

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 DEAN WILSON

I, DEAN WILSON, hereby declare as follows:

1. I make this declaration on behalf of Atchafalaya Basinkeeper. 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 thirty-four (34) year resident of Plaquemine, Louisiana in Iberville Parish and within the Atchafalaya Basin.
4. I am the Executive Director and a member of Atchafalaya Basinkeeper, and a member of Healthy Gulf, two organizational plaintiffs in this case.
5. I have served as director since Atchafalaya Basinkeeper's creation in 2004. Atchafalaya Basinkeeper, Inc. (Basinkeeper or ABK) is a 501(c)(3) non-profit corporation incorporated under the laws of the State of Louisiana with its principal place of business in Plaquemine, Louisiana.

6. Basinkeeper's purpose is to preserve and restore the ecosystems of the Atchafalaya Basin, including wildlife habitat, and to support the future health and sustainability of the Basin and Louisiana's coast. Basinkeeper works to protect the Basin for present and future generations from illegal development, unsustainable accretion and sedimentation, and destructive permitted conduct; to engage, educate, and advocate for the all communities in the Basin and across coastal Louisiana; and to restore navigation, deep-water, and intermittently-flooded swamp habitat for wildlife, commerce, community safety, and recreational interests including hunting and fishing.
7. Protection of native wildlife and wildlife habitat and educating the public about the importance of the Basin and its ecosystems are cornerstones of our mission at Atchafalaya Basinkeeper to preserve and restore the Atchafalaya Basin for future generations.
8. Basinkeeper is a member of Waterkeeper Alliance, an international grassroots advocacy organization of over 350 programs working to protect watersheds across the globe. Each organization that is part of Waterkeeper Alliance has one staff member designated as the "keeper" for the water body the organization seeks to protect. Waterkeeper Alliance designated me as the "keeper" of the Atchafalaya Basin, so I refer to myself as the Atchafalaya Basinkeeper.
9. Atchafalaya Basinkeeper has over 1,500 members, including members like me who live in and around the Atchafalaya Basin, who work in the Basin, and who recreate and enjoy the diverse ecosystems that make up the Basin.
10. As part of our program work, ABK engages in community outreach, providing information pertaining to the Basin, its primary threats, and its importance to the health

and safety of surrounding communities, the state, and the nation. This includes informing our members and the general public of projects, activities, or actions that may adversely affect the Basin or its ecosystems, waters, or communities. Furthermore, as part of our program work, Basinkeeper regularly monitors by land, water, and air to investigate sources of harm and ascertain the health of the Basin's ecosystems, waterways, and wildlife.¹

11. Monitoring, enforcement, education, and outreach are at the core of ABK's mission to protect the Atchafalaya Basin. As part of our monitoring and enforcement program work, ABK engages with local fishermen, hunters, recreationists, and residents to monitor the health and sustainability of native wildlife habitat and populations, and to enforce legal protections to ensure that these areas are, and continue to be, adequately protected from illegal or unsustainable development and modifications that impair the health of these native ecosystems.
12. Many of Atchafalaya Basinkeeper's members like me are recreationists, ecotourists, and hunters and fishers who recreate and enjoy the Basin's wildlife habitat and ecosystems, including observing the Louisiana black bear and its habitat.
13. As the Atchafalaya Basinkeeper, the founder and a member of the organization, I have over seventeen (17) years of experience patrolling, monitoring, and advocating for the Basin. I engage in all levels of advocacy, from educating the public of the value of the Basin and its many threats, to alerting the regulatory agencies of unpermitted actions and failures to comply with permits, and if necessary, litigating for enforcement and

¹ <https://www.basinkeeper.org/projects>.

compliance with applicable laws and permits to protect the interests of the Basin and those who rely upon it.

14. Historic habitat for the Louisiana black bear included the entire Atchafalaya Basin and surrounding coastal wetlands and inland wetland forests. The Atchafalaya Basin contains some remaining cypress-tupelo legacy trees over 1,000 years old. Hollowed cypress trees provide suitable dens, shelter, and protection for Louisiana black bears. Since 2004, I have worked to protect remaining cypress-tupelo forests from unsustainable and illegal development and logging for the health of the entire Basin ecosystem and for the protection of wildlife habitat, including the Louisiana black bear. Working with state and national partners, I created the Cypress-Shield Campaign, part of Basinkeeper's Monitoring and Enforcement Program work, which has successfully monitored and stopped unsustainable and illicit logging in the Basin.²
15. Before starting Basinkeeper, I made my living hunting and commercially fishing in the Atchafalaya Basin for sixteen (16) years full-time, and many more years part-time.
16. I am also the owner of Last Wilderness Swamp Tours,³ a company I created in 2000 to educate people about the Atchafalaya Basin and its wetlands, swamp culture, wildlife, and threats. People come from all over the world to experience the Basin and observe its native and migratory wildlife, including the Louisiana black bear. The tour goes deep into the wetland forests of the Basin and visitors learn about how the Louisiana black bear has adapted to this swamp ecosystem. Just the possibility of seeing Louisiana's "swamp bear" in its native habitat is a major draw for visitors to our swamp tours as most of our customers are fascinated by Louisiana's "swamp bears."

² <https://www.basinkeeper.org/logging>.

³ <http://lastwildernesstours.com/>.

17. The presence and habitat of the Louisiana black bear (LBB) in the swamps of the Basin creates a major draw for ecotourism, which supports my business, my personal interest in conservation and wildlife protection, and the education and outreach program work of Basinkeeper. Visitors to the Basin are fascinated to learn about and potentially observe how the “Teddy Bear” has adapted to make nests in this swamp habitat, with nests on tree branches or inside the remaining huge, hollowed cypress trees. Visitors often join as members of Atchafalaya Basinkeeper to stay informed about the Basin, its threats, and our advocacy efforts. The benefits of ecotourism in the Basin are far reaching and include additional public awareness and attention on the Basin, its importance to Louisiana and the Gulf Coast, its unique aquatic functions, and its need for advocates.
18. I have a strong, personal interest in observing and protecting the native and migratory wildlife of the Atchafalaya Basin as a resident, staff and member of Atchafalaya Basinkeeper, ecotourism business owner, and former commercial fisherman. This interest is based on my years of working and living in the Atchafalaya Basin and on my recreational interests as a fisher, wildlife watcher, and outdoor enthusiast. I enjoy boating, hiking, and canoeing in the Basin. The Atchafalaya Basin is my church, a place I go to pray and feel closer to God. Being out in the natural habitat and having the opportunity to observe animals such as the Louisiana black bear is a spiritual and familial experience for me; it makes me feel closer to God. I taught my children to hunt, fish, and canoe in the Basin. The Atchafalaya Basin, its wildlife, and habitat is a special place to both me and my family. Members of Basinkeeper likewise share an interest in the Basin’s wildlife and habitat; many of our members have lived and recreated in the Basin for generations.

