

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA**

PUBLIC EMPLOYEES FOR ENVIRONMENTAL)
RESPONSIBILITY)
2000 P Street, N.W., Suite 240)
Washington, DC 20036,)

FLORIDA BIODIVERSITY PROJECT)
1060 Tyler Street)
Hollywood, FL 33019,)

SIERRA CLUB)
85 2nd Street)
San Francisco, CA 94105)

SOUTH FLORIDA WILDLANDS ASSOCIATION)
1455 Tyler Street)
Hollywood, FL 33020,)

WILDERNESS WATCH)
208 E. Main Street, Third Floor)
Missoula, MT 59802,)

BRIAN SCHERF)
1060 Tyler Street)
Hollywood, FL 33019,)

Plaintiffs,)

v.)

KENNETH SALAZAR, Secretary)
U.S. Department of the Interior)
1849 C Street, N.W.)
Washington, DC 20240,)

JONATHAN B. JARVIS, Director)
National Park Service,)
1849 C Street, N.W.)
Washington, DC 20240,)

DANIEL M. ASHE, Director)
U.S. Fish and Wildlife Service)
1849 C Street, N.W.)
Washington, DC 20240,)

Civ. No.

Defendants.

)
)
)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This suit challenges a decision by the National Park Service (“NPS”) to authorize a substantial network of off-road vehicle (“ORV”) trails in the Addition Lands (“the Addition” or “Addition Lands”) of the Big Cypress National Preserve (“Preserve”) in southern Florida. The February 2011 Record of Decision (“ROD”) challenged here approved NPS’s October 2010 Final General Management Plan (“FGMP”), Wilderness Study, Off-Road Vehicle Management Plan, and Final Environmental Impact Statement (“FEIS” or “Final EIS”). This suit also challenges a Biological Opinion issued by the U.S. Fish and Wildlife Service (“FWS”) on November 17, 2010 authorizing NPS’s underlying decision to proceed.

2. In contrast to the original Preserve where public ORV use and ORV-assisted hunting have long degraded soils, hydrology, plants, wildlife, habitat, and other natural resources, public ORV use and hunting have never been previously authorized in the Addition. Therefore, the Addition constitutes one of the few remaining sizeable and contiguous tracts of relatively pristine and significantly undisturbed landscape in the eastern United States, and particularly in Florida, available for peaceful enjoyment and solitude by its visitors.

3. NPS’s February 2011 ROD, and the October 2010 decisions supporting the ROD, authorize approximately 130 miles of primary ORV trails in the Addition, in addition to an unspecified mileage of secondary trails. NPS has deemed this level of ORV trails “a substantial amount of ORV access and riding opportunities.” FEIS at 80. In addition to permitting a substantial amount of ORV use, the ROD and supporting documents have finalized a Wilderness Study, recommending to Congress that “a moderate amount of wilderness” be designated under

the ROD. *Id.* The amount of wilderness proposed is not only far less than the amount deemed eligible for wilderness designation by NPS, but it is also significantly less than NPS proposed for designation in the Draft EIS, without any justification for the substantial reduction in view of overwhelming support from the public and other federal agencies for even more designated wilderness in the Addition.

4. Moreover, because the Addition is one of the most important, if not the most important, remaining tracts of public land essential for survival and recovery of the highly imperiled Florida Panther – a species harmed in various ways by ORV use and ORV-assisted hunting – FWS’s Biological Opinion, which fails to seriously consider many of the inevitable adverse impacts of NPS’s decision on Panthers, as well as other federally listed species that use the Addition, is arbitrary, capricious, and contrary to law.

JURISDICTION

5. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, 16 U.S.C. § 1540(g), and 5 U.S.C. §§ 701-706.

PARTIES

6. Plaintiff Public Employees for Environmental Responsibility (“PEER”) is a Washington D.C.-based nonprofit, non-partisan public interest organization. PEER serves and protects current and former federal and state employees of land management, wildlife protection, and pollution control agencies who seek to promote an honest and open government and help hold governmental agencies accountable for faithfully implementing and enforcing the environmental laws entrusted to them by Congress. PEER represents thousands of local, state, and federal government employees nationwide, including members who have been intimately involved in the habitat protections in and around the Addition Lands. PEER has submitted

several comment letters on behalf of the organization and its members related to the Draft and Final GMP for the Addition Lands reflecting these first-hand concerns.

7. Plaintiff Florida Biodiversity Project (“FBP”) is a non-profit public interest membership organization incorporated in Florida. It is dedicated to the preservation of all native and wild plants and animals, communities of species, and naturally functioning ecosystems in Florida. FBP engages in educational, administrative, and other activities to improve public awareness and attitudes and policies that impact natural ecosystems and wild flora and fauna. FBP has been extensively involved in issues concerning the Preserve and the Addition, including by investing considerable organizational resources in ascertaining and attempting to prevent recreational ORV impacts on the Preserve and the Addition. FBP was a plaintiff in 1995 in litigation concerning the adverse impacts of ORV use in the Preserve, and is a party to the Settlement Agreement resulting from that lawsuit. Additionally, FBP was a party in the 2001 lawsuit defending the ORV Plan in the original Preserve, and in the 2007 lawsuit challenging NPS’s reopening of certain trails in the Bear Island Unit of the original Preserve. For many years, FBP members, including Brian Scherf, have repeatedly visited the Addition (and other parts of the Preserve) to enjoy its wild flora and fauna, to look for signs of the Panther and perhaps observe a Panther, and to experience the tranquility and solitude of the area. FBP’s members will be adversely impacted by this decision in various ways, including because ORVs will make it more difficult for FBP’s members to observe rare wildlife such as the Florida Panther, and because this decision will necessarily increase user conflicts and noise as ORV users (and ORV-assisted hunters) and nonmotorized users vie for use of the same areas within the Addition, thus diminishing the quality of the recreational experience for FBP’s members.

8. Plaintiff Sierra Club is a national nonprofit organization of approximately 1.3 million members and supporters dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. The Sierra Club works to protect endangered species and habitats as well as to ensure that our national parks and preserves are managed in a way that protects our natural heritage. The Sierra Club and its members lead group hikes throughout Big Cypress, including in the Addition. The Addition Lands are a favorite destination of many Sierra Club members in Florida, who enjoy the unparalleled tranquility of the area and its undisturbed vistas, and who enjoy looking for signs of Panthers and the possibility of observing a Panther. Hikes throughout the Addition will necessarily be diminished in quality as a result of public ORV use and ORV-assisted hunting because the relatively pristine wilderness quality of the land will be substantially compromised and the routine passage of ORVs on hiking trails creates noise, exhaust, safety concerns, and user conflicts, further diminishing the aesthetic and recreational interests of Sierra Club members in using the Addition. Sierra Club was a party in the 2001 lawsuit and in the 2007 lawsuit.

9. Plaintiff South Florida Wildlands Association (SFWA) is a non-profit environmental organization incorporated in the State of Florida to protect remaining wildlife habitat in the Greater Everglades. SFWA's focus is on the large swaths of still undeveloped lands which exist outside of south Florida's urban boundaries. SFWA's conservation efforts are carried out through educational talks at various community venues, emailed "action alerts," interviews and articles in the press and other media, communication during agency hearings and public comment periods, and, where necessary, litigation. Executive Director Matthew Schwartz

has many years experience leading outings in the Preserve, including in the Addition. As the Addition Lands are one of the last pieces of land in the region possessing wilderness characteristics, SFWA's members hold a keen appreciation for the Addition, both for its value as intact habitat for the Florida Panther and other species, and also for the opportunities the Addition provides the public and SFWA's members to experience a part of Florida in the mostly primitive form in which it operated prior to extensive human disturbance. SFWA's members routinely use the Addition, and they will be harmed by this decision because of the inherent user conflicts that will result, severely diminishing their recreational and aesthetic interests in the Addition, its wildlife, and its resources. Specifically, SFWA's members use the Addition Lands for wildlife observation, hiking, camping, and other uses such as photography and birdwatching. They are drawn to the scenic beauty of the area, and enjoy the vistas of vast expanses of prairies and marshes with interspersed hammocks. They enjoy exploring the wilderness and trails of the Addition, as well as looking for, and the possibility of observing, rare, threatened or endangered species, or signs of such species, including the Panther. They have routinely hiked through the areas of the Addition that will be opened to public ORV use for the first time pursuant to NPS's decision; indeed, virtually all of the hiking trails currently used by SFWA members will be converted to ORV trails under NPS's decision. They have observed the damage to soils and vegetation in the original Preserve that results from ORV use, such as deep rutted soils and destroyed prairie and marsh grasses. They have observed the pooling of water and other forms of disrupted hydrological flows. They have also observed previously natural prairies and marshes in the original Preserve becoming defaced by authorized and unauthorized ORV trails running through prairies and marshes. Such damage in the original Preserve causes SFWA's members who visit the Preserve sadness, frustration, a sense of loss, and anger, and it

discourages them from visiting parts of the original Preserve. Indeed, because the Addition until now constituted one of the remaining places where SFWA's members can hike, use, and otherwise enjoy the Preserve in solitude and tranquility, the introduction of "substantial ORV access" into the Addition Lands will have especially egregious effects on SFWA's members because of the cumulative impact of this decision in conjunction with ORV use in the original Preserve.

10. Plaintiff Wilderness Watch is a nonprofit organization whose mission is to provide citizen oversight to ensure the long term preservation of America's wilderness and wild and scenic rivers. Wilderness Watch is dedicated solely to protecting wilderness and wild and scenic rivers nationwide in part by ensuring the Wilderness Act is implemented and enforced in a manner consistent with the law. Wilderness Watch is headquartered in Missoula, Montana, and has chapters in Mammoth Lakes, California; Sonora, California; Sheridan, Wyoming; Fairbanks, Alaska; and Atlanta, Georgia. Wilderness Watch has 1050 members, including many in Florida. Members of Wilderness Watch enjoy backpacking, hiking, fishing, and other nonmotorized recreational pursuits in designated wilderness and potential wilderness lands, where they seek to experience the beauty, peace, and the solitude of the areas. Wilderness Watch has several members in Florida who routinely use national parks and preserves for the types of nonmotorized activities described above. Their enjoyment of the Addition Lands will be impaired by the decision at issue.

11. Plaintiff Brian Scherf is a resident of Hollywood, Florida, and has been a member of Florida Biodiversity Project since 1993. Since the mid 1980s, Mr. Scherf has hiked through the Preserve approximately six to ten times a year, including several trips through the Addition annually. Last year, Mr. Scherf hiked in the Addition four times. He plans to continue hiking

regularly in both the original Preserve and the Addition in the future, and has concrete plans to hike in the Addition four to six times in the next year (and will create similar plans in future years). Mr. Scherf typically hikes and observes wildlife in the Addition via the two access points by the L-27 canal (California Slough) and the FDOT rest area on I-75. He hikes and observes wildlife in the Addition because he enjoys the natural beauty of the area and the expansive vistas, as well as looking for rare, threatened and endangered species, and signs of such species, including the Panther. On previous hikes, Mr. Scherf has encountered other hikers who have reported observing Panthers in the vicinity, and the possibility of observing a Panther excited Mr. Scherf and adds immense value to his recreational activities in the Addition. On many occasions in the original Preserve, Mr. Scherf has encountered vegetation and soil destruction that results from ORV use, such as deep ruts, large areas drained of water while other areas have deep pools of water, and areas in which soils have lost their cohesion, turning into a muddy quagmire. Observing such damage to, and destruction of, the Preserve causes Mr. Scherf great sadness and anger and also harms his aesthetic enjoyment of the area as the expansive vistas are damaged and crossed with wide muddy, rutted ORV trails; vegetation is damaged; trails he has walked, and the soils they cross, become muddy bogs; and species and their signs that he hopes to see, such as the Panther, are less common. These extensive impacts are made worse over time, as the cumulative nature of the impacts adds up to make the degradation of resources even more noticeable. In the Addition, which is one of the few places with no public ORV use, such damage is far less noticeable (or in some places nonexistent) at present, and allows Mr. Scherf a serene hiking and recreational experience that is difficult, if not impossible, to have in the original Preserve due to the extent of ORV use, ORV-assisted hunting, and the damage resulting from those activities. His interest in hiking and otherwise enjoying the Addition will be

seriously harmed by the introduction of extensive ORV use and ORV-related hunting in the Addition. Moreover, Mr. Scherf rarely sees NPS enforcement rangers in the original Preserve or in the Addition, meaning that the illegal ORV use that occurs in both locations further exacerbates the injuries that result to Mr. Scherf's recreational and aesthetic interests from ORVs.

12. Defendant Kenneth Salazar is the Secretary of the U.S. Department of the Interior ("DOI"). As the parent agency of NPS and FWS, DOI is ultimately responsible for the administration, management, and protection of our Nation's federal lands, including the National Park System.

13. Defendant Jon Jarvis is the Director of NPS, the agency within DOI charged with the administration, management and protection of the National Park System, including Big Cypress National Preserve.

14. Daniel Ashe is the Director of the FWS, the agency within DOI charged with the administration, management, and protection of federally listed terrestrial species under the ESA.

STATUTORY AND REGULATORY FRAMEWORK

A. Addition Act and National Park Service Organic Act

15. The original Preserve was established by Congress in 1974 via the Big Cypress Establishment Act to "assure the preservation, conservation, and protection of the natural, scenic, hydrologic, floral and faunal, and recreational values of the Big Cypress Watershed in the State of Florida and to provide for the enhancement and public enjoyment thereof." 16 U.S.C. § 698f(a). In establishing the Preserve, Congress stressed that "public uses and enjoyment would be limited to activities where, or periods when, such human visitation would not interfere with or disrupt the values which the area is created to preserve." H. Rep. No. 502, 93rd Cong., 1st Sess.

7 (1973). One of the House sponsors of the legislation explained that the “ecosystem of the Big Cypress area is fragile indeed and must be given every protection if we are to avert the elimination of the wildlife forever.” 119 Cong. Rec. H32838 (Oct. 7, 1973) (Statement of Rep. Fuqua). Congress further directed the Secretary of the Interior to administer the Preserve lands “as a unit of the National Park System in a manner which will assure their natural and ecological integrity in perpetuity” 16 U.S.C. § 698i(a).

16. Congress amended the Big Cypress Establishment Act in 1988, passing the Big Cypress National Preserve Addition Act (“Addition Act”), which expanded Big Cypress by 147,000 acres. Pub. L. 100-301, 102 Stat. 443 (1988). The Addition Act required that within five years of enactment, DOI and NPS would review the area for eligibility as wilderness. 16 U.S.C. § 698l. As with the original Preserve, the Addition Act authorized NPS to promulgate rules “necessary and appropriate to limit or control the use of [motorized vehicles on] Federal lands,” *id.* § 698i, and, while not prohibiting hunting, gave NPS authority to close entire geographic zones and time periods to hunting for “floral and faunal protection and management,” among other reasons. *Id.* § 698j.

17. As a part of the National Park System, the Preserve and the Addition must be managed to achieve the fundamental purpose of the National Park Service Organic Act of 1916 (“Organic Act”). The Organic Act requires the NPS to “conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.” 16 U.S.C. § 1. This “nonimpairment” mandate requires that NPS only proceed with decisions where the natural resources of a National Park unit will not be impaired, as that term is construed under the Organic Act. The Organic Act was amended by the Redwood Act to

further reinforce that NPS lands shall be managed in a manner that prioritizes the preservation of such lands. *Id.* at § 1 a-1.

B. Executive Orders 11,644 and 11,989

18. In 1972, President Richard Nixon signed Executive Order (“EO”) 11,644, which sets forth the criteria that are to be employed in the designation of areas and trails for the use or nonuse of ORVs on federal lands. The EO provides that ORV use on public lands must be “controlled and directed so as to protect the resources of those lands,” and that “[a]reas and trails [for ORV use] shall be located to minimize damage to soil, watershed, vegetation, or other resources [and] minimize harassment to wildlife or significant disruption of wildlife habitats.” EO 11,644 §§ 1, 3(a). Executive Order 11,644 also requires the NPS to “ensure adequate opportunity for public participation in the promulgation of [such regulations] and in the designation of areas and trails” for ORV use. *Id.* at § 3(b).

19. Reaffirming and strengthening Executive Order 11,644 five years later, President Jimmy Carter issued Executive Order 11,989, directing agencies to close areas or trails to ORV use when such vehicles are causing or might cause “considerable adverse effects on the soil, vegetation, wildlife, wildlife habitat, or cultural or historic resources of particular areas or trails of public lands.” Exec. Order No. 11,989.

C. Wilderness Act and NPS Management Policies

20. By enacting the Wilderness Act, 16 U.S.C. §§ 1131-1136, Congress created the National Wilderness Preservation System “to secure for the American people of present and future generations the benefits of an enduring resource of wilderness.” *Id.* § 1131(a). Congress directed that such wilderness areas “shall be administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as

wilderness, and so as to provide for the protection of these areas [and] the preservation of their wilderness character.” *Id.* Among other protections afforded designated wilderness is a prohibition against “motor vehicles, motorized equipment or motorboats.” *Id.* § 1133(c).

21. Congress defined wilderness as follows: “A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain.” 16 U.S.C. § 1131(c). Congress also provided specific criteria upon which NPS and other land management agencies are to assess an area’s suitability for wilderness designation, *i.e.*, the area

- (i) generally appears to have been affected primarily by the forces of nature, with the imprint of man’s work substantially unnoticeable;
- (ii) has outstanding opportunities for solitude or a primitive and unconfined type of recreation;
- (iii) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and
- (iv) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value. *Id.*

22. Because wilderness is integral to the public’s enjoyment of, and solitude in, federal lands, Congress mandated that as “[c]onditions precedent to recommendations of suitability of areas for preservation as wilderness,” NPS must publish notice in the Federal Register, hold public meetings, and solicit input before submitting its proposal to Congress. 16 U.S.C. § 1132(d).

23. In its current governing management policies, NPS has likewise identified criteria for determining whether lands under its administration are eligible for wilderness designation, which include but are not limited to the following:

- (i) Ecological, geological, or other features of scientific educational, scenic, or historical value, although it does not need these things to be considered eligible;
- (ii) Lands that have been logged, farmed, grazed, mined, or otherwise used in ways not involving extensive development or alteration of the landscape may also be considered eligible for wilderness designation if, at the time of assessment, the effects of these activities are substantially unnoticeable or their wilderness character could be maintained or restored through appropriate management actions;
- (iii) An area will not be excluded from . . . eligibility solely because established or proposed management practices require the use of tools, equipment, or structures if those practices are necessary to meet minimum requirements for the administration of the area as wilderness;
- (iv) Lands will not be excluded solely because of existing rights or privileges . . . If the National Park Service determines that these lands possess wilderness character, they may be included in the eligibility determination

National Park Service, *Management Policies* (2006) at 78-79, 6.2.1.2 (2006).

