

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 HAROLD SCHOEFFLER

I, HAROLD SCHOEFFLER, hereby declare as follows:

1. I make this declaration on my own behalf. 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 longtime resident of Lafayette, Louisiana.
4. I am also a long-time, active member of both the Sierra Club, Delta Chapter and the Louisiana Crawfish Producers Association-West, two of the organizational plaintiffs to this lawsuit. I have been an active member of LCPA since 2001. I have been an active member of the Sierra Club since 1982.
5. Sierra Club is the oldest grassroots organization in the U.S. dedicated to the protection and preservation of the environment. Sierra Club has over 803,000 members dedicated to exploring, enjoying, and protecting the wild places of the Earth; practicing and promoting the responsible use of the Earth's ecosystems and resources; education and enlisting humanity to protect and restore the quality of the natural and human environment; and

using all lawful means to carry out these objectives. The Sierra Club's concerns encompass the protection of wildlands, wildlife and habitat, water resources, air, climate, public health, and the health of its members.¹ The Delta Chapter of the Sierra Club has 3,251 Sierra Club members living in Louisiana, including within the Atchafalaya Basin. Many Sierra Club members recreate, boat, and fish in the Atchafalaya Basin. Members of the Delta Chapter of the Sierra Club, including myself, also enjoy observing wildlife in the Basin, on the coast, and throughout Louisiana.

6. I have many interests in the survival of the Louisiana black bear and the protection of its habitat, as an individual and as a member of Sierra Club and LCPA.
7. I have been a vocal advocate and champion for the restoration and protection of the Louisiana black bear and its habitat for more than three decades.
8. I have a long history of involvement in efforts to conserve the bear and protect its habitat, including spending decades of time and effort seeking to have the Secretary of the Interior protect the bear under the Endangered Species Act (ESA), and to protect critical habitat for the bear. These efforts continue today.
9. In March 1987, I personally drafted a citizens' petition to have the bear listed as a threatened species under the ESA. But when the U.S. Fish and Wildlife Service (USFWS or the Service) failed to list the bear, I initiated suit, with Sierra Club and Defenders of Wildlife, against the USFWS to list the Louisiana black bear.² The lawsuit ultimately was resolved by an agreed-upon consent judgment (and included a requirement to designate critical habitat that went unfulfilled until I sued the Service again in 2005). Because of

¹ <https://www.sierraclub.org/about-sierra-club>.

² *Defenders of Wildlife, et al. v. Lujan*, 2:91-cv-04641-CS (E.D. La. 1991).

our lawsuit, the Service finally listed the Louisiana black bear as a threatened subspecies under the ESA in 1992.

10. When the USFWS failed to designate critical habitat for twelve years after listing the bear, I filed suit with LCPA in 2005 to force the Secretary of the Interior to designate critical habitat.³ Because of our lawsuit, in 2009 the Service designated 1,868 square miles of critical habitat for the bear, including 886 square miles in the Atchafalaya Basin.
11. The Louisiana black bear is symbolic of the wilderness of the South. Because of the bear's historical and cultural importance in Louisiana, I believe it is imperative that we protect the subspecies and its habitat; habitat that would preserve the bear and other wildlife native to these areas in and around the Atchafalaya Basin and the coast.
12. I have spent decades of my life canoeing, camping, hiking, hunting, fishing, and recreating in and around the Atchafalaya Basin. I have been a Scoutmaster for many years, and have led many camping trips in the Atchafalaya Basin. I regularly fish and recreate in the Basin, including areas within the native habitat for the Louisiana black bear. I regularly recreate in the lower Basin between Morgan City and the Bay, between Wax Lake and the Atchafalaya River, between Bayou Sally and Wax Lake, and on the west side of the Basin, including in the Buffalo Cove area (in Unit 2 of designated critical habitat for the bear).
13. I use the Basin on a regular basis, four or five days a week, for fishing, crabbing, canoeing and hunting, and I will continue to do so.

³ *Schoeffler and Louisiana Crawfish Producers Association-West v. Kempthorne*, 493 F. Supp. 2d 805 (W.D. La. 2007).

14. I have an interest in the protection of the Louisiana black bear, and its habitat, including these areas in the Atchafalaya Basin where I frequently recreate. My involvement with the Louisiana black bear and its habitat will continue into the future.
15. I believe preserving the Atchafalaya Basin is vital to the bear's survival in Louisiana because the region includes some of the bear's best remaining habitat, particularly for the isolated coastal population of Louisiana black bears (the Lower Atchafalaya River Basin, or LARB, population).
16. The delisting decision has and will continue to negatively affect my recreational, conservation, and aesthetic interests in the Louisiana black bear and its habitat. The delisting decision took away necessary Endangered Species Act (ESA) protections for the remaining populations of Louisiana black bears and their habitat.
17. The delisting's removal of ESA protections for the bear and its habitat is particularly injurious to my interests in Louisiana's wildlife habitat, coastal marshes, and flooded forests. When the bear was listed in 1992, the USFWS acknowledged that the primary threat that warranted listing was the destruction and fragmentation of bear habitat. The delisting proclaims that this threat has been sufficiently alleviated. But as discussed below, this habitat destruction and fragmentation has continued and has accelerated since the delisting. I am particularly concerned about the coastal population of bears and the quality and quantity of habitat this population relies on for survival.
18. Since the delisting, huge areas of marsh habitat have been lost to rising seas, subsidence, and extreme weather events; what was once viable bear habitat is now open water. These areas include parts of west Terrebonne Parish, the area north of Four-Leaf Bay, and east of the Atchafalaya River below Highway 90. Reported sightings of Louisiana black bear

in these parts are now a thing of the past. The Intracoastal Waterway as it traverses this area in the LARB habitat now resembles an open lake, not the navigation channel it once was.

19. The USWFS established the Bayou Teche National Wildlife Refuge (NWR) in St. Mary Parish to provide habitat for the bear, but the Service has continually failed to fulfill its commitments to continue to restore bear habitat in this area.
20. During the listing, the USFWS acquired 28,000 acres of property in St. Mary Parish from the Bailey family for fifteen dollars an acre, a substantial financial investment, to establish the Bayou Teche National Wildlife Refuge. The area includes land between the west Atchafalaya Basin guide levee and Bayou Teche, down towards Bayou Sally and including the swamp area south of Franklin (the “Franklin Oil Field”).
21. In establishing the Bayou Teche NWR, the Service committed to restoring 6,000 acres of sugarcane fields and converting those agriculture lands to swamp forested habitat for the coastal bear. This area located between the Atchafalaya River and Bayou Sally to the west, and between the Atchafalaya Basin and coastal islands to the south, is needed to provide safe, covered access to the bear, particularly in the spring when the water level rises and bears in the Basin escape to seek higher ground. It is located in what was designated critical habitat for the Louisiana black bear (Unit 3). The Service gave the farmers five years to finish their agriculture operations, but this area still produces sugar cane to this day. The open fields have not been converted to covered, forested wetlands as was promised, and therefore leave bears who traverse this area exposed to additional threats.

22. Based on my observations and experience in wildlife conservation and outdoor recreation, I do not believe that the Service has properly managed and cared for the Bayou Teche NWR. The agency's interest in fulfilling its commitments in this area appears to have waned, as the operation of this area as a wildlife refuge is poorly managed, appears understaffed, and under resourced to ensure adequate management of the area for wildlife habitat.
23. The Service's refusal to accept an unsolicited donation from the Perrett family of St. Mary of 600 acres of land, adjacent to the Bayou Teche NWR, with the specific intent of providing additional habitat for the bear shows its disinterest in the continued preservation of bear habitat in this area.
24. The situation in Bayou Teche is just one example of how commitments to preserve, restore, and connect Louisiana black bear habitat are not being honored, to the detriment of the Louisiana black bear and the plaintiffs in this case. Another example is the continued failure by the Service to install a wildlife underpass at Highway 90 – a significant barrier to movement of the coastal bear and source of mortality for this population – despite representing that it would work to facilitate this means of safe passage for bears in the LARB area.
25. Without relisting and reinstating federal protections under the ESA to require the Service to redress these ongoing failures, I do not expect that these areas will ever receive the oversight needed to provide quality habitat for the coastal bear. Because restoration and protection of the LARB bears and their habitat near the coast and into the Atchafalaya Basin are not part of the state's management and monitoring plans, since the delisting

decision, these commitments to create a wildlife underpass at Highway 90 and to convert the 6,000 acres of sugarcane fields to forested habitat have ceased.

26. I am also concerned about the impact that the delisting has on existing habitat in the Basin. Not only have there been more major development projects and habitat degradation in the Basin since the delisting and removal of critical habitat, but the long period of highwater and flooding in the Basin in recent years has exacerbated these harms to the bear's habitat in the Basin. For the past four years, the Atchafalaya Basin floodway system has been plagued by extraordinarily long periods of sustained high water. These events have proven to be more extreme and sustained than we have seen in previous years, and disruptive to the natural processes of these ecosystems. As pertains to the black bear, sustained levels of highwater on spoil banks reduce food supply in the area, and degrade the habitat quality for the entire wildlife, recreational, and commercial ecosystems of the Basin. Because of these highwater events, negative impacts to Basin wildlife habitat and the wetlands from major pipeline construction during the past few years is exacerbated and far reaching. Again, without ESA protections, because these areas and the coastal bear are greatly excluded from state management of LBB in Louisiana, I anticipate that these new threats will continue and will not be addressed by existing management efforts.

27. The delisting failed to estimate long-term survival for the coastal population of the Louisiana black bear in the LARB. The negative habitat trends in the coastal and lower Atchafalaya Basin areas add to the uncertainty of this population's future viability, and harm my interests in the bear and its habitat in and around the Atchafalaya Basin. But for the delisting of the Louisiana black bear and removal of its critical habitat, the Recovery

Plan and management efforts could be revised in light of these negative habitat trends to protect the coastal population from further harm, and to ensure fulfillment and expansion of habitat restoration commitments for this population.

28. The delisting's removal of protections for the bear, for bear habitat, and the USFWS's failure to adequately address existing and foreseeable threats to the coastal population harm my recreational, conservation, and aesthetic interests in the Louisiana black bear and its habitat.
29. My longstanding, personal interests in the bear and its habitat are also threatened by the Louisiana Department of Wildlife and Fisheries' (LDWF) intent to open a bear hunt now that the bear is delisted and allegedly "recovered" and hunting is no longer prohibited by the ESA protections for the bear. I am a hunter, and I hunt regularly in the Atchafalaya Basin. I am not against hunting species with sufficient population numbers to support a hunting season. However, the Louisiana black bear's population is already small in comparison to other bear species and subspecies. Considering the population size, as well as the decline in survival and increased threat of harm to the native genome through the Three Rivers Complex repatriated population connecting a native Tensas River Basin population with a non-native subspecies in the Upper Atchafalaya River Basin, a hunt and/or harvest would injure the viability of the bear and in turn, my interest in protecting the Louisiana black bear. Opening a bear hunt would reduce the already small population of Louisiana black bears, and negatively impact the likelihood of survival for the whole subspecies, particularly in light of existing threats facing true Louisiana black bear populations (*i.e.*, vehicular mortality, illegal kills, and for the LARB, habitat loss, barriers to mobility, and isolation).

30. I am suffering and will continue to suffer recreational, conservation and aesthetic injuries due to the diminished opportunities to observe the native wildlife, including the Louisiana black bear, and the reduction and degradation of bear habitat. These are actual, particularized and concrete injuries specific to my interest in the bear, its habitat and the entire ecosystem native to these areas in south Louisiana in which I have grown up and regularly recreate and enjoy.
31. I suffer these injuries both as an individual and as a long-time member and supporter of the Louisiana Crawfish Producers Association-West and Sierra Club.
32. My recreational, conservation and aesthetic interests will continue to be harmed if the Louisiana black bear is not re-listed to the U.S. List of Endangered and Threatened Wildlife, and if critical habitat is not re-designated. This redress would greatly enhance my ability to continue to recreate, fish, canoe, camp, hike and hunt in the bear's habitat within the Atchafalaya Basin; it would greatly enhance my plans for future observation and recreation in the bear's native habitat; and it would greatly enhance the Service's ability to fulfill its commitments to promote habitat restoration and protect and safe passage for the coastal bear.
33. If the Louisiana black bear is returned to the U.S. List of Endangered and Threatened Wildlife, ESA protections reinstated to protect the bear and its critical habitat from actual and foreseeable threats that continue to harm the bear and its habitat, the Recovery Plan revised to include more adequate management and protection for the coastal population of Louisiana black bears, and prevention of hybridization of the TRB population with the non-*luteolus* UARB population, these actual and imminent injuries to my interests would

be redressed. Also, my plans for additional recreation and wildlife observation in the Atchafalaya Basin would be greatly enhanced and preserved.

34. Unless these injuries are redressed through relisting and re-designation of critical habitat, I will continue to suffer substantial harm as a consequence of the premature decision to delist the Louisiana black bear.

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

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



Harold Schoeffler