19. My job as Basinkeeper is to protect wildlife habitat, including habitat for the Louisiana black bear, but this interest is frustrated by the U.S. Fish and Wildlife Service's (Service or FWS) delisting and removal of habitat protections for the bear, and by the U.S. Army Corps of Engineers' (Corps) and the State of Louisiana's failure to protect the bear and its habitat since the delisting decision.
20. The decision to delist and remove Endangered Species Act (ESA) protections for the Louisiana black bear and its habitat injures my interests in a number of ways. The delisting has harmed the bear and its habitat in ways that adversely impact my recreational, conservation, and aesthetic interests in protecting the bear and its habitat.
21. Since the bear was delisted, annual reported bear deaths have increased and estimated survival has declined in comparison to annual deaths and estimated long-term persistence reported during the listing.⁴ The Service boasts a current population estimate of between 500 and 750 Louisiana black bears across the country.⁵ The Post-Delisting Monitoring Annual Reports do not include an updated or current estimated population. Additionally, the delisting failed to estimate survival for the Lower Atchafalaya River Basin (LARB) population of LBB, and no long-term persistence data for that population has yet been provided. These documented trends in increased mortality (primarily by road kills and

⁴ According to the Post-Delisting Monitoring Annual Reports published by the state management agency (1st - 4th), the average annual reported deaths for Louisiana black bears in Louisiana has been 46 bear deaths per year post-delisting. When compared to the average annual reported deaths during the entire listing (16 bear deaths per year between 1992-2015), and even the average annual reported deaths during the time Laufenberg & Clark produced abundance estimates for population viability analyses (24 bear deaths per year between 2006-2012), the most recent figures are alarming. *See* Email from Murphy to Davidson, Aug. 8, 2015 AR 649; 020040 (noting that between 1992-2015, there were 390 total bear mortalities reported); AR 421; 017520-017743. Also, the Post-Delisting Monitoring Annual Reports reflect a downturn in survival estimates for both the Tensas River and Upper Atchafalaya River Basin populations; and in the 2019 Report (the most recently published report), the female survival rate for the Upper Atchafalaya River Basin population actually fell below the 0.90 minimum threshold to ensure survival.

⁵ <https://www.fws.gov/southeast/wildlife/mammals/louisiana-black-bear/>.

poaching of bears from the LARB, Three Rivers Complex (TRC), and Tensas River Basin (TRB)), and a declining survival estimate for both the TRB and Upper Atchafalaya River Basin (UARB) population (the “metapopulation” according to the Service) confirm my fears that the premature removal of ESA protections and delisting would negatively impact bear survival for a subspecies that already suffers from low population numbers compared to other species and subspecies of bears.⁶ Increased mortality and decreased estimated survival reduce my chances – and that of my tour customers – to observe the bear in its native habitat. My interests in observing and protecting this unique subspecies has been, and continues to be, injured by these post-delisting negative population trends.

22. The delisting allows for the spread of hybridization of Louisiana black bear with the non-native population in the Upper Atchafalaya River Basin, which threatens my interests in conservation of this unique subspecies, and my business. The Louisiana black bear is the original “Teddy Bear”, a unique subspecies that cannot be replaced by other black bears from out of state. The Louisiana black bear, also known as “swamp bear” in these areas, is a tourist attraction for Louisiana and many of my swamp tour patrons come in hopes of catching a glimpse of this “Teddy Bear” and to see its native habitat. This unique subspecies has public significance in Louisiana, and the unnatural spread of genetic influence from an alien population of bears conflicts with this interest. Because public interest in the Louisiana black bear contributes to my swamp tour business, if hybridization with the non-native UARB population continues to threaten the native TRB

⁶ On behalf of Basinkeeper, LCPA, Sierra Club Delta Chapter, and Healthy Gulf (then “Gulf Restoration Network”), I submitted a Comment Letter to the FWS on the Proposed Delisting. AR 584. In our comment, I compared the path of bear recovery in Maryland to the situation in Louisiana, noting that despite Maryland’s greater human population density and much smaller population of bears to begin with, that state today hosts a growing population of over 1,000 black bears. AR 584, at 019568-019569.

population (and potentially the LARB if the Service's sediment predictions in the Basin come to pass and this population regains lost connectivity with populations to its north) without redress, I may suffer economic loss as a result.

23. The delisting and removal of ESA protections for the bear and its habitat has harmed and will continue to harm my interests in protecting wildlife habitat and forested wetlands at the coast and in the Atchafalaya Basin.
24. In 2009, the Service designated critical habitat for the Louisiana black bear, including areas within the historic Basin (Unit 2) and coastal wetlands (Unit 3) only after Harold Schoeffler and LCPA (plaintiffs in this suit) sued the Service for failing to fulfill its duty to designate critical habitat for the bear.
25. Before, during, and after critical habitat designation, over the past thirty-four (34) years, I have spent many hours boating and recreating in the Atchafalaya Basin, including in areas designated critical habitat for the Louisiana black bear at the heart of the Atchafalaya Basin along the Atchafalaya River. I regularly fish, hike, tour, and monitor in the Bayou Sorrel, Bayou Pigeon, Grand River, Belle River, and Atchafalaya River areas of the Atchafalaya Basin, including Little Bayou Pigeon, Big Bayou Pigeon, Bayou Postillion, Grand Lake, Lake Murphy, Lake Zadrick, Bayou Canon, Bayou Salt Mine, Bayou Chene, Bayou L'Embaras, and countless other smaller streams and man-made canals. Many of these areas include cypress-tupelo swamps with cypress trees suitable for Louisiana black bear dens.
26. I regularly visit the following areas that were part of the Service's designated critical habitat (Unit 2) for the Louisiana black bear: (A) Fisher Lake, (B) Bayou Chene, (C) I-10 canal between the Whiskey Bay Pilot Channel and the Eastern levee, including East

Branch of Brown Bayou, and (D) up and down the Atchafalaya River. These areas are identified by their respective letters on the map attached hereto as **Exhibit A**.

27. I enjoy visiting, working, and recreating in these areas of the Basin, and I use them on a continuing and ongoing basis. I intend to continue to recreate in these areas of the Basin, and on behalf of Basinkeeper, I intend to continue to work, observe, and protect wildlife habitat in these areas of the Basin in pursuit of our mission and on behalf of our membership.

28. Since I moved to the Basin in 1987, between my years working as a commercial-fishermen and now with Atchafalaya Basinkeeper, I have seen many trends in the rate of development, permit compliance, and regulatory enforcement in the Basin. Prior to the designation of critical habitat in 2009, I identified, monitored, and pushed for enforcement of permit conditions and environmental laws for a great number of illegal, unpermitted development projects in the Basin, including illegal cypress-tupelo logging, and unpermitted construction activities constructing roads, dams, and structures used to privatize public waterbodies. Between 2004 and 2009-2010, I worked incessantly identifying unlawful and/or destructive conduct in the wetlands, notifying the U.S. Army Corps, and working to ensure enforcement and protection in the Basin. As we became more vocal advocates for legal compliance and protection of our invaluable wetlands and swamps, including compliance with federal laws – *e.g.*, the Clean Water Act, and the Endangered Species Act – we gained some success in reducing the rate of wetland degradation, but it has certainly been a constant and evolving struggle to monitor the many acres of wetlands in the Basin.

29. After the Service designated critical habitat, we were able to use Section 7 of the ESA to challenge the Corps' failures to protect wetlands and critical habitat, but our efforts have been hindered as a result of the delisting. Although I witnessed some regulatory failures and harmful conduct during the critical habitat designation, I definitely saw improvement in the degree of harm caused by development projects in the Basin during this time, which in part, I attribute to ABK and other groups use of ESA protections to force regulators to fulfill their mandatory duties under the law.⁷ If the ESA protections are restored, and the bear is relisted, it would afford the Service and interested parties the opportunity to adequately address ongoing regulatory failures, and it would allow citizen groups, like Basinkeeper, opportunities to pursue action to force the regulatory agencies to fulfill their mandatory duties and to challenge illegal development projects adversely impacting bear habitat. The rushed and flawed claim of "recovery" has benefitted no one, especially not the bear or the habitat it needs to survive.

30. Based on my observations and monitoring of activities and impacts across the Basin (before, during, and after critical habitat designation), I believe that ESA protections for

⁷ For example, in our Comment Letter to FWS on the Proposed Delisting, I raised concern with the adequacy of Corps easements to protect LBB habitat. *See* AR 584. In 2012, on land in designated critical habitat and included in Corps easement protections, a private party cleared trees and constructed a huge mansion, without permits and in violation of the terms of the easement. AR 584, at 019578, 019580. Although this occurred during listing and in designated critical habitat, the mansion and clearing remain, meanwhile the delisting alleges that these Corps easements provide adequate protection from development for bear habitat. In our comment letter, I also brought to the Service's attention that clearcutting of bottomland hardwood forests was occurring in Wildlife Management Areas. AR 584, at 019581 – 019583. I observed clearcutting in the Richard K. Yancey Wildlife Management Area (formerly the Red River/Three Rivers Wildlife Management Area) in former critical habitat in the Basin (Unit 2), both prior to and during the critical habitat designation (1999 and 2013). I raised these issues not to suggest that critical habitat designation did not have a positive effect on habitat protection, but rather to alert the agencies to inadequacies in the regulatory enforcement of these protective measures. If the bear is relisted, these failures and violations of habitat protections can be redressed, and the Service can make more informed decisions in habitat protection management. Relisting would allow the agency to address these problems rather than continuing to ignore on-the-ground deficiencies in pursuit of claimed – but not proved – "recovery" of the bear and protection of its habitat.

critical habitat contributed to a reduction in the degradation of wetlands and wildlife habitat in the Basin during this time.

31. For example, when I started Basinkeeper, a major threat to the wetland forests was illegal cypress logging. I observed illegal logging before starting Basinkeeper, but I began to seriously study, monitor, and seek enforcement against illegal cypress logging in the Basin in 2004. Between 2000 and 2006, over 65,000 acres of cypress forests were illegally logged for cypress mulch in and around the Atchafalaya Basin, without permits and without regulatory intervention. These areas logged included some parts of what would become designated critical habitat in 2009 (in Unit 2, just north of I-10, east of the Atchafalaya River). Although some cypress logging continued into 2012, it was in an area outside and west of designated critical habitat. From 2012 through 2016, not only did we observe no illegal cypress logging activities in areas of critical habitat, but we also observed no illegal logging across the Basin.
32. Also, during this time, I personally experienced more willingness from project developers to work with stakeholders, including Basinkeeper, to ensure permit compliance, adequate protection of the surrounding environment, and minimal impacts to the Basin's wetlands and ecosystems for permitted activities. The critical habitat designation gave me, ABK, and our partners, additional substantive and procedural opportunities to engage in environmental regulation and enforcement, and to advocate for the protection of wildlife habitat and irreplaceable forested wetlands.
33. However, the 2016 delisting removed all ESA protections for the bear and its habitat, including legal protection for candidate and actual den trees in occupied bear habitat. In 2016, despite having observed no additional illegal cypress logging activities in the Basin

since 2012, or in any area of designated critical habitat since 2006, we identified new illegal, unpermitted cypress logging operations in the Basin, south of I-10 and east of the Atchafalaya River, just outside the critical habitat boundary for Unit 2.

34. The delisting and removal of critical habitat has and will continue to adversely impact wildlife habitat in the Basin, conflicting with the core mission of Basinkeeper to protect and restore the Basin, and harming my recreational, aesthetic, and conservation interests, and the interests of Basinkeeper members. Without federal protections for critical bear habitat and denning trees, areas in the Basin that are essential to the conservation and life cycle needs of the Louisiana black bear are degraded through both permitted and unpermitted adverse activities at a greater rate than I observed during the listing and critical habitat designation.
35. In 2010, Atchafalaya Basinkeeper and the Louisiana Crawfish Producers Association-West (LCPA) filed suit against private developers for unpermitted violations of the Clean Water Act in Fisher Lake, an area that was in Unit 2 of designated LBB critical habitat in the Basin.⁸ The violations including the unpermitted cutting down of cypress trees and dredging a public waterway to create a private pond for duck hunting. We notified the Corps of the illegal activity, but they failed to act until after we initiated our suit in federal court, after which the Corps issued an after-the-fact permit without consulting FWS as required under the ESA. We then initiated another suit against the Corps for issuing an after-the-fact permit and failing to consult pursuant to Section 7 of the ESA before granting a permit that could (and we alleged had already) adversely modified critical habitat for the threatened bear. However, before the court addressed our ESA

⁸ See ABK et al. Comment Letter to Proposed Delisting, AR 584 at 019578 – 019579.

Section 7 claim, the FWS delisted the bear, removed federal protections and critical habitat, and in so doing, mooted our claims in the eyes of the court. As a result of the delisting, our legal challenge of the Corps' blatant failure to follow the ESA, which led to adverse modification bear habitat, was stymied and our opportunity to use ESA Section 7's procedural and substantive power to protect wildlife habitat across the Basin was taken away. The illegal activities in Fisher Lake (which began in 2006 and which the Corps illegally permitted in 2010) destroyed hundreds of cypress-tupelo trees, including a number of very old hollow, denning trees, in an area that was designated critical habitat, with impunity.

36. In 2011, Air Products & Chemicals, Inc. constructed an 18-inch hydrogen gas pipeline across the Basin, including in an area designated critical habitat for the Louisiana black bear. *See* map of pipelines described herein, and attached hereto as **Exhibit B**. However, throughout the permitting and construction process from 2010 through 2012, ABK worked with the company as a consultant and inspected the pipeline during construction to ensure permit compliance and protection of the project area. Despite a history of failed compliance in pipeline construction for decades across the Basin, we did not find a single violation related to the construction of this pipeline. This is a great example of how permit compliance was generally improved during the LBB's critical habitat designation, and developers showed greater willingness to work with stakeholders to protect these areas.

37. In 2011, Basinkeeper learned of a plan to dam the East Branch of Brown Bayou, and identified illegal roads and dams in the Bristow and Dixie Bayou areas, just to the north of I-10 in Unit 2 of LBB critical habitat. Basinkeeper sent Notices of Intent (NOI) to Sue

to the violators, which then prompted the Corps to issue cease and desist orders prohibiting the illegal activities in the area. The dam on the East Branch of Brown Bayou was never built as a result of our NOI, evidenced by the culvert Basinkeeper identified and which was intended for installation in the bayou, but remains present on the ground next to the bayou, uninstalled to this day. I believe that because these illegal dams and road were in an area included in LBB critical habitat the Corps was more willing to initiate an enforcement action. I believe this to be the case because when faced with a similar situation involving an unpermitted, illegal dam in Brown Bayou south of I-10, which was outside the LBB critical habitat, the Corps refused to act to redress the harm.

38. In 2013, Basinkeeper and partners opposed Shell Pipeline Company's proposal to construct a 36-inch crude oil pipeline across eleven parishes, including St. Martin and Iberville in the Atchafalaya Basin and Unit 2 of LBB critical habitat (Westward Ho pipeline). In written comments submitted in opposition to the proposed oil pipeline, Basinkeeper primarily focused on the failures of the agencies to enforce previous pipeline permit conditions and the proposed pipeline's route traversing and adversely impacting LBB critical habitat in the Basin. In 2015, Shell Oil withdrew its application for the permit to construct its pipeline across the Basin, and across critical habitat.
39. In 2014, Enterprise Products Operating, LLC constructed a 20-inch ethane gas pipeline across the Basin, including in an area designated LBB critical habitat. *See* location in Exhibit B. We monitored construction of this pipeline project and identified no permit violations. This is one of two pipelines constructed in the Basin between 2009 and 2016, and in both cases, we saw no issue of permit noncompliance as we have in the past, prior to critical habitat designation, and as we have since the delisting. Since the delisting, I've

observed increased instances of noncompliance and failure to enforce in the Basin that is severely damaging the ecosystems.

40. I believe, based on my experience and observations on the ground in the Atchafalaya Basin before, during, and after delisting of the Louisiana black bear and removal of the critical habitat designation for the bear, that the additional federal protections afforded through ESA listing and critical habitat designation were valuable and necessary to protect Louisiana black bear populations and habitat, and that those protections are still needed today. Since delisting, large development projects such as the Bayou Bridge and Enterprise pipelines have received permits amid substantial resistance, and have significantly degraded the projects areas. I have personally observed and reported numerous permit violations to the Corps but without redress. These actions have and continue to adversely modify areas of former critical habitat for the Louisiana black bear in the Atchafalaya Basin.
41. The delisting and removal of critical habitat has made areas of former critical habitat in the Basin more vulnerable to adverse development. Since the bear's delisting in 2016, the Corps approved two major new pipeline development projects (Bayou Bridge's crude oil pipeline and Enterprise's propylene pipeline) to construct in jurisdictional wetlands of the Basin, in areas of formerly designated critical habitat, that have severely degraded water quality and wildlife habitat in these areas. In all my years working as Basinkeeper, and in the years before when I was a commercial fisherman, I have never seen destruction to the wetlands as extensive as that I observed throughout, and even after, construction of the Bayou Bridge pipeline. Nor have I ever seen destruction to this scale with impunity –

Bayou Bridge ignored permit conditions and the Corps allowed it to continue unabated for months on end.

42. In 2017, Enterprise Products Operating, LLC constructed a 10-inch propylene pipeline across the Atchafalaya Basin, including in former critical habitat. *See* Exhibit B. Unlike the two pipelines constructed in critical habitat during the designation where we identified no violations of permit conditions, for this project we identified a number of Clean Water Act permit violations including in areas of former critical habitat. The identified permit violations impeded water flow, and impaired water quality and wildlife habitat in the adjacent areas. Basinkeeper and LCPA reported these violations to the Corps, but the agency failed to act, so we pursued action against the company directly, sending two Notices of Intent to Sue to Enterprise in September and November 2017. Although the company ultimately responded and worked with us to address these violations outside of court, irreversible and significant damage had already been done, adversely impacting areas that were in formerly designated bear critical habitat (Unit 2) in St. Martin Parish on the west side of the Atchafalaya River.
43. In December 2017, the Corps authorized construction of the Bayou Bridge pipeline, a 24-inch crude oil pipeline across jurisdictional wetlands spanning eleven parishes in south Louisiana, across the Atchafalaya Basin and including areas with large cypress trees adjacent to waterways and portions of former critical habitat for the bear.
44. Construction began in the Basin in January 2018 and continued through an exceptionally wet season with high waters in the Basin, causing massive anticipated and unanticipated harmful impacts to the surrounding wetlands. Hundreds of acres of wetlands were permanently destroyed, and although the Corps anticipated 455.5 acres to be

“temporarily” impacted, forestry experts consulted and agencies alike acknowledged that alleged “temporary” impacts in the Basin, particularly in cypress-tupelo swamps, are actually permanent, as hydrologic and water-level conditions necessary for cypress regeneration are rarely available, particularly as flood events and extreme weather continue to increase and sedimentation elevates the forest floor.⁹ These harmful impacts included the removal of several, irreplaceable 1000-year old, hollow cypress trees, important for black bear denning in wetlands, in particular the inundated swamp areas in the Basin.

45. For the Bayou Bridge Pipeline, the Corps approved compensatory mitigation to replace lost aquatic functions for anticipated permanent impacts only. As noted above, impacts that were not considered by the Corps to be permanent actually are permanent. In addition, the mitigation requirements allowed the purchase of mitigation credits that were not commensurate with type of impact and the aquatic functions forever lost (cypress-tupelo swamp). As if that wasn’t bad enough, the mitigation bank was not in or around the areas impacted, but 55 miles north of the site of impact in a converted agriculture field that has yet to meet the conditions claimed to replace the lost wetlands from my observations. Despite the Service claiming in the delisting rule that it “routinely requests

⁹ In fact, the Louisiana Department of Natural Resources (LDNR) has commented on this issue of “temporary” impacts to forested wetlands in the Basin. In a comment letter to the Corps regarding the Enterprise pipeline discussed in paragraph 41 above, LDNR stated: “Removal of trees from forested wetlands, especially those that are hydrologically impaired and may not have the ability to naturally regenerate, cannot practically be considered as temporary impacts, because re-establishment of those forests may take hundreds of years if it happens at all. All impacts to forested wetlands are, practically speaking, permanent. Further, because there are no mitigation options currently available in the Atchafalaya Floodway for cypress-tupelo forests other than mitigation banks outside of the Floodway, impacts to this sensitive habitat will be permanent, and therefore **we request that impacts to cypress-tupelo forests be avoided.**” I also raised this concern in our Comment Letter to the Proposed Delisting, discussing how difficult it is for cypress-tupelo to regenerate. AR 584, at 019571. However, despite these negative, long-term and likely permanent impacts, the Corps continues to authorize activities impacting cypress-tupelo swamps and requiring mitigation for impacts it deems permanent.

that any associated wetland mitigation project . . . be sited in a location, and conducted in a manner, that would result in the restoration of suitable” LBB habitat (AR 654; 020089), the Corps’ Environmental Assessment document for the Bayou Bridge pipeline provides that in 2017, after the delisting, the USFWS expressly declined to provide input on the final mitigation plan for the pipeline. How does approved compensatory mitigation that is so distant from the actual area impacted help protect bear habitat, particularly in an area that is constantly being degraded and is intended to serve as a corridor for the coastal population of bears in the face of rising seas and increased, severe weather and flooding? I question the ability of distant mitigation credits to offset impacts to affected wetland habitat, including areas that provide necessary habitat and connectivity for Louisiana black bears.

46. Against our best efforts to challenge the pipeline permit in court, the pipeline was constructed. Despite submitting numerous reports to the Corps identifying specific locations where we identified blatant permit violations along the pipeline right-of-way throughout its construction and post-construction, the Corps failed to act and construction caused severe degradation of water quality and wetland habitat in and adjacent to the pipeline channel, including areas in former critical habitat for the Louisiana black bear in Unit 2 where the pipeline crossed St. Martin Parish to the Atchafalaya River (e.g., in Bayou Chene). The harm I have seen caused by the permitted pipeline project, and failed compliance and enforcement of permit conditions during construction and since completion of the project, has been unlike any other destructive development I’ve borne witness to, destroying wildlife habitat, navigability, water quality and flow, and impairing the ability of these areas to support essential wildlife needs.

47. During construction of the Bayou Bridge pipeline in the Basin and former critical habitat for the bear, we observed blocked waterways, felled cypress-tupelo trees (some of substantial size and diameter), and increased sediment distribution in adjacent deep-water swamp areas. This resulted in impaired water quality and wildlife habitat, the unpermitted elevation of the “natural” grade swamp floor (*i.e.*, accretion) in and around the pipeline right of way in the Basin, and the damming of most of the waterways between the Atchafalaya River and the Eastern Atchafalaya Levee with debris from chopping up cypress trees and digging a trench to install the pipeline. This impairs the Basin’s ability to accommodate excessive flood waters, and therefore its ability to protect neighboring communities from major flood events, including the community where I reside on the east side of the Atchafalaya Basin in Bayou Sorrel.
48. Some of this construction occurred in former critical habitat, and during denning season for the bear. We observed pipeline construction commence in the Basin in January 2018, which included removing trees in the pipeline right-of-way. The permit granted by the Corps authorizing construction of the pipeline in the wetlands specifically provided that if construction occurred during bear denning months (December – April) the permittee would have to consult further with the LDWF. USACE Bayou Bridge Pipeline (MVN 2015-02295-WII) Permit Special Conditions, No. 45 at p. 9. However, when we requested records from LDWF regarding all LBB consultations for the Bayou Bridge pipeline, we received no records to reflect that further consultation regarding construction in the Basin during bear denning months had occurred.
49. The destruction of denning trees has increased since the delisting in formerly designated critical habitat and surrounding areas in the Basin. Large hollow cypress trees are

irreplaceable and provide necessary denning habitat for bears. Attached hereto as **Exhibit C**, are photos I took of cypress trees removed during construction of the Bayou Bridge Pipeline.

50. I have witnessed the result of impacts from pipeline, road and dam construction, cypress logging, and other development in the Basin over the past thirty-four years. These activities have left areas of former swamp habitat significantly elevated and blocked off from formerly connected public waters, resulting in uncontrolled growth of invasive species, including Chinese Tallow, which chokes out cypress-tupelo and bottomland hardwood growth; disrupted water flow and hypoxia; privatization of public areas; and unsustainable accretion in cypress-tupelo swamps and wildlife habitat. These alterations not only impact bear habitat and survival, but also the entirety of the ecosystems in the Basin and communities across Louisiana. In the past five years since the bear was delisted, I have observed unprecedented permit noncompliance and approved activities that have decimated healthy wetlands in the Basin, and despite attempts to seek enforcement, the perpetrators continue to destroy irreplaceable wetland habitat with impunity. Since the delisting, I have witnessed an increased unwillingness from both developers and regulatory agencies to work with stakeholders to protect these wetlands forests – because if the agency refuses to enforce the law, the developers have little incentive to incur extra costs to follow it. These are the types of harms I warned the Service of in my comment letter to the proposed delisting of the bear (AR 584; 019568-019583), and the types of harms I feared at that time would continue despite the agency's finding that habitat had been restored and existing regulatory mechanisms were adequate to continue to protect the bear and its habitat.

51. I worry for the future of the Basin, and whether there will be a Basin to support wildlife and its habitat, and for our children and grandchildren to experience. Despite the willingness of some project developers to work with stakeholders like ABK on development projects in the wetlands and former critical habitat for the Louisiana black bear, since the delisting I have observed a significant decline in collaborative efforts to promote agency enforcement, permit compliance, and protection of the Basin, its wildlife and habitat.
52. The federal listing of the Louisiana black bear and subsequent designation of critical habitat provided opportunities for citizen groups, such as ABK, to protect native wildlife and its habitat from illegal and destructive development, and to promote effective enforcement through citizen suits. The removal of critical habitat has denied me the procedural and substantive opportunity to participate in protection of the bear and its habitat in comments to proposed development projects in areas of former critical habitat. Several projects have been approved since the delisting that would have been subject to substantive ESA protections.
53. Since the delisting, the Corps has approved many projects authorizing impacts to forested wetlands in the Basin in formerly designated critical habitat for the bear. *E.g.*, in 2018 the Corps granted a permit to Cleco Power, LLC to construct a transmission line, and clearing of bottomland hardwoods, in former critical habitat (Unit 3) in St. Mary Parish, that would have been subject to the ESA consultation mandate for consideration of adverse modification to Louisiana black bear habitat.
54. Without additional protections provided by federal critical habitat designation, and listing of the subspecies, habitat that is critical for true recovery of the Louisiana black bear will

continue to be degraded and destroyed. The delisting decision, and removal of critical habitat designations, has removed an opportunity we had, through the ESA consultation requirement and FWS management of the bear and its habitat, to protect this wetland habitat from unsustainable development. Because the delisting removed procedural and substantive ESA protections for critical habitat, I have lost the opportunity to use the ESA to protect these areas, and I have seen a growing unwillingness to consider the bear and its habitat in permit compliance and approvals and regulatory enforcement. Without the Service's oversight, there is no federal regulatory agency looking out for the bear.

55. The delisting fails to show recovery for all true native populations of Louisiana black bear and yet ends most efforts to protect all populations. The delisting decision impedes federal and state cooperative efforts to recover all Louisiana black bear populations, including the LARB. The delisting did not estimate the long-term viability of the LARB, and its viability remains unknown to this day. The decision impairs recovery for the LARB, the population that may have the best chance to maintain genetic purity, and improperly dismisses the ongoing and foreseeable threats of coastal land loss, subsidence, sea level rise, increased significant weather events, and vehicular mortality that uniquely threaten this population. These threats not only harm the LARB bears, but also the present and future sustainability of the Atchafalaya Basin, its ecosystems, wildlife, and habitat.

56. As part of its Post-Delisting Monitoring Plan, and Management Plan, LDWF gathers data to monitor the estimated survival rate for the Upper Atchafalaya bear population and the Tensas population of Louisiana black bear (the "metapopulation"), but it does not – and

has never –estimated the likelihood of long-term survival of the LARB population. The post-delisting monitoring plan largely excludes the LARB.

57. The delisting decision acknowledges many threats facing LARB bears but fails to employ or direct any means to ensure that this population will not be exterminated. The delisting found that this population is not “significant” to warrant further analysis, minimized its contribution to the subspecies, and as a result has left this population out of the monitoring that LDWF conducts for the TRB and UARB, and significantly vulnerable to existing and foreseeable threats.
58. The delisting’s dismissal of the LARB, its threats, and significant mortality rates harms my recreational, aesthetic, and conservation interests in protecting Louisiana black bears, especially in the LARB where I work. I work to protect and promote the conservation of non-invasive species and their supportive habitat, including the LBB. I have an interest in the survival of all populations of true Louisiana black bear, including and especially the more vulnerable and isolated coastal population. The Atchafalaya Basin provides needed habitat for the coastal population of bears to connect with Louisiana ecosystems to the north, which is essential to the survival of this population in the face of foreseeable sea level rise and more extreme weather events, including larger and stronger hurricanes, that are already occurring.
59. However, the recognized existing barriers (especially Highway 90) to movement prevent coastal bear migration that could reduce their isolation and vulnerability, which the delisting decision acknowledged but failed to address in any meaningful way. To the best of my knowledge, the proposed guidelines to modify Highway 90 to construct safe bear passage corridors have not been implemented, and the roadway continues to block bear

movement north, encroach upon and prevent expansion of the bear's habitat in this area, and serves as one of the primary threats to the Louisiana black bear today as vehicular mortality remains the greatest source of bear mortality since the delisting. Without a sufficient plan to provide for greater mobility north for this population, it has and will continue to be killed attempting to cross Highway 90. Unfortunately, the proposed highway upgrade's possible inclusion of bear corridors is not required for the project, but merely suggested guidance, and there has been no forward progress towards the highway's upgrade since early 2007, and no indication that that will change in the near future.

60. The delisting's prediction that the impacts of sedimentation in the Basin will benefit coastal bears is misguided and harmful to my interests and others who actively work to protect Louisiana's wetlands from unsustainable accretion and sedimentation. The decision fails to contend with the detrimental impact such a substantial hydrologic alteration to the ecosystem can create on the state as a whole in addition to its wildlife. These include diminished floodwater retention capacity, overgrowth of invasive species, and lost wetland jurisdiction under federal regulations. Relying on sedimentation accumulation conflicts with the growing collaborative efforts of the state and stakeholders to combat this trend of sedimentation filling in the Basin. I am deeply troubled by the Service's unreasonable acceptance of the "filling in" of the Basin to support its finding that the LARB will be protected, and connected to habitat further north, in the near future.
61. For the last four years in a row, we have experienced unusually long-term, sustained highwater levels in the Basin. We have also experienced more severe and frequent flood

events. As increased sediment settles into areas of the Basin at an unsustainable rate, the Basin floodway loses its capacity to function as the Corps intended to contain floodwaters. This phenomenon has exposed more and more communities to increased flood risks. This year, my home was completely flooded and I am still working daily to rebuild.

62. Bottomland hardwood forests provide nutritional needs for black bears, such as acorns and hickory nuts. However, swamp wetlands are also important, providing seasonal foods such as fish and crawfish, and isolated, hard-to-access nesting trees such as hollow cypress. The quality of both of these types of habitats is equally as important to wildlife, including the Louisiana black bear. But the delisting's emphasis on habitat quantity over quality; reliance on ineffective compensatory mitigation measures; and assumptions of permit compliance, regulatory enforcement, and the habitat "benefits" of a filled in Basin injures my interest in protecting the quality and function forested wetlands and contiguous wildlife habitat. The delisting's unsupported assumptions regarding habitat and existing regulatory protections lead to absurd results because they are not supported on the ground, and we continue to see substantial degradation of forested wetland habitat despite regulatory "oversight" in jurisdictional waters under the Clean Water Act. I raised these concerns in my comment letter for the proposed delisting, but I don't feel they were given proper consideration by the agency. Relisting the bear and reestablishing ESA protection and FWS oversight would provide an opportunity for the agency to address these issues that continue to cause harm and which for most of the listing term were largely ignored by the agency, and again provides citizens greater opportunities to force the regulators to fulfill their duties to protect these areas of wetland habitat.

63. Without any long-term viability analysis, the LARB population will remain threatened and may face extinction if the bear is not relisted and management employed to actually protect and restore all significant populations of LBB, including at the coast. Reduced numbers and/or the total loss of the coastal population will have repercussions on the viability of the entire population of Louisiana black bears and its habitat.
64. Basinkeeper members, including myself, will continue to recreate in the Basin to observe the Louisiana black bear and to enjoy and appreciate its habitat, and I will continue to work to protect bear habitat from further fragmentation and destruction.
65. The decision to delist adversely impacts my ability on behalf of my interests and all members of Basinkeeper to protect and restore native wildlife, the ecosystems and wildlife habitat of the Atchafalaya Basin. The decision to delist adversely impacts my ability to observe and enjoy these majestic creatures, and affects my business in promoting observation of native wildlife throughout the Basin. The Louisiana black bear is an integral part of the Basin's ecosystems. Without the protections that accompany listing of a threatened or endangered species, the viability of the Louisiana black bear, and the LARB coastal population and its habitat in particular, remains at risk.
66. My recreational interests in wildlife sightings and observing the bear, which I plan to continue to do, are also injured by the delisting decision. The removal of ESA protections for the bear and its habitat also harms my business interest. With bear sightings on the decline, ecotourism supported by sightings of native Louisiana black bear in the Basin's swamps will suffer. With ongoing habitat loss and degradation in the Basin, I already suffer from loss of navigable waters and impaired habitat in the areas I use to promote ecotourism, which presents an ongoing and increasing loss to my swamp tour business.

Without adequate protections, existing causes of mortality will continue to increase and impact populations, as evidenced by data provided by LDWF in its annual reports.

Without further intervention, the coastal population of bears will decline as existing threats continue, as sea level rises and subsidence continue to cause coastal land loss and loss of habitat forces more bears into residential areas increasing human-bear conflict and to cross major roads and highways causing more vehicular mortality.

67. The delisting harms the conservation and recreational interests of Atchafalaya Basinkeeper and our members, as well as my personal, recreational, conservation, and employment interests. My ability to observe and enjoy the Louisiana black bear and its habitat has been and will continue to be adversely impacted by the delisting.
68. As a full-time hunter and fishermen before starting Basinkeeper in 2004, I didn't have the opportunity to hunt black bears because their population had been decimated by poor management and habitat destruction. One day I would like to return to making my living hunting and fishing. Delisting the Louisiana black bear without true recovery of the subspecies, and in particular the coastal population, harms my rights as a hunter and interest in some day ethically hunting Louisiana's black bears when and if the population numbers are substantial and stable enough to support hunting, and the threats that continue are properly managed. I believe that hunting wildlife when there are not enough individuals to support the species is unethical because genes from every individual are critical for the long-term health and survival of the species.
69. Only if the bear is relisted and federal protections and management employed to grow population numbers and long-term viability of all populations of Louisiana black bear to a sustainable level will hunting as a means of population management be both a

reasonable and scientifically supported option. However, I do not believe current numbers support the delisting of the Louisiana black bear or recreational hunting of Louisiana black bears. Nevertheless, the plaintiffs have received records produced by the LDWF in response to a request for records that confirm the agency's intent to open a hunt for bears. This imminent harm to the already small population of bears harms my interests in protecting the bear and for one day being able to participate in a sustainable hunt.

70. Unless the Louisiana black bear is relisted, ESA protection reinstated, and the Service required to reevaluate the recovery criteria for the bear, I do not expect I will ever be able to ethically hunt Louisiana black bears. The delisting contends that the Louisiana black bear population increased during the listing, but the population growth pales in comparison to other bear populations across the country. Moreover, since the bear was delisted, annual reported deaths of Louisiana black bear appear to have more than doubled, and survival rates of both the TRB and UARB populations have steadily declined. The low population numbers at the time of delisting, coupled with the declining survival of the bear and increased mortality assures that I'm not likely to have any opportunity to ethically hunt the bear unless it is relisted and adequate protections reinstated to ensure adequate population growth and protection of the subspecies and its habitat.

71. The expressed interest by some individuals to open a hunting season with so few individual Louisiana black bears calls for the immediate relisting of the bear to promote population growth and habitat protection until the subspecies is fully recovered. The possibility of a hunting season for the Louisiana black bear despite the small number of

bears and the many threats to the subspecies that remain poses one of the greatest threats, not only to the Louisiana black bear, but to species all over the world.

72. Returning the Louisiana black bear to the U.S. List of Endangered and Threatened Wildlife, and re-designating its critical habitat will protect existing populations and habitat, and reevaluating the best available science to devise an adequate, updated and effective Recovery Plan for the bear will redress the particularized, concrete injuries to my recreational, conservation, and aesthetic interests in the bear and its habitat by preserving and restoring wildlife habitat, and protecting existing *luteolus* populations from further harm.
73. Since the outset, we have had to force the Service to fulfill its mandatory duties under the ESA and protect the bear.¹⁰ Today, these same advocates challenge the Service's actions again for failing the bear and its habitat, and for harming our interests in protecting this unique subspecies from ongoing threats to its survival.
74. Relisting of the Louisiana black bear will provide opportunity for the Service to finally address a number of issues it largely ignored in its management prior to, and in the delisting decision, namely, threats to the LARB population and the lack of connectivity between populations of true *luteolus*. The delisting's recovery finding was based on the Service's threats factors analysis and its finding that the Recovery Plan criteria have been met. The delisting was based greatly on the Service's management efforts during the listing to satisfy the recovery criteria as the Recovery Plan's goal was to accomplish

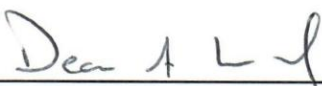
¹⁰ Harold Schoeffler, an individual plaintiff and active member of LCPA and Sierra Club, submitted a petition to list the bear, and only after filing suit did the FWS list the bear in 1992. *See Defenders of Wildlife, et al. v. Lujan*, 2:91-cv-04641-CS (E.D. La. 1991). Then in 2009 the FWS designated habitat only after Harold Schoeffler and LCPA sued to force the FWS to fulfill its mandatory duty under the ESA. *See Schoeffler and Louisiana Crawfish Producers Association-West v. Kempthorne*, 493 F. Supp. 2d 804 (W.D. La. 2007) (ordering the Service to designate critical habitat for the Louisiana black bear).

recovery to remove the subspecies from the U.S. List of Endangered and Threatened Wildlife. Unfortunately, in an attempt to satisfy the 1995 Recovery Plan criteria, the Service made scientifically unsupported genetics assumptions – despite the ongoing studies regarding bear genetics pursued to answer genetics questions and hybridization concerns that preexisted the 1992 listing decision – to support its creation of a connective population at the TRC to facilitate the interbreeding of the native TRB population with the non-native, alien UARB population. Relisting provides the opportunity to reevaluate the more than twenty-year old recovery plan criteria in light of the most current, best available scientific data.

75. Unless these injuries are redressed through relisting and re-designation of critical habitat, the Service's flawed management and premature delisting decision will continue to injure my interests in the protection and restoration of the Louisiana black bear and its habitat, particularly in the Atchafalaya Basin.

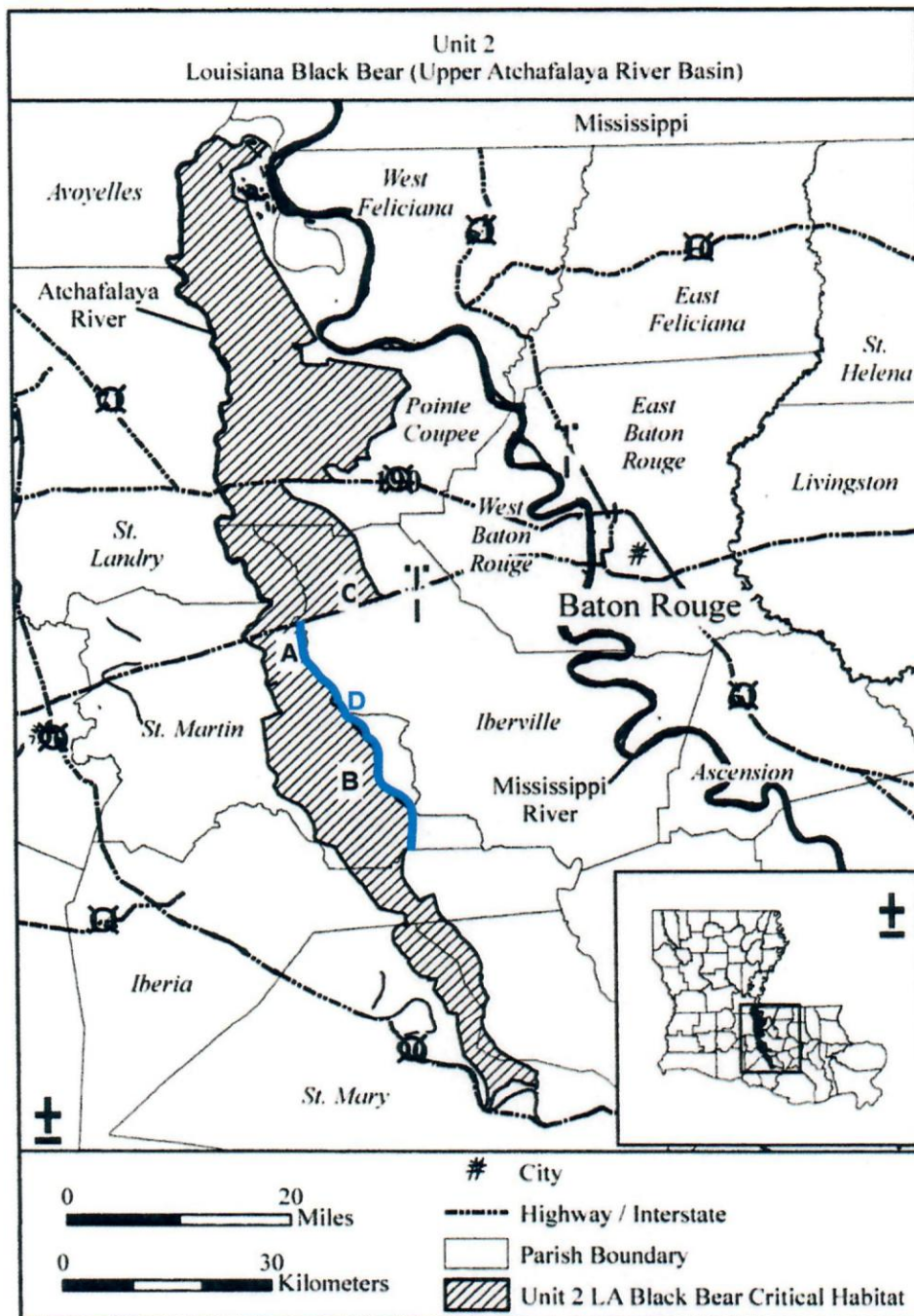
Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 18 day of July, 2021, in Plaquemine, Louisiana.



