

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DEFENDERS OF WILDLIFE, <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No.
)	04-1230 (GK)
GALE NORTON, <u>et al.</u> ,)	
)	
Defendants.)	
)	

O R D E R

Plaintiffs are ten not-for-profit environmental organizations dedicated to the conservation of endangered species, including the Canada Lynx (Felis Lynx Canadensis), and one individual who has been involved with efforts to protect the Lynx since 1989.¹

Defendants, who are sued in their official capacities, are Dirk Kempthorne, Secretary of the U.S. Department of the Interior (the "Secretary"); Dale Hall, Director of the U.S. Fish and Wildlife Service ("FWS" or the "Service"); Carlos M. Gutierrez, Secretary of the U.S. Department of Commerce; William T. Hogarth, Assistant Administrator for Fisheries, National Oceanic and Atmospheric Association ("NOAA"); and Mike Johanns, Secretary of

¹ Plaintiffs are Defenders of Wildlife, Northwest Ecosystem Alliance, The Fund for Animals, Humane Society of the United States, Kettle Range Conservation Group, Oregon Natural Resources Council, Restore: The North Woods, Superior Wilderness Action Network, American Lands Alliance, Center for Biological Diversity, and Mark Skatrud.

the U.S. Department of Agriculture ("USDA").² In addition, the American Forest and Paper Association ("AFPA") has intervened in support of the Defendants.

Plaintiffs bring two distinct claims against Defendants. First, in the latest chapter of an almost decade-long dispute, they allege that FWS violated a 2002 Order of this Court requiring them to explain their finding that "collectively, the Northeast, Great Lakes, and Southern Rockies do not constitute a significant portion" of the distinct population segment ("DPS") of the Lynx, and therefore that the Lynx should not be listed as "endangered" under the Endangered Species Act ("ESA"), 16 U.S.C. §§ 1531 et seq.

Second, Plaintiffs challenge a set of regulations issued in 2003 by several federal agencies including Interior, Commerce, and FWS, known as the "Joint Counterpart Endangered Species Act Section 7 Consultation Regulations" ("Counterpart Regulations" or "the Regulations.") See 68 Fed. Reg. 68254 (Dec. 8, 2003). According to Plaintiffs, the Regulations are invalid under the ESA, the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 1332 et seq., and

² When Plaintiffs initially brought this action, Gale Norton was Secretary of Interior and the case was titled Defenders of Wildlife et al. v. Norton et al.. In the months since this case was filed, there has been significant turnover in the executive branch. On May 26, 2006, for instance, Dirk Kempthorne succeeded Norton. Pursuant to Federal Rule of Civil Procedure 25(d)(1), the Court has automatically substituted Kempthorne, Hall, Gutierrez, and Johanns for their predecessors in office who were originally named as Defendants in this action.

the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701 et seq..

This matter is now before the Court on Plaintiffs' Motion for Summary Judgment and Defendants' Cross Motion for Summary Judgment. Upon consideration of the Motions, Oppositions, and Replies, and the entire record herein, and for the reasons set forth in the accompanying Memorandum Opinion, Plaintiffs' Motion for Summary Judgment [Dkt. #36] is hereby **granted in part and denied in part** and Defendant's Cross Motion for Summary Judgment [Dkt. #39] is **granted in part and denied in part**. Specifically, it is

ORDERED that summary judgment is granted in favor of Plaintiffs as to their challenge to FWS's July 3, 2003 Remanded Lynx Determination. That Determination is again **remanded** so that the Service may clearly and specifically address the finding it was ordered to explain three years ago: that "[c]ollectively the Northeast, Great Lakes, and Southern Rockies do not constitute a significant portion of the [lynx] DPS;" and it is further

ORDERED that summary judgment is **granted** in favor of Defendants as to Plaintiffs' challenge to the Counterpart Regulations and that this claim is **dismissed**.

September 29, 2006

/s/
Gladys Kessler
U.S. District Judge

Copies to: attorneys on record via ECF