24. The general policy of NPS regarding wilderness resource management states that “wilderness will include the categories of eligible, study, proposed, recommended, and designated wilderness. . . . The policies apply regardless of category except as otherwise provided.” *Id.* at 80, 6.3.1. The policy also declares that the NPS “will take no action that would diminish the wilderness eligibility of an area possessing wilderness characteristics until the legislative process of wilderness designation has been completed. . . . The only exception is for areas that have been found eligible, but for which, after completion of a wilderness study, [NPS] has not proposed wilderness designation. However, those lands will still be managed to preserve their eligibility for designation.” *Id.*

25. NPS’s internal policies require that NPS “will involve the public in the wilderness eligibility assessment process through notification of its intentions to conduct the assessment and publication of the Director’s determination, either as ‘eligible’ or as ‘ineligible’ for further wilderness study.” *Id.* at 79, 6.2.1.3.

26. Federal regulations state that “any person desiring to submit recommendations as to the suitability or non-suitability for preservation as wilderness of any roadless area in any unit of the National Park System, or of any such area or any roadless island in any unit of the National Wildlife Refuge System, may submit such recommendations at any time to the superintendent or manager in charge of the unit. Such recommendations will be accorded careful consideration and shall be forwarded with the report of review to the Office of the Secretary.” 43 C.F.R. § 19.4(b) (2009).

D. National Environmental Policy Act

27. The National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321-4370h, is the “basic national charter for protection of the environment.” 40 C.F.R. § 1500.1. Its purposes are to “help public officials make decisions that are based on understanding of environmental consequences, and to take actions that protect, restore, and enhance the environment,” and to “insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken.” *Id.* §§ 1500.1(b)-(c).

28. To accomplish these purposes, NEPA requires all agencies of the federal government to prepare a “detailed statement” regarding all “major federal actions significantly affecting the quality of the human environment,” 42 U.S.C. § 4332(C), including situations where several separate actions may have a cumulatively significant impact on the environment. 40 C.F.R. § 1508.27(b)(7).

29. This statement – known as an Environmental Impact Statement (“EIS”) – must describe (1) the “environmental impact of the proposed action,” (2) any “adverse environmental effects which cannot be avoided should the proposal be implemented,” (3) “alternatives to the proposed action,” (4) “the relationship between local short-term uses of man’s environment and

the maintenance and enhancement of long-term productivity,” and (5) “any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.” 42 U.S.C. § 4332. NEPA further provides that agencies “shall . . . study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” *Id.* § 4332(2)(E).

30. At the time of its decision to take a proposed action, the agency must prepare a concise public “record of decision,” which must identify all reasonable alternatives and “[s]tate whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not.” 40 C.F.R. § 1505.2.

E. Endangered Species Act

31. Recognizing that certain species of plants and animals “have been so depleted in numbers that they are in danger of or threatened with extinction,” Congress enacted the Endangered Species Act (“ESA”) to provide both “a means whereby the ecosystems upon which endangered and threatened species depend may be conserved, [and] to provide a program for the conservation of such endangered species and threatened species.” 16 U.S.C. § 1531. The ESA reflects “an explicit congressional decision to afford first priority to the declared national policy of saving endangered species.” *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 185 (1978).

32. A species may be listed as endangered or threatened. An endangered species is one that is “in danger of extinction throughout all or a significant portion of its range” 16 U.S.C. § 1532(6). A threatened species is one that is “is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” *Id.*

33. Section 9 of the ESA makes it unlawful for any person to “take” an endangered species without express authorization from FWS. 16 U.S.C. § 1538(a)(1). “Take” means “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” 16 U.S.C. § 1532(19). The term “harm” is further defined by FWS regulations to encompass habitat modification or degradation that injures an endangered species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering, 50 C.F.R. § 17.3, and “harass” is defined as “an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding or sheltering.” *Id.*

34. Section 7 of the ESA directs all federal agencies, in consultation with the Secretary of Interior, to use their existing authorities to conserve threatened or endangered species. 16 U.S.C. § 1536(a)(1). “Conservation” means “to use and the use of all methods and procedures which are necessary to bring any endangered species . . . to the point at which the measures provided pursuant to this chapter are no longer necessary.” *Id.* at § 1532(3).

35. Section 7 of the ESA further requires all federal agencies to “insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered species.” 16 U.S.C. at § 1536(a)(2). To carry out this obligation, an agency formally “consults” with the FWS when it undertakes an action that “may affect” listed species, unless the “federal agency determines . . . that the proposed action is not likely to adversely affect any listed species.” 50 C.F.R. § 402.14. The agency requesting consultation must, among other things, “provide the [FWS] with the best scientific and

commercial data available or which can be obtained during the consultation.” *Id.* Formal consultation results in the issuance by the FWS of a Biological Opinion (“BO”).

36. In formulating a BO, FWS is required to “use the best scientific and commercial data available,” and to determine whether the effects of the action, “taken together with cumulative effects,” are likely to result in jeopardy to the species. 50 C.F.R. § 402.14(g). Each BO must contain, among other things, “[a] detailed discussion of the effects of the action on listed species or critical habitat.” *Id.* at § 402.14(h)(2).

37. If a BO finds that the proposed action is not likely to jeopardize the continued existence of the species, but may result in the take of individual animals, FWS must prepare an incidental take statement (“ITS”) which permits an agency to “take” a specified number of individual members of a protected species if the taking is incidental to an otherwise lawful activity, 16 U.S.C. § 1536(b)(4); 50 C.F.R. §§ 17.3, 402.14(i), and if the agency complies with required terms and conditions of the ITS to minimize and mitigate take. 16 U.S.C. §§ 1536(c)(2), 1536(b)(4). An ITS must be as specific as possible to set a trigger for reinitiation of consultation, and the burden is on FWS to employ an effective surrogate if a quantified take number cannot be provided.

F. Administrative Procedure Act

38. The Administrative Procedure Act, 5 U.S.C. §§ 701-706, provides for judicial review of agency action. Under the APA, the reviewing court must “hold unlawful and set aside agency action, findings, and conclusions” found to be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). A reviewing court must also set aside agency action, findings, and conclusions found to be without observance of procedure required by law. 5 U.S.C. § 706(2)(D).

FACTUAL BACKGROUND

A. ORV Impacts on Big Cypress's Natural Resources and Wildlife

39. The Florida Panther (*Felis concolor coryi*) population represents the last known members of a sub-species that once roamed much of the southeastern United States. The population is now isolated to southernmost Florida and is estimated at approximately 120 adult and juvenile Panthers. As a result of land development and road-building in the Panther's current range – an area smaller than five percent of its historic range – FWS has identified the Panther as a subspecies with a “a high degree of threat of extinction.” FWS, *Technical/Agency Draft Florida Panther Recovery Plan 5* (3rd rev. Jan. 2008). The conservation of remaining Panther habitat is crucial to the Panther's survival. FWS has concluded that “[c]ontinued deterioration, fragmentation, loss of habitat, and further reductions in the current extent of the occupied range will likely reduce the south Florida population below the level necessary for demographic and genetic health.” FWS, *Biological Opinion on Impacts of ORV Management Plan to Endangered Species in Big Cypress National Preserve* (“2000 BO”) (July 14, 2000).

40. According to the Final EIS, “926,000 acres of habitat [are] considered essential to maintaining a minimum viable population of panthers in south Florida, [and] [a]bout 582,000 of these acres are within Big Cypress National Preserve, representing approximately 63% of the essential habitat.” FEIS at 178. Panthers traverse the Preserve's diverse terrain in search of prey and to den. Big Cypress is considered by Panther experts as the core of the species' “primary zone” – land that, if preserved, is essential to the long term persistence of the species in the wild. In particular, the Addition has an especially high concentration of Florida Panthers and is widely considered by Panther biologists the most critical parcel of land anywhere in the Preserve with respect to Panther survival and recovery.

41. In a previous BO, FWS has stated that “the Preserve addition north of I-75 supports *intense* panther use.” See FWS, Biological Opinion on the I-75 Recreational Access Plan (“1990 BO”) (August 15, 1990), at 5 (emphasis added). FWS also noted in the 1990 BO that at least five Panthers, including two reproductive females, routinely used a particular portion of the Addition. *Id.* The Addition has only become more important for the Panther population since that time as numbers have increased from their 1990 lows (although they are still far below levels needed for recovery); indeed, FWS concluded in the 2010 BO that at least 50 Panthers, approximately 50% of the remaining population, spent time in the Preserve or Addition in 2009. See 2000 BO at 31. Moreover, FWS explained that at least 20 biologically critical Panther dens exist in the Addition, at least 8 of which will be “located adjacent to proposed [ORV] trails.” *Id.* at 32.

42. The topography of Big Cypress, including the Addition, consists of ecologically sensitive prairies, marshes and cypress swamps, with hardwood hammocks and pine flatwoods interspersed. Underlying the soils and vegetation is a layer of limestone. Water flows as a sheet across this landscape, through the prairies and marshes. This is essential habitat for not only the Panther, but also other critically imperiled species including the Eastern Indigo Snake, Red-cockaded Woodpecker, and Everglade Snail Kite.

43. For at least several decades, NPS has been acutely aware that natural and cultural resources of the original Preserve are extremely vulnerable to degradation from ORV use. See 2000 ORV Plan. However, for years, NPS permitted thousands of ORVs – including street legal 4 x 4s, airboats, all-terrain vehicles, and homemade swamp-buggies – virtually unrestricted access into the original Preserve, only recently requiring the vehicles to stay on designated trails

throughout the Preserve, as a result of an ORV management plan adopted in response to a settlement to a 1995 lawsuit.

44. ORV use has inflicted havoc on basic ecological functions of the original Preserve: it has caused soil and vegetation degradation, surface water channelization, spread of invasive species, and it threatens Panthers by increasing human activity in remote Panther habitat, by displacing Panthers, by fragmenting habitat, and by facilitating hunting that reduces Panther prey availability. The size, distribution, and abundance of available prey species are critical factors to the persistence of Panthers in south Florida and often determine the extent of Panther use of an area. FWS, *Florida Panther Recovery Plan*, at 29.

45. In 1991, NPS found that “the decline of the Florida Panther has been attributed to the loss of habitat quality due to increased hunting [and] ORV use.” 1991 GMP at 231. This finding is supported by the fact that “panthers tend to leave the [original Preserve] . . . during hunting season,” and that Panthers found north of I-75 (including on private lands) where there is significantly less ORV use and more available prey are “more abundant, heavier, and healthier than their counterparts south of I-75 in the preserve.” 1991 GMP at 179, 231; *see also* FWS, *Florida Panther Recovery Plan*, at 33-34.

46. A 1999 study further suggested the detrimental effects of ORV activity on the Panther in the original Preserve, including adverse behavioral changes and a “lowering of the quality” of Panther habitat. Michael W. Janis & J.D. Clark, *The Effects of Recreational Deer and Hog Hunting on the Behavior of the Florida Panthers* 63 (May 1999). This study determined that the frequency of Panther use in the original Preserve measurably decreases during the hunting season. *Id.* As the authors found when publishing their conclusions in 2002, “the decreased use of Bear Island most likely reflects a direct reaction to human activity.” Michael

W. Janis & J.D. Clark, *Responses of Florida Panthers to Recreational Deer and Hog Hunting*, 66 J. Wildlife Mgmt. 839, 847 (2002). Therefore, as the authors stated, “the consequence [of ORV use and ORV-assisted hunting] was that panthers spent more time on private lands north of [the Preserve] during the hunting season.” *Id.* The authors thus concluded that “[s]imilar hunting regulations and intensity on the Addition Lands could be expected to produce similar panther responses there.” *Id.* Accordingly, “future loss of refugia north of the Addition Lands could be critical.” *Id.* A recent unpublished, non-peer reviewed study similarly concluded that “hunter ORV effects on resource selection by panthers . . . [was] statistically significant.” Fletcher and McCarthy, *Historical Data Analysis Related to Hunter ORV Use and Panthers Within Big Cypress National Preserve*, May 6, 2011.

47. Additional studies have found that ORV use in Big Cypress National Preserve has impacted wildlife populations (including ESA-listed wildlife) and habitats through modifications to water flow patterns and water quality, soil displacement and compaction, direct vegetation damage, disturbance to foraging individuals and, ultimately, overall reduction in the suitability of habitat for wildlife. See U.S. Geological Services, *Effects of Public Land Use on Indicator Species’ Populations and Habitats in Big Cypress National Preserve* at 2 (2001).

48. FWS has acknowledged the vital function served by the Addition as a refuge for displaced Panthers, and expressed its concerns that allowing public ORV access and hunting in the Addition “will generate much more activity in the Preserve addition than the historic activity while in private ownership, and thus increase the potential for associated impacts on the panther.” 1990 BO at 6. Accordingly, FWS concurred with NPS’s assessment that “public hunting and ORV access to the Preserve will not be permitted until sufficient resource data can be collected . . . and NPS management capabilities are in place,” *id.* at 7, and recommended

“detailed studies in the Preserve addition to obtain definitive data on types and levels of human activity compatible with panther habitation.” *Id.* at 8. Further, FWS strongly recommended that “[n]o hunter access will be allowed . . . for a period of 2 or 3 years following the[] opening to the public [of the Addition]. The monitoring program for levels of public use and program activities will continue through this period to establish a baseline of recreational ORV use *not associated with hunting.*” *Id.* at 8 (emphasis added).

49. Degradation to soils and vegetation as a result of ORV traffic has been found to transform landscapes, especially in low elevation wetland terrains such as prairies and marshes. Soil disturbance is the most direct, visible, and lasting impact of ORV use in the Preserve. *E.g.*, 2000 ORV Plan at 4. When the soils of Big Cypress are saturated or inundated with water, they become especially susceptible to disturbance from vehicle traffic. *Id.* Prairies and marshes have been identified as the vegetation community in the Preserve most impacted by ORV use. *E.g.*, 2000 ORV Plan at 31, 33. NPS evaluated the suitability of six types of Preserve terrain for ORV traffic in the ORV Plan, and concluded that prairies and marshes were the only terrain having “low” substrate suitability. *Id.* at 33.

50. NPS has found that once ORV use displaces soils, there are no natural mechanisms capable of restoring the natural topography. *Id.* at 4. As a result, the damage can be permanent, effectively altering hydrology and promoting unnatural vegetation succession. *Id.*

51. In contrast to the original Preserve, public ORV use and hunting have never previously been permitted in the Addition Lands. Accordingly, the Addition consists primarily of large tracts of wilderness, constituting some of the most important Panther and other wildlife habitat not only in the Preserve, but throughout south Florida. Because the Addition has been almost entirely spared from the devastating impacts of public ORV use and hunting that have

adversely impacted the original Preserve, the Addition has long served as an essential refuge for Panthers and other wildlife, shielding displaced wildlife from the effects ORV use and hunting in the original Preserve.

B. Litigation over Related Issues in the Original Preserve

52. In 1995, Plaintiff FBP and others brought suit challenging NPS's failure to protect the fragile ecosystems of the original Preserve by not regulating destructive ORV use that resulted in nearly 23,000 miles of ORV trails in the original Preserve. NPS eventually settled the case, agreeing to prepare an ORV Plan for the original Preserve along with environmental analyses required by federal law.

53. Pursuant to its obligations under the 1995 Settlement Agreement, NPS issued the ORV Plan for the original Preserve in September 2000. Among other things, the 2000 ORV Plan provided criteria for ORV trail suitability, and prohibited the placement of ORV trails in prairies because of the sensitive nature of prairies for natural resources and Panthers. In addition, the 2000 ORV Plan incorporated the precautionary principle as its guiding tenet, meaning that "[i]n all situations involving conflicts between resource protection and resource use, [NPS] would decide in favor of resource protection." *See* 2000 ORV Plan.

54. In 2001, ORV users challenged the 2000 ORV Plan as arbitrary and capricious. Many of the Plaintiffs in this case intervened and, along with NPS, defended the ORV Plan as a substantial improvement over the largely unregulated ORV use that prevailed in the Preserve. In 2003, this Court upheld the Plan as a lawful exercise of the agency's authority under the various federal statutes applicable to NPS decisionmaking.

55. In 2007, NPS reopened nearly 25 miles of trails in sensitive prairies in the Bear Island Unit of the original Preserve. These precise trails had been closed by NPS in 2000

pursuant to the 2000 ORV Plan because these trails were located in the most sensitive areas of the original Preserve for Panthers, hydrology, vegetation, and other natural resources. Many of the Plaintiffs here sued NPS in December 2007 challenging the reopening of these trails in the Bear Island Unit, and the case is currently pending before this Court.

C. NPS's Management of the Addition Lands Prior to the Final GMP/EIS/Wilderness Study/ORV Plan

56. Although NPS finalized a GMP for the original Preserve in 1991, it did not contain guidance for the Addition. NPS began administration of the Addition in 1996. Prior to the decision at issue in this case, the only public uses authorized in the Addition were hiking, camping, bicycling, and frogging – *i.e.*, entirely nonmotorized uses without significant adverse impacts on the Addition's resources. Because of the limited human use of the Addition, it has long served as the most important land parcel for Panther and wildlife refugia in the Preserve, particularly during those seasons when ORV use and ORV-assisted hunting are highest in the original Preserve.

57. In 2001, the Preserve Superintendent reviewed the Addition for wilderness eligibility, and determined that 128,000 acres (approximately 87% of the Addition) were eligible for wilderness classification pursuant to the Wilderness Act's eligibility criteria and NPS management policies. The Superintendent forwarded that report to the NPS Regional Office.

58. On July 11-12, 2006, an interdisciplinary team, including land managers, met at the Preserve and produced a detailed Wilderness Study of the Addition, concluding that 109,000 acres (approximately 74% of the Addition) were eligible for wilderness designation pursuant to the eligibility criteria in the Wilderness Act and NPS management policies. NPS amended this determination in late 2007 by including an area called "the Gap" and finding a total of 111,600

acres (approximately 76% of the Addition) eligible for wilderness designation pursuant to the criteria in the Wilderness Act and NPS management policies

59. On July 10, 2009, NPS released the Draft GMP/EIS/Wilderness Study/ORV Plan for the Addition Lands. In that document, NPS once again determined that 111,601 acres (approximately 76%) of the Addition Lands were eligible for wilderness designation. The agency's Preferred Alternative called for a wilderness proposal to Congress of 85,862 acres (approximately 58% of the Addition).

60. NPS solicited public comment on the Draft EIS. NPS received a total of 16,912 comments on the Draft EIS, including from Plaintiffs, other conservation organizations, and other federal agencies, requesting that, at bare minimum, NPS propose at least the 85,862 acres to Congress for wilderness designation, and preferably that NPS propose more wilderness acreage to Congress since NPS had determined that another 25,739 acres (approximately 18% of the Addition) were eligible for wilderness designation pursuant to the Wilderness Act's eligibility criteria and NPS management policies.

61. A total of 15,702 comments on the Draft GMP (approximately 93% of all correspondence) indicated an opposition to any motorized access (*i.e.*, ORV access) to the Addition, and 15,594 respondents (approximately 92% of all correspondence) expressed support for Alternative F in the Draft EIS, which emphasized resource preservation (including maximizing benefits for listed species such as the Florida Panther), restoration, and research, and also provided for the maximum amount of wilderness among the alternatives (all 111,601 acres of eligible wilderness would be proposed to Congress for wilderness designation). However, despite this overwhelming public support for heightened environmental protection and wilderness designation, the Draft EIS drew criticism from a small contingent of ORV users, who

maintained that extensive wilderness designation in the Addition would hamper their ORV use, which in turn they consider essential for sport hunting – activities never before publicly authorized in the Addition.

62. NPS's sister agency, the Environmental Protection Agency ("EPA"), the federal expert agency on environmental matters which is specifically authorized by Congress to review and comment on all EISs, *see* 42 U.S.C. § 7609(a) (explaining that "[t]he Administrator [of EPA] shall review and comment in writing on the environmental impact of . . . any major Federal action . . . to which section 4332(2)(C) of this title applies"), submitted detailed comments on the Draft EIS. EPA voiced its concerns with NPS's Preferred Alternative in the Draft GMP/EIS, explaining that "EPA finds that the Preferred Alternative may adversely impact surface water flow . . . the Florida panther's food supply; the redcockaded woodpecker and [have] localized impacts on major game species." EPA then urged that the "FEIS provide a cumulative impact analysis for the entire Big Cypress National Preserve, including the Addition." Lastly, EPA recommended that rather than selecting NPS's Preferred Alternative, NPS instead select "Alternative F which would emphasize resource preservation, restoration, and research while providing recreational opportunities with limited facilities and support. This alternative would provide the maximum amount of wilderness, no ORV use, and minimal new facilities."

D. The Final GMP/EIS/Wilderness Study/ORV Plan and the Biological Opinion

63. On November 23, 2010, NPS released the Final GMP/EIS/Wilderness Study/ORV Plan for the Addition Lands in a single document. The document analyzed several alternatives with varying levels of designated wilderness, ORV use, and other forms of human access. On February 4, 2011, NPS signed the Record of Decision, which adopted the Final GMP's "Preferred Alternative" without any changes.

1. The Wilderness Study

64. In its Final Wilderness Study, which was attached as Appendix B to the FGMP, NPS substantially modified its Wilderness Study on which it had sought public comment as part of the 2009 Draft EIS, determining that only 71,263 acres satisfied the wilderness eligibility criteria (approximately 48% of the Addition), compared to the 111,601 acres (approximately 76% of the Addition) that NPS had determined to meet the same objective criteria in the 2009 Wilderness Study.

65. In Appendix B to the FGMP, NPS set forth its purported reasons for the elimination of 40,338 acres (approximately 27% of the Addition) from wilderness eligibility under the Wilderness Act criteria between its 2009 Wilderness Study and its 2010 Wilderness Study. Included in those reasons were novel and unprecedented NPS applications of the Wilderness Act criteria, which excluded, *inter alia*, all “roads, trails, or other areas that were created by man” even where such roads and trails have not received any or much use for several decades; any areas where “man’s past work is . . . substantially noticeable to a land manager . . . [even if unnoticeable] to the common visitor”; all lands in the Addition north of I-75 because some of this area “has been altered by previous agricultural practices”; and all land within .25 miles of any trail or road as a buffer zone.

2. The Final GMP, EIS, and ORV Plan

66. In addition to NPS’s substantially reduced amount of *eligible* wilderness in the Final Wilderness Study, NPS selected, in its Final EIS, a “Preferred Alternative” whereby NPS would propose to Congress only 47,067 acres (approximately 32% of the Addition) for wilderness designation, compared to 85,862 acres (approximately 58% of the Addition) that NPS

had proposed for wilderness designation in the Draft EIS under its Preferred Alternative. NPS did not provide any justification for the dramatic reduction in wilderness acreage that would be proposed to Congress, nor did NPS explain why it could not propose to Congress all 71,263 acres that it determined to be eligible wilderness, considering that this would still not exceed the amount of acreage proposed by NPS in its Preferred Alternative to the Draft EIS (85,862 acres) – a proposal for which NPS had overwhelming public support.

67. Moreover, NPS's Preferred Alternative, as described by NPS itself, provides for only a "*moderate* amount of proposed wilderness," but "*substantial* ORV use." FGMP/FEIS at ii (emphases added). The "substantial ORV use" will consist of 130 miles of primary ORV trails and an unidentified number of secondary trails. Thus, by NPS's own admission, NPS prioritized ORV use over nonmotorized uses in potential wilderness areas that are far more consistent with Florida Panther conservation and natural resource protection – the overriding goals of the Addition's enabling legislation. 16 U.S.C. § 698f ("The purpose of the Addition is to "assure the preservation, conservation, and protection of the natural, scenic, hydrologic, floral and faunal, and recreational values of the Big Cypress Watershed in the State of Florida and to provide for the enhancement and public enjoyment thereof."). Indeed, nonmotorized users, including Plaintiffs and the vast majority of commenters on the Draft EIS, have enjoyed the Addition for many years before NPS's recent decision by engaging in environmentally benign activities in the Addition (hiking, birdwatching, photography, backpacking, etc.), which, unlike ORV use, do not irreparably impair the resources of the Addition for future generations, and are therefore more consistent with the enabling legislation and the Organic Act's nonimpairment mandate, but will be significantly impaired by the "substantial" ORV use that will benefit a small minority of the Addition's visitors.

68. User conflict is of particular concern for plaintiffs and others who have long recreated in and otherwise used the Addition as a place for solitude in nature, in stark contrast to the original Preserve where public ORV use and ORV-assisted hunting have detracted from such solitude since the original Preserve's founding. NPS has disregarded this important difference between the original Preserve and the Addition in the Final EIS, claiming instead that user conflicts in the Addition under the Preferred Alternative will be "infrequent due to sensible facility design, resulting in . . . minor, adverse impacts." FEIS at 370. However, for users accustomed to solitude and silence in their enjoyment of the Addition via hiking, birdwatching, or other nonmotorized forms of recreation, the introduction of up to 650 loud, polluting ORVs to the Addition on existing hiking trails, as well as both walk-in and ORV-assisted hunting (which is loud and dangerous to nonmotorized users), the Preferred Alternative will result in a substantial adverse impact to the ways in which these users have long enjoyed the Addition consistent with the enabling legislation's goals. Serious user conflicts are inevitable as a result of the decision because ORV trails will now be sited over virtually all of the hiking trails used by nonmotorized users for the past several decades.

69. Moreover, despite acknowledging in the EIS that unknown levels of adverse impacts would inevitably result to diverse resources in the Addition, including to surface water flows and the spread of invasive species, NPS failed to gather pertinent information on which to fully analyze the environmental impacts or to apprise the public of the extent of such impacts. *See, e.g.*, GMP at 173. NPS similarly failed to investigate and analyze the inevitable impacts to resources with respect to several listed species, including Florida Panthers, for which vital research is lacking concerning the expected impacts of ORV use and ORV-assisted hunting on Panthers and their prey.

70. In its Final EIS, NPS relied on long-term mitigation measures being undertaken in the region as a whole (*i.e.*, the South Florida Ecosystem Restoration Plan), which is not site-specific to the Addition, which is not enforceable by NPS, and which “will take more than 30 years to complete.” FEIS at 35.

71. NPS also relied heavily on its commitment to increase resources and personnel to monitor and enforce ORV use of designated trails. However, based on stark failures to do the same in the original Preserve since the implementation of the 2000 ORV Plan there, NPS has offered no rationale for why the agency will be able to better enforce these rules now that the size and breadth of ORV trails in the Preserve as a whole (including the Addition) have increased. Indeed, by increasing the size and extent of ORV use in the Preserve in view of NPS’s lax enforcement history, NPS has made it *more* likely for unpermitted ORVs to illegally use the Preserve’s ORV trails and for even permitted ORVs to degrade resources off-trail in what is termed “dispersed use” as ORV users drive off of designated trails.

72. NPS’s Preferred Alternative will allow up to 130 miles of primary trails and an unspecified number of secondary trails, which are supposed to constitute short trails of de minimis distance intended only for light use to travel to a handful of specific destinations. However, in contradiction to the original purpose of secondary trails as explained in the 2000 ORV Plan for the original Preserve, NPS has a long history in the original Preserve of authorizing extensive secondary trails with no “specific destinations” that receive heavy use. These “secondary trails” have been described by a member of the Preserve’s ORV Advisory Committee as “gaming the system,” because secondary trails with no specific destinations do nothing more than extend the primary trail system to even larger mileages for ORV users.

73. Without explanation, the ORV Plan for the Addition departs from the agency's own standards and trail closure criteria adopted in the 2000 ORV Plan for the original Preserve. For example, the 2000 ORV Plan's foundational cornerstone – the precautionary principle that required NPS not to make a decision impacting Preserve resources until and unless the action at issue was analyzed and determined to have a net *beneficial* effect on natural resources – is entirely absent from the ORV Plan for the Addition.

74. With one limited exception, the 2000 ORV Plan expressly prohibited ORVs in prairies because of the sensitive ecological nature of the resources there, finding that those areas were the “most impacted” of any landscape type in the Preserve. In contrast, the ORV Plan for the Addition discards the agency's prohibition on ORV trails in prairies, and instead places several trails directly in the Addition's sensitive prairies, finding that the impact is somehow “minor.” Similarly, the 2000 ORV Plan excluded ORV trails in the portion of Mullet Slough that falls in the original Preserve because of the sensitive nature of the resources there. However, the ORV Plan for the Addition allows ORV use in portions of Mullet Slough that fall within the Addition. NPS has provided no rationale for this and other discrepancies between the 2000 ORV Plan and the ORV Plan for the Addition.

75. The 2000 ORV Plan explicitly determined that areas of high Panther usage (certain areas of the Bear Island Unit) were too sensitive for ORV trails (*i.e.*, near known Panther dens and/or high concentration of Panther telemetry data). However, with the ORV Plan for the Addition, NPS jettisoned this approach to instead locate ORV trails based not on Panther impacts but rather on lands that the agency has determined ineligible for wilderness designation; this means that at least eight known Panther dens will be in very close proximity to ORV trails in the Addition.

3. Nonimpairment Determination

76. As required by the Organic Act, NPS prepared a determination of resource impairment for the preferred alternative. This determination was attached to the ROD, issued on February 4, 2011. NPS determined that the Preferred Alternative “will not rise to levels that would constitute impairment.”

77. As NPS acknowledges in its Final EIS, NPS’s “discretion is limited by the statutory requirement that the [NPS] *must leave resources and values unimpaired* unless a particular law directly and specifically provides otherwise.” EIS at 261 (emphasis added). However, the Final EIS and the ROD prioritize substantial resource use and degradation (*i.e.*, ORVs) over the agency’s mandate to protect resources and leave them unimpaired for future generations because of a purported “need to provide high-quality visitor experiences” (*i.e.*, ORV use) as “balance[d]” against the need to protect the Addition’s natural resources. ROD at 20-21. The impairment determination thus relied heavily on this purported need to “balance[.]” these interests in reaching a nonimpairment conclusion.

78. NPS did not evaluate at all the inevitable user conflicts that will occur as a result of the decision, because NPS determined that “impairment findings are not necessary for visitor experience.” Impairment Determination at 1. NPS also did not consider the cumulative impact of ORV use or ORV-assisted hunting in evaluating whether particular natural resources would be impaired, finding instead that ORV effects “will be localized in nature and mitigated by ongoing NPS restoration efforts.” Impairment Determination at 2.

4. The Biological Opinion

79. Included with the FGMP/FEIS/Wilderness Study/ORV Plan was a November 17, 2010 Biological Opinion from FWS. That Opinion purports to authorize NPS to proceed with its

Preferred Alternative under the FGMP/FEIS/Wilderness Study/ORV Plan. In the Opinion, FWS concurred with NPS's assessment that the project is not likely to adversely affect the Eastern Indigo Snake, Red-cockaded Woodpecker, or the Everglade Snail Kite. However, this conclusion was not supported by NPS's own findings, which concluded that adverse effects were in fact likely to result to these three species from the Preferred Alternative, including by displacing, disturbing, and adversely modifying their habitat. *E.g.*, GMP at 47, 49, 141-42, 185-86, 197, 353, 358, 360-61.

80. In addition, FWS concluded in its BO that the Preferred Alternative would not jeopardize the continued existence of the Florida Panther. The Opinion, however, failed to analyze several issues that are the direct or indirect result of the Preferred Alternative that will adversely impact Panthers, including public ORV-assisted hunting (which has never previously been permitted in the Addition), the secondary trail system that will inevitably branch off the primary trail system and expand the spatial extent of ORV activity in the Preserve, and new access points that will facilitate ORV use and ORV-assisted hunting. In addition, the Opinion failed to analyze the fact that the Addition – in stark contrast to the original Preserve – has never had public ORV use or hunting, meaning that the anticipated impacts in the Addition to Panthers and other listed species are likely to be far more dramatic than the adverse impacts observed to date in the original Preserve. Indeed, in the original Preserve, the management direction has been to significantly scale back ORV use including the extent of areas impacted. In the Addition, the impact of the preferred alternative will be to significantly increase human disturbance and the consequent species impacts from motorized recreation and ORV-assisted hunting.

81. FWS based much of its determination of Panther impacts on effects observed in the original Preserve, where ORV use and ORV-assisted hunting have long existed. However, there was no analysis on the historical differences between the original Preserve and the Addition, including that the Addition has long served as refugia for Panthers without invasive ORV use or hunting that can significantly deplete the Panther's prey resources and affects Panthers in other ways.

82. In the Opinion, FWS issued an incidental take statement, but did not quantify the number of takes authorized, nor did the agency provide any rationale for its failure to provide a trigger (*i.e.*, number of authorized takes) upon which the impacts to Panthers, and thus the need for reinitiation of consultation, can be measured. FWS did not provide any surrogate method for measuring take.

E. Public Outcry

83. After releasing its heavily revised FGMP/FEIS/Wilderness Study/ORV Plan to the public in November 2010, several conservation organizations, members of the public, and EPA submitted comments pursuant to 40 C.F.R. § 1503.1(b), detailing the legal, practical, and procedural deficiencies of NPS's substantially altered final decision as compared to its draft. Many of the Plaintiffs here submitted extensive comment letters during that time requesting that NPS reexamine its decision in order to comply with the various legal mandates applicable to the decision.

84. EPA reiterated many of the concerns with the final decision that it had when it commented on the Draft EIS. In particular, EPA explained that “[e]vidence is mounting that ORVs pose a serious threat to wildlife, water, soil, plants, and the rest of the natural world.” EPA recommended that NPS avoid ORV use in “ecologically sensitive areas,” and explained that

“[i]t is imperative that environmentally sensitive areas stay contiguous.” EPA again strongly urged NPS not to select its Preferred Alternative, instead concluding that NPS should select “Alternative F which would emphasize resource preservation, restoration, and research while providing recreational opportunities with limited facilities and support. This alternative would provide the maximum amount of wilderness, no ORV use, and minimal new facilities.”

85. On February 4, 2011, NPS Regional Director Vela signed the ROD. Despite the comments from the public and EPA requesting modification to the FGMP/FEIS/Wilderness Study/ORV Plan, no changes were made and the Preferred Alternative was authorized by the ROD. NPS never addressed in the ROD or elsewhere the extensive pre-ROD comments submitted by the EPA, members of the public, or Plaintiffs.

86. On March 9, 2011, Plaintiffs sent NPS and FWS, via certified mail, a 22-page notice letter alleging violations of the ESA, as required by 16 U.S.C. § 1540(g)(2)(A)(i).

PLAINTIFFS’ CLAIMS FOR RELIEF

Claim One: NPS’s Violations of the Wilderness Act, NPS Management Policies, and the Administrative Procedure Act

87. By interpreting and applying the Wilderness Act criteria in the Final Wilderness Study in an arbitrary manner unsupported by the plain language of the Wilderness Act or NPS’s own management policies, and in so doing departing from NPS’s own longstanding application of the criteria generally as well as in the Addition, which had the result of excluding 40,338 acres (approximately 27% of the Addition) from wilderness eligibility that the agency’s had previously determined to be eligible wilderness under the same criteria, NPS’s Final Wilderness Study is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with the law within the meaning of the APA, 5 U.S.C. § 706(2)(A).

88. Specifically, by *per se* excluding, *inter alia*, “roads, trails, or other areas that were created by man” even where such roads and trails have not received any or much use for multiple decades, any areas where “man’s past work is . . . substantially noticeable to a land manager . . . [even if unnoticeable] to the common visitor,” all lands in the Addition north of I-75 because some of this area “has been altered by previous agricultural practices,” and all land within .25 miles of an ORV trail as a buffer zone, NPS not only applied the Wilderness Act criteria inconsistently with NPS’s own policies and past practices in the Addition and elsewhere, but also severely constrained its inquiry in such a manner that cannot be reconciled with the Wilderness Act, or with NPS Management Policies. Accordingly, the purported rationales provided by NPS for its substantial reduction in eligible wilderness between the Draft Wilderness Study and the Final Wilderness Study are arbitrary and capricious under the APA, 5 U.S.C. § 706(2)(A), and contrary to the Wilderness Act.

89. Moreover, by failing to involve the public in its substantially altered Final Wilderness Study, including by conducting the new analysis without public notice and by publishing the Final Wilderness Study without any public comment opportunity, NPS violated its own Management Policies and the Wilderness Act, and this action is arbitrary, capricious, and without observance of procedure required by law. 5 U.S.C. §§ 706(2)(A)-(D); 16 U.S.C. § 1132(d).

**Claim Two: FWS’s and NPS’s Violations of the Endangered Species Act
and the Administrative Procedure Act**

90. In its 2010 Biological Opinion, FWS failed to analyze various direct and indirect effects to the Panther that will result from NPS’s decision, including the inevitable and extensive adverse effects of ORV-assisted hunting in the Addition; the secondary trail system that will likely be large in scope; the access points and parking lots that inevitably facilitate both legal and

illegal ORV use and circumscribe the type, size, and number of ORVs that have access to the Addition; the connection of trails in the Addition to trails in the original Preserve and the potential increase in ORV users in the Addition; and increased intraspecific mortality with heightened traffic. These failures violate section 7 of the ESA, which requires FWS to base its Opinion on the best available science, 16 U.S.C. § 1536(a)(2), as well as FWS's implementing regulations, which require FWS to consider all direct and indirect effects, 50 C.F.R. § 402.14, and is therefore arbitrary, capricious, and not in accordance with law within the meaning of the APA, 5 U.S.C. § 706(2)(A).

91. FWS failed to rely on the best available scientific evidence in rendering its 2010 Biological Opinion by failing to specify, without any explanation, the amount of incidental take of the highly endangered Florida Panther that FWS authorized before reinitiation of consultation would be triggered. This failure, which effectively provides blanket authorization to NPS, ORV users, and ORV-assisted hunters to take Panthers without ever requiring reinitiation of consultation, violates the ESA, its implementing regulations, and the APA. 16 U.S.C. § 1536(a)(2); 50 C.F.R. §§ 402.14, 402.16; 5 U.S.C. § 706(2)(A).

92. FWS in its Biological Opinion failed to meaningfully assess the loss and/or degradation of a vast amount of essential Panther habitat due to the opening of ORV trails under the Preferred Alternative, in potentially the most important remaining tract of public land within the Panther's range. By downplaying or simply ignoring the effect of this dramatic blow to the Panther and its habitat, particularly since the Addition has long served as the last remaining refuge in the Preserve during seasons of heavy ORV use and ORV-assisted hunting in the original Preserve, FWS acted arbitrarily and capriciously under the APA, 5 U.S.C. § 706(2)(A), violating the best available science standard of section 7, 16 U.S.C. § 1536(a)(2).

93. In assessing the anticipated impact to the Panther from NPS's underlying decision, FWS improperly relied on the effects that have been observed to date in the original Preserve from ORV use. However, because the original Preserve has long allowed ORV use and hunting, while the Addition has expressly prohibited public ORV use and hunting, FWS used a highly inappropriate and legally improper baseline for assessing the anticipated effects to Panthers that use the Addition, where Panthers will necessarily be more highly impacted than Panthers were in earlier studies in the original Preserve because in those studies the Addition Lands served as a vital refuge for panthers during hunting season in the original Preserve. By failing to identify and address the fundamental differences between the impacts observed in the original Preserve when the Addition Lands were available as critical refugia and the anticipated impacts to panthers in the Addition (and elsewhere in the Preserve) under NPS's Preferred Alternative, FWS failed to incorporate the best available science pursuant to section 7 of the ESA, and thus the use of an improper baseline was contrary to the ESA's implementing regulations and the APA. 16 U.S.C. § 1536; 50 C.F.R. § 402.14(g)(2); 5 U.S.C. § 706(2)(A).

94. By relying on the FWS's invalid Biological Opinion concerning the panther, NPS has also violated the ESA and implementing regulations and acted contrary to the ESA. 16 U.S.C. § 1536; 50 C.F.R. § 402.14(g)(2); 5 U.S.C. § 706(2)(A).

95. FWS also acted arbitrarily in rendering its Biological Opinion by "concurring" with determinations purportedly made by NPS that the FGMP is "not likely to adversely affect" the Eastern Indigo Snake, the Red-cockaded Woodpecker, and the Everglades Snail Kite. However, FWS applied the wrong biological and factual assumptions to these species because, in fact, NPS determined that *all* of these listed species *would* be adversely affected by the FGMP. For example, NPS concluded in the Final EIS that adverse effects would result to these three

species from the Preferred Alternative, including by displacing, disturbing, and adversely modifying their habitat. *E.g.*, GMP at 47, 49, 141-42, 185-86, 197, 353, 358, 360-61. The EPA also found that the FGMP would harm the Red-cockaded Woodpecker and other wildlife. Accordingly, FWS's "concurrence" that adverse effects were unlikely was arbitrary and capricious and contrary to the ESA and its implementing regulations, which require that consultation decisions must be based on the best available science, and that formal consultation must be undertaken whenever an action will have any adverse impacts on a listed species. 16 U.S.C. § 1536(a)(2); 5 U.S.C. § 706(2)(A). In turn, NPS has violated the ESA, its implementing regulations, and the APA by failing to engage in formal consultation with respect to species for which NPS has conceded there will be adverse impacts from its decision. 16 U.S.C. § 1536(a); 50 C.F.R. § 402.14; 5 U.S.C. § 706(2)(A)

**Claim Three: NPS's Violations of the Organic Act, the Addition Act,
and the Administrative Procedure Act**

96. NPS fundamentally misapplied the Organic Act's mandates in its nonimpairment determination and its Final EIS by seeking to "balance" resource protection in the Addition with the "need to provide high-quality visitor experiences" (*i.e.*, ORV use). However, the Organic Act does not call for such a balance; instead, the Organic Act requires that the Preserve's resources be left unimpaired for future generations, and NPS's failure to apply the Organic Act as its plain terms require was arbitrary and capricious, in violation of the Organic Act and the APA, 5 U.S.C. § 706(2)(A), and was also an unexplained departure from NPS's own Management Policies. NPS, 2006 Management Policies § 1.4.3 (requiring "when there is a conflict between conserving resources and values and providing for enjoyment of them, conservation is to be predominant")

97. NPS's determination to allow invasive use to the extent that it will impair resources also contravenes the Preserve (and Addition) Enabling Act, in which Congress explained that the fundamental purpose of the Addition was to "assure the preservation, conservation, and protection of the natural, scenic, hydrologic, floral and faunal, and recreational values of the Big Cypress Watershed," 16 U.S.C. § 698f(a), and for which Congress mandated that NPS shall manage the Preserve and the Addition "in a manner which will assure their natural and ecological integrity in perpetuity" 16 U.S.C. § 698i(a). Since, in its nonimpairment determination and Final EIS, NPS prioritized resource use over resource protection resulting in a decision that fails to assure the preservation of the Addition's resources or the Addition's ecological integrity in perpetuity, the nonimpairment determination and the underlying decision are arbitrary and capricious. 5 U.S.C. § 706(2)(A); 16 U.S.C. §§ 698f(a), 698i(a).

98. NPS's nonimpairment determination is also invalid because NPS skewed its impairment analysis by concluding that user conflict was not a value to be considered by NPS, by minimizing the anticipated impacts to key ecological resources, by relying on untested and hypothetical mitigation unrelated to the Addition specifically, by conducting its analysis in an unduly narrow fashion to account for localized impacts but not cumulative impacts to resources in the Addition, and by concluding that the introduction of public use of ORVs and ORV-assisted hunting for the first time in the Addition's history will have beneficial effects on game species that will be hunted. For all of these reasons, the nonimpairment determination is arbitrary and capricious under the APA. 5 U.S.C. § 706(2)(A).

99. By discarding the objective trail closure criteria, foundational resource protection principles, and measurable standards adopted by NPS in the 2000 ORV Plan for the original Preserve pursuant to the mandates imposed against NPS by the Organic Act, NPS failed to

provide any explanation for its departure in the ORV Plan for the Addition, in violation of the Organic Act and the APA. 5 U.S.C. § 706(2)(A).

100. By allowing ORV trails in prairies and in sensitive places such as Mullet Slough – in stark contrast to the prohibition against ORV trails in prairies and in Mullet Slough in the 2000 ORV Plan which was adopted pursuant to the Organic Act – and by removing the governing principle adopted by NPS in the 2000 ORV Plan (the “precautionary principle”), NPS has adopted a substantially different, and far less ecologically protective, management scheme for ORV use in the Addition as compared to the original Preserve. In so doing, NPS not only failed to follow protective principles embodied in its own 2000 ORV Plan, but also the Organic Act mandates that compelled NPS in 2000 to adopt the 2000 ORV Plan for the original Preserve. Such an unexplained reversal of position as to the applicable standards and criteria in evaluating trail suitability in light of resource protection mandates found in the Organic Act is arbitrary and capricious within the meaning of the APA, 5 U.S.C. § 706(2)(A), and violates the mandates of the Addition Act and Organic Act.

101. NPS’s action in authorizing “substantial ORV use” in the Addition – an area that has never before been open to public ORV use or ORV-assisted hunting – failed to properly control and direct ORV use so as to protect the vital resources of the Addition, to minimize damage to soil, water flow, vegetation, wildlife (including listed species), or wildlife habitat, or to minimize harassment to wildlife or significant disruption of wildlife habitat, as recognized and emphasized by EPA and others in their comments on the FEIS. NPS’s actions are therefore in violation of the requirements of the Organic Act, and are arbitrary, capricious, and otherwise contrary to law, in violation of the APA, 5 U.S.C. § 706(2)(A).