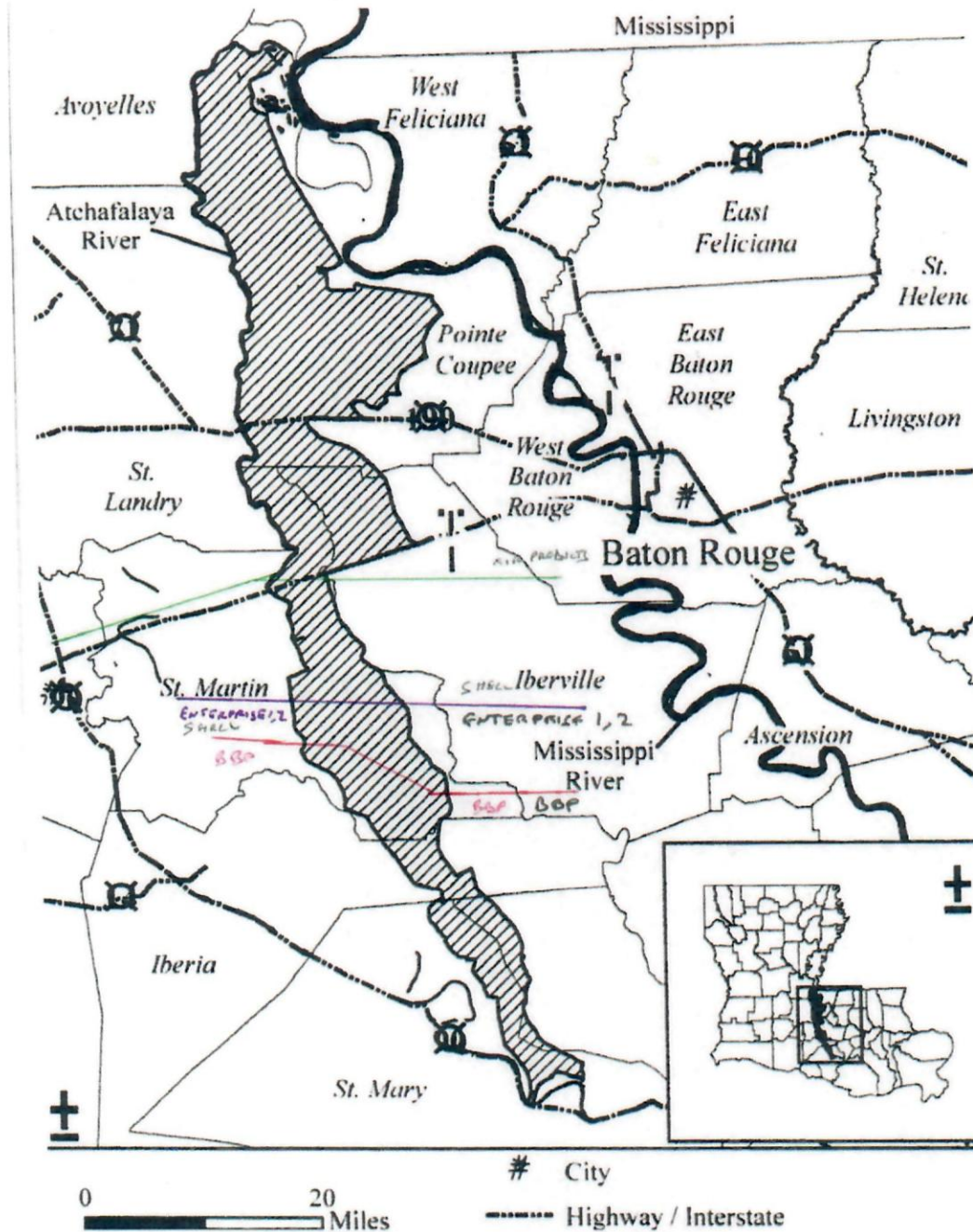
Dean A. Wilson

EXHIBIT A



This is a map identifying Unit 2 of Louisiana black bear critical habitat. I have marked A-D to identify areas I regularly recreate in that were part of the bear's critical habitat.

EXHIBIT B



This is a map identifying Unit 2 of Louisiana black bear critical habitat. The markings added identify pipeline routes discussed *infra* that cross former critical habitat in the Basin.

EXHIBIT C





I took the three photos above, all three of which depict the same old growth cypress tree from farther away to close up. This tree was a hollow, old growth cypress, over 1,000 years old, located at the following coordinates: 30.086819 N, -91.389908 W, on the east side of the Atchafalaya Basin and along the Bayou Bridge pipeline right-of-way. During installation of its crude oil pipeline, BBP destroyed this tree, grinding it down entirely and discarding its wood chips and remains into the channel.



I took the above-photo depicting Dr. Ivor van Heerden standing next to a different old growth cypress tree along the Bayou Bridge pipeline right-of-way. Dr. van Heerden's presence in the photo helps provide perspective regarding the size of the tree. By comparison, this tree is roughly half the size of the old growth cypress tree shown in the previous three photos. Fortunately, the particular tree shown in this photo was spared from destruction during pipeline clearing and installation.