

Before the U.S. Forest Service

# Petition to Restrict Hounding in the Chequamegon-Nicolet National Forest



Photo by [Cowgirl Jules](#)

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On Behalf of Petitioners

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### III. SUMMARY OF REQUESTED ACTION

On behalf of Petitioners and their Wisconsin-based members, we hereby submit this Petition to the U.S. Forest Service to prohibit “hounding” – using packs of dogs to hunt, and training packs of dogs to pursue – wildlife including black bears, wolves,<sup>1</sup> coyotes, fox, and bobcats in the Chequamegon-Nicolet National Forest (“CNNF”). In the alternative, Petitioners request the Forest Service prohibit hounding in the CNNF’s Washburn District as the first step towards a phaseout of hounding.

The CNNF provides crucial habitat to numerous wildlife species, ranging from wolves to warblers. Every year, hundreds of thousands of people visit the CNNF to view these species and the natural features the CNNF provides.<sup>2</sup> To protect people and wildlife in the CNNF, the Forest Service has advised visitors to keep their dogs on leash.<sup>3</sup> However, every year, thousands of dogs are let off-leash, often in packs, to chase and harass wildlife like black bears, coyotes, foxes, and

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<sup>1</sup> Hunting gