

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

ATCHAFALAYA BASINKEEPER, et al.

Plaintiffs,

vs.

DEBRA HAALAND, et al.

Defendants.

Case No. 20-651-BAJ-EWD

DECLARATION OF SCOTT EUSTIS

I, SCOTT EUSTIS, hereby declare as follows:

1. I make this declaration on behalf of Healthy Gulf. I have personal knowledge of each of the facts stated herein, and if called as a witness, would and could competently testify thereto.
2. I make this declaration in accordance with 28 U.S.C. § 1746.
3. I am a resident of New Orleans, Louisiana.
4. I am a member of and the Community Science Director for Healthy Gulf, one of the organizational plaintiffs in this case.
5. Healthy Gulf is a 501(c)(3) non-profit corporation incorporated under the laws of the State of Louisiana with its principal place of business in New Orleans, Louisiana. Healthy Gulf's mission is to collaborate with and serve communities who love the Gulf of Mexico by providing research, communications, and coalition-building tools needed to reverse the long-term pattern of overexploitation of the Gulf's natural resources. Healthy Gulf

has 400 members.¹ Healthy Gulf's members and supporters use the Atchafalaya Basin and coastal wetlands for recreation and value these areas as part of the national and cultural heritage of this region.

6. I work in the organization's main office in New Orleans, Louisiana.
7. I have a bachelor of science degree in Ecology from the University of Georgia, Odum School of Ecology. While at the University of Georgia, I worked as a research technician in various plant demography, fisheries, and fish and hydrology labs. I also worked on contract for the Department of Transportation to draw new road maps from aerial photography. Thereafter, I received a master's degree in environmental science from the University of New Orleans, in the Department of Earth and Environmental Science.
8. I attended vertebrate natural history classes, as well as macroecology classes, during my studies at UGA. I am familiar with the studies regarding how Louisiana black bears (LBB) have shown preferences for large cypress trees near water sources for their dens. Large mammals like the LBB perform many ecological functions (such as seed distribution and manure), and contribute to many different kinds of species interactions across many trophic levels in our Louisiana coastal swamps (such as suppression of smaller herbivores from forest habitats). The swamp makes the bear, and the bear makes the swamp.
9. I have worked at Healthy Gulf since 2011. Prior to my current position as Community Science Director, I served as a Coastal Wetland Specialist for the organization. My work for the organization has focused on reviewing permit proposals for development projects impacting wetlands, *e.g.*, Clean Water Act Section 404 dredge and fill permits issued by

¹ <https://www.healthygulf.org/our-story/about-us>

the U.S. Army Corps of Engineers (the Corps) and coastal use permits issued by the Louisiana Department of Natural Resources, Office of Coastal Management (LDNR) under the Coastal Zone Management Act, as well as restoration project proposals from the Coastal Protection and Restoration Authority, and projects proposed pursuant to the Louisiana Coastal Master Plan. I also study sediment diversions and assess their ecological impact on Louisiana's natural resources. We have a great challenge in Louisiana—a lack of sediment on our coast, and a surplus of sediment in floodways like the Atchafalaya Basin Floodway and Bonnet Carré Spillway. I regularly observe and study the effects of sediment deprivation at the coast and filling of more inland areas, particularly in the Basin. For example, I have been documenting the land built by the Mardi Gras Pass crevasse in Plaquemines Parish since 2012.

10. I have been certified as a Louisiana Master Naturalist of Greater New Orleans since Spring 2013 and also in the National Green Infrastructure Certification Program since Spring 2019.

11. I spend my leisure time canoeing and kayaking on the coast, occasionally fishing and flying kites for aerial photography over the wetlands of Louisiana. I regularly fly in small planes across the Gulf Coast as a passenger, photographer, and tour leader during educational and factfinding tours with the Southwings pilot organization. I am particularly fond of the Atchafalaya Basin swamps, for their quietude and the remnant ancient trees that allow me to imagine the ecosystem potential of Louisiana's natural world. In my work, I have come to appreciate the fragile nature of these swamps, and fear for their future given the lack of policies that would protect them in the face of sedimentation from oil and gas development and for hunting clubs.

12. I have a deep interest in and passion for the wildlife and wetlands of Louisiana, both across the coast, and especially the Atchafalaya Basin, an outgrowth of my geologist grandfather who instilled in me a strong environmental ethic and care for the value of our natural resources, water, and forests alongside or in conflict with oil. I am most familiar with the places my grandfather worked in Plaquemines Parish, but have been increasingly drawn to the basin. The Atchafalaya Basin is unique on a global scale, and the last remaining piece of what was once a vast ecoregion of riverine swamps extending up to Illinois. The taming of the great Mississippi River with levees cut off the river from its historic floodplain, and the Atchafalaya Basin is the last great river swamp in this ecoregion.
13. Habitat for the LBB in areas I regularly visit along the coast and in the Basin have already been drastically altered since the delisting. While the LBB was listed under the Endangered Species Act, habitat destruction proposals and actual impacts, both legal and illegal, were more limited than what we are seeing now. A large pipeline proposal that was considered during the period when the bear was protected, and rejected partially on the basis of costs related to avoiding habitat destruction. Since the delisting, two large pipelines were approved and their construction has adversely impacted hundreds of acres of habitat by the removal of trees and addition and compaction of sediments in the rights-of-way. These hydrologic barriers will create new and larger areas where waters have low or no oxygen. Habitat impacts are ongoing, will eventually be numbered in the thousands of acres, in Cocodrie Swamp and East Grand Lake in particular. These acres of habitat loss and alteration are not mitigated under the Clean Water Act within, or even close to, the Cocodrie Swamp and East Grand Lake areas that have been severely impacted.

14. I have been visiting the basin since 2011 regularly, for enjoyment and to witness various swamp and wetland forest injuries that Healthy Gulf has sought to remedy alongside Atchafalaya Basinkeeper and other groups. The initial work involved surveying for road, logging, and gate damages to wetlands, flow of water, and access to fishing grounds. These areas before delisting were areas with a longer history of siltation and damage from construction of the interstate, siltation from landowner projects to increase their land holdings, and from oil and gas projects. Most of these initial habitat damages I witnessed were either actively illegal, such as illegal logging of habitat that would cease once unpermitted wetland roads were reported, or were projects found not to result in the loss of wetland forest habitat and thus excluded from the permitting regime. The habitat damages I observed until more recently were limited to tens of acres at most, in habitats that were relatively stable in regard to siltation, and conversion of cypress forest to hardwood forest.

15. In 2013, while the LBB was still listed, the first in a series of large oil and gas pipelines was proposed for the Basin, Shell's "Westward Ho" pipeline. We engaged with negotiations with the various departments, staff, and separate companies of Shell for over a year, in regard to how the proposed pipeline would affect hundreds of acres of wetland forest and swamp habitat, as well as aggravate existing hydrologic barriers in the Basin – pipeline rights-of-way are often used as heavy equipment roads for construction and maintenance of pipelines. Some Shell employees sympathized with our concerns. Shell had told us that addressing our concerns would lead to higher costs, and that they would seek monies from a 'social benefit fund' in order to address our habitat concerns. Shell

eventually withdrew the project as cost ineffective. Shell had expressed to us that our habitat concerns were a part of the cost factors.

