's determination that lynx are "recovered" and no longer threatened is arbitrary, capricious, premature, an abuse of discretion and not in accordance with the ESA as alleged above;

D. Remand this matter back to the Service with instructions to comply with the ESA and prepare and publish a final recovery plan for lynx within a reasonable amount of time, not to exceed 12 months (one year) from issuance of a final judgment in this case. If the Service publishes (in the Federal Register) a *final* rule delisting lynx in the contiguous United States *before* issuance of a final judgment in this case, direct the Service to prepare and publish a final recovery plan for lynx within 12 months of any subsequent agency decision to withdraw the final delisting rule or any subsequent court order vacating the final delisting rule;

E. Award Plaintiffs their reasonable attorneys' fees, costs, and expenses of litigation pursuant to section 11(g) of the ESA, 16 U.S.C. § 1540(g) and/or the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412;

F. Issue any other relief, including preliminary or permanent injunctive relief that Plaintiffs may subsequently request; and

G. Issue any other relief this Court deems necessary, just, or proper.

Respectfully submitted this 1st day of December, 2020.

/s/ Matthew K. Bishop
Matthew K. Bishop

/s/ John Mellgren
John Mellgren, *PHV pending*

Counsel for Plaintiffs