**Claim Four: NPS’s Violations of Executive Orders 11,644 and 11,989, and the
Administrative Procedure Act**

102. Although NPS only mentions Executive Orders 11,644 and 11,989 a single time in its Final EIS, and does not mention the Orders in its ROD or nonimpairment determination, those Executive Orders require NPS to “protect the resources of those lands,” to ensure that “[a]reas and trails [for ORV use] shall be located to minimize damage to soil, watershed, vegetation, or other resources . . . [and] minimize harassment to wildlife or significant disruption of wildlife habitats,” and to close trails to ORV use where such use might cause “considerable adverse effects on the soil, vegetation, wildlife, wildlife habitat, or cultural or historic resources of particular areas or trails of public lands.” NPS has not explained, in its decision documents or elsewhere, how the ecologically damaging alternative that will inevitably degrade and otherwise adversely impact soil, water, vegetation, wildlife, and other resources complies with the Executive Orders, which are binding on NPS in making ORV trail decisions. In addition to their independent legal status as enforceable executive orders, NPS has incorporated those orders into its regulations governing ORV use on NPS lands. *E.g.*, 36 C.F.R. § 4.10. Accordingly, NPS’s failure to analyze and document its compliance with these Orders in introducing a “substantial” amount of ORV use in the Addition – particularly in light of the extensive degradation observed to date from ORV use in the original Preserve – is a violation of Executive Orders 11,644 and 11,989, NPS’s own regulations, and the APA. 5 U.S.C. § 706(2)(A).

**Claim Five: NPS’s Violations of the National Environmental Policy Act and
the Administrative Procedure Act**

103. In various places in the FEIS, NPS stated that anticipated impacts to water, Panthers, and other resources in the Addition are unknown, incomplete, or unavailable. Despite

the uncertainty of the action's impacts on these resources, NPS adopted a final decision without obtaining vital information regarding surface water flows, spread of invasive plant species facilitated by ORV use, Panther behavior related to ORV use and ORV-assisted hunting, and other resource impacts from ORV use in a location where such public uses have never been previously authorized. Because impacts to these resources are "relatively foreseeable" results of the "substantial" ORV use authorized by the decision, NPS violated NEPA and its implementing regulations by failing to obtain crucial research that is "essential to a reasoned choice among alternatives" or alternatively by failing to document why it could not, due to costs, obtain such information, and such action was arbitrary and capricious under the APA. 40 C.F.R. § 1502.22; 5 U.S.C. § 706(2)(A).

104. NPS's narrow analysis of ORV use in a localized fashion, and the agency's resulting conclusions of only "localized" impacts to various resources, including surface water flows, improperly failed to consider and assess cumulative impacts as required by NEPA's implementing regulations. 40 C.F.R. §§ 1502.15, 1502.16, 1508.7, 1508.8. By failing to consider and analyze localized impacts as added together in a cumulative fashion, NPS violated NEPA and its implementing regulations, as well as the APA. 5 U.S.C. § 706(2)(A).

105. NPS failed to take a "hard look" at the user conflicts that will result from the introduction of extensive and invasive ORV use and ORV-assisted hunting by a small number of Addition Lands visitors into an area long used for nonmotorized recreation by a much larger number of visitors. For example, NPS acknowledged that some aspects of the nonmotorized user experience would be negatively affected, including the natural soundscape, by the introduction of recreational ORVs into the Addition. FEIS at 270. However, despite the inevitable and serious user conflicts that the decision will create to the soundscape and to more general user

experiences, NPS nonetheless determined that user conflicts would be “infrequent” and “minor.” However, because longstanding environmentally benign uses in the Addition (*e.g.*, hiking, birdwatching, etc.) will be sharply circumscribed by the introduction of “substantial” ORV use and ORV-assisted hunting, and will make it difficult, if not impossible, to find the solitude and recreational opportunities that the Addition’s longtime visitors seek, particularly since NPS’s action will transform most of the Addition’s hiking trails, in use for the past several decades, into ORV trails. Thus, the failure to meaningfully analyze the effects of the Preferred Alternative on longstanding Addition Lands visitors violates NEPA and its implementing regulations, 40 C.F.R. §§ 1502.15, 1502.16, and is arbitrary and capricious under the APA. 5 U.S.C. § 706(2)(A).

106. In its Final EIS, NPS inadequately analyzed the no-action alternative by conducting its alternatives analysis in a vacuum and by disregarding the effects of extensive ORV use and ORV-assisted hunting in the original Preserve. NPS did not select the no-action alternative because “[u]nder the no-action alternative, recreational ORV use would be nonexistent . . . [and] the resulting impacts on visitor use and experience would be long term, moderate, and adverse.” FEIS at 290. However, NPS’s no-action alternative analysis entirely failed to consider the 400 miles of primary trails and many hundreds of miles of secondary trails in the *original* Preserve, as well as extensive ORV-assisted hunting opportunities in the original Preserve, that should have been considered and analyzed as part of the no-action alternative. *See* FEIS at 434. Therefore, because the no-action alternative would, in fact, not result in “nonexistent” ORV use in the Preserve as a whole, but instead would continue NPS management of extensive ORV use in the Preserve, while protecting the Addition from such use, NPS’s failure to analyze ORV use and ORV-assisted hunting opportunities in the original Preserve was

arbitrary, capricious, and contrary to NEPA and its implementing regulations. 42 U.S.C. § 4332(2)(C)(3); 40 C.F.R. § 1502.14; 5 U.S.C. § 706(2)(A).

107. NPS violated NEPA by failing to provide an opportunity for public comment on the substantially revised wilderness eligibility assessment, which is a key component of NPS's selected alternative. By failing to provide meaningful public input and involvement on this critical part of NPS's selected alternative that has significant consequences on the amount and location of both wilderness designations and ORV trails in the Addition, NPS violated NEPA's implementing regulations that require public participation in the NEPA process, 40 C.F.R. §§ 1503.1-1503.4, 1506.6, and the Final EIS was arbitrary, capricious, and contrary to law. 5 U.S.C. § 706(2)(A).

108. In its Final EIS, NPS improperly relied on a long-term regional restoration project that will not be completed for at least thirty years, if at all, and NPS enforcement efforts related to ORV use. NPS determined that both the restoration plan and enforcement efforts would provide substantial beneficial impacts and would offset other adverse effects of the decision. However, because of the generalized and nondiscretionary nature of the restoration plan – which is not specific to the Addition in any event – and the extremely lax enforcement efforts on illegal ORV use in the original Preserve as well as the Addition, NPS's analysis of and reliance on these efforts is legally improper. This failure to adequately analyze these efforts violates NEPA's implementing regulations, 40 C.F.R. §§ 1502.15, 1502.16, and is arbitrary and capricious under the APA. 5 U.S.C. § 706(2)(A).

Claim Six: NPS's Violations of the Administrative Procedure Act

109. By substantially modifying its Preferred Alternative from the Draft EIS to the Final EIS concerning the amount of wilderness that NPS would propose to Congress for

wilderness designation, resulting in a reduction in that proposal from 85,862 acres (approximately 58% of the Addition) – which had overwhelming public support – to only 47,067 acres (approximately 32% of the Addition), NPS acted arbitrarily and capriciously under the APA by failing to adequately explain its substantial departure from its conclusion in the Draft EIS. 5 U.S.C. § 706(2)(A).

110. By entirely failing to explain why it could not propose all 71,263 acres for wilderness designation that NPS found to be eligible wilderness in the Final Wilderness Study – which would, in any event, constitute far less than the 85,862 acres proposed for wilderness designation in NPS’s Preferred Alternative in the Draft EIS – NPS acted arbitrarily and capriciously under the circumstances by providing no explanation, much less a reasoned one, for the dramatic reduction in its proposal for wilderness designation, in violation of the APA. 5 U.S.C. § 706(2)(A).

111. NPS violated the APA by failing to address in any way the comments provided on the Final GMP/EIS by Plaintiffs, other members of the public, and the EPA. The unexplained failure to respond to these detailed and extensive comments raising serious concerns about the legality of NPS’s decision under various statutory and regulatory schemes violates the CEQ regulations, 40 C.F.R. § 1503.4, and in any event is arbitrary and capricious under the APA. 5 U.S.C. §§ 706(2)(A)-(D).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

1. Declare that NPS violated the Wilderness Act, NEPA, the Addition Act, the Organic Act, and Executive Orders 11,644 and 11,989 by way of the unlawful actions or omissions

described herein; and declare that FWS violated the ESA and APA by issuing a legally deficient Biological Opinion and that NPS violated the ESA by relying on that Biological Opinion;

2. Pursuant to the APA, set aside and remand NPS's Final GMP/EIS/Wilderness Study/ORV Plan for the Addition; and pursuant to the APA and the ESA, set aside and remand FWS's Biological Opinion;

3. Enjoin NPS from permitting ORVs in the Addition until and unless Defendants fully comply with all applicable laws;

4. Award Plaintiffs their reasonable attorney fees and litigation costs in this action; and

5. Grant such other and further relief as the Court may deem just and proper.

Respectfully Submitted,

Matthew Farmer – Trial Counsel
Florida Bar No. 0793469
Farmer and Fitzgerald, P.A.
708 East Jackson Street
Tampa, FL 33602
(813) 228-0095
(813) 224-0269 (fax)
Mattfarmer1@aol.com

_____/s/_____
William S. Eubanks II (*pro hac vice* pending)
D.C. Bar No. 987036
beubanks@meyerglitz.com

_____/s/_____
Eric R. Glitzenstein (*pro hac vice* pending)
D.C. Bar No. 358287
eglitzenstein@meyerglitz.com

Meyer Glitzenstein & Crystal
1601 Connecticut Ave., N.W., Suite 700
Washington, D.C. 20009
(202) 588-5206; (202) 588-5049 (fax)

Of Counsel: _____/s/_____
Paula Dinerstein
D.C. Bar No. 333971
Public Employees for Environmental Responsibility
2000 P St., N.W. Suite 240
Washington, D.C. 20036
202-265-7337; 202-265-4192 (fax)

Counsel for Plaintiffs

November 3, 2011