16. After the 2016 delisting, another oil pipeline was proposed, the Bayou Bridge Pipeline, as well as the Enterprise Aegis natural gas pipeline. Despite our petitioning agencies on the same issues of habitat loss, siltation, and hydrologic alteration of swamps, both pipelines were approved to be built, resulting in the largest destruction of swamp forest I have ever witnessed, during construction and continuing to the present day. The new water channels, scouring, and headcutting created by the new Bayou Bridge right-of-way also contributed to the failure of the Coon Trap project in 2021, which has had massive destructive impact on this area in the Basin.
17. According to the USGS, the failure at Coon Trap has created a new 8,000 cfs channel directly connected to the Pilot Channel. Based upon my experience with Mardi Gras Pass in Plaquemines, and study of the engineering of sediment diversions, I believe this new channel is conveying vast amounts of sediment to pour into wetland forests and swamps.
18. I believe that the destruction of hundreds of acres of forest and the re-routing large amounts of water into new channels, caused in large part by these more recent pipeline developments, is disrupting wetland forest habitat all along these pipeline rights-of-way in Cocodrie Swamp, Beau Bayou, Buffalo Cove, East Grand Lake, and lower Grand Lake. These habitat changes can displace animals, including the LBB, from their habitat in these areas of the Basin, and make the population more vulnerable to hunting losses.
19. Because of my role at Healthy Gulf, I am acutely aware of the changing nature of Louisiana's relationship to the oil and gas industry since the recent price crashes, as new transmission pipelines for various commodities (Oil, Gas, Gas Liquids, etc.) have been

the largest single wetlands impact category in the New Orleans District, and thus to the Basin, for the majority of my career at Healthy Gulf. I anticipate a new wave of US oil and gas commodities, including CO₂ liquids, Hydrogen, and Liquefied Natural Gas export, will only add to the burden that the Atchafalaya Basin will have to bear.

20. I am concerned that the agencies have disregarded swamp habitat in their recovery finding for the LBB, despite the research that shows LBB preferring cypress trees near water as preferred denning habitat. Many hundreds of acres of cypress forest near water have been removed since the delisting. If the swamp areas of the Basin were limiting migration to the degree that the agencies suggest, we would not see the increases in coastal mortality along highway 90 that have been reported. I believe these increases are due to the increased displacement of animals due to the large losses of habitat since delisting. In Louisiana, shallow water is not generally a barrier for bear, deer, and other animals. Even in marsh habitat, the state promotes the hunting of deer around Couba Island. Conversion of swamp habitat to hardwood habitat is beneficial to landowners seeking to increase their private properties, who are limited in their ability to own waterbottoms, promote hunting leases, and control commerce upon the waters. Conversion of swamp habitat to hardwood habitat is useful to facilitate land-based hunting of the bear, and would be especially useful for hunters seeking to move hunting dogs in trucks or ATVs into LBB habitats they otherwise could not access. Conversion of swamp habitat to hardwood habitat increases the habitat areas where the bear could be hunted, more than increasing areas beneficial to the bear.
21. This lack of consideration of swamp habitat for the LBB not only threatens the bear, but is also allowing the filling of the Atchafalaya Floodway, which is essential for the safe

operation of the Mississippi River and Tributaries system. This system protects Baton Rouge and New Orleans from river flooding. This system requires the operation of floodways at Morganza and Bonnet Carré when the Carrollton gauge rises above 17 feet. The Bonnet Carré spillway is currently mined for sand in order to maintain its depth as a floodway, but the Atchafalaya Floodway is being filled. The Floodway is being unnaturally filled by sediment diversions such as the Bayou Bridge Pipeline right of way.

22. The delisting harms my interest in the survival and protection of LBBs, an important species driving many interspecies interactions in Louisiana's wetland ecosystems. In addition to the threats to bear habitat, particularly in the Lower Atchafalaya River Basin (LARB), the post-delisting reported rate of annual mortalities for LBBs has increased since the removal of ESA protections for the bear, and the post-delisting survival estimates for both the Tensas River Basin (TRB) population and the Upper Atchafalaya River Basin (UARB) populations have dropped in each consecutive reporting year since the delisting.² These trends signal harm for the entire bear population in Louisiana, but I also worry that the agencies' failure to provide long-term persistence estimates for the LARB population means that it would not be known if this population is encountering circumstances requiring intervention, which thus makes these bears much more vulnerable to harms impacting their survival.
23. The delisting affects the coastal population disparately. The Louisiana Department of Wildlife and Fisheries' (LDWF) failure to monitor this population as closely as the TRB and UARB threatens the viability of the entire subspecies. Many of the documented deaths since delisting includes coastal bears (at least 73 reported LARB deaths between

² According to the 1st – 4th Post-Delisting Monitoring Annual Reports published by LDWF (2015-2019).

2015 and February 2020)³, but because this population is excluded from the survival estimate for the LBB that would theoretically trigger agency response and intervention, significant harms to this population would be unknown and would not impel appropriate action. The annual reported rate of mortality for the coastal bears since the delisting, and lack of long-term survival estimates for this population, further harms my interest in protecting all populations of LBB. Traffic patterns along highway 90 have not increased, so I feel these increased deaths are related to increased displacement of the LBB from its habitat. These trends in increased mortality and declining survival post-delisting injure my interests in observing and protecting LBBs.

24. My interests in the protection and restoration of the population of LBBs, and in observation of this unique subspecies, is also injured by the imminent threat of an open hunting season for bears in Louisiana. The LDWF appears to be seriously considering initiating a bear hunt since ESA protections prohibiting hunting have been removed. The population of bears is already low, and in light of reported mortality data, can hardly support an additional source of deaths in a sanctioned hunt. If the LDWF follows through with its intent to initiate a bear hunt in Louisiana, my interests in observation and protection of the bear will be injured.
25. I have seen black bears hunted during my fieldwork in western North Carolina, including inter-hunter conflicts between the hunters who hunt the bear in order to move them away from the hunters that kill the bear. I have reported and retrieved bear-hunting dogs lost or abandoned in the forests that were my study sites. Having never seen a live bear in Louisiana, I nonetheless have seen bear tracks during my recent investigations of the

³ According to data produced by LDWF in response to a public record request.

crevasse at the failure of the Coon Trap project. I enjoy looking for signs and tracks of bear movement and occupation in the areas I visit. If a bear hunt is opened in Louisiana, opportunities to observe LBBs in their native habitat will be further diminished, and my interests in conservation and observation of the LBB, including its tracks in the wild, will be harmed as the already small population is reduced further.

26. I hope to someday see a bear in the more coastal areas that I visit, including Cocodrie Swamp, Henderson, and Lake Fausse Pointe State Park (areas included in former critical habitat for the LBB in Unit 2), and including any animals that may still reside in Bayou Pigeon and East Grand Lake area, including Lake Zadrick. When I visit these areas, I observe wildlife and specifically look for black bears but have yet to see a live bear in its coastal habitat. If the bear's survival continues to be harmed by existing and foreseeable threats, my chances of observing live bears in coastal habitat will be reduced if not completely eliminated.
27. The injuries to my recreational, conservation, and observational interests in the LBB and its habitat, particularly in coastal wetlands and the Atchafalaya Basin, are traceable to the delisting decision and its removal of ESA protections for the species and its habitat. Since the delisting, mortality is on the rise, survival is on the decline, harmful impacts from development in jurisdictional wetlands and essential bear habitat since the removal of ESA protections for critical habitat has been unprecedented and on a scale I had not seen before, and the removal of federal protections has opened the door to the State's agenda to initiate a bear hunt.
28. All of these harms would be redressed by the relisting of the LBB, imposing ESA protections to address illegal kills and roadkill mortalities of bears to assure the long-term

survival of all populations of LBB; redesignating critical habitat to protect essential forested, wetland habitat for the bear from further unsustainable development; and revising of the Recovery Plan to reflect best available science, to adequately address current threats, and all essential populations, including the LARB coastal bears.

29. Unless these injuries are redressed through relisting and redesignating critical habitat, the premature removal of ESA protections for the LBB and its habitat will continue to injure my personal interests, and the interest of all Healthy Gulf members, in the bear and its habitat, particularly the protection of Louisiana's coastal marshes and wetlands, and the majestic Atchafalaya Basin.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 19th day of July, 2021, in New Orleans, Louisiana.

A handwritten signature in black ink, appearing to read "Scott Eustis", is written over a light gray rectangular background.

Scott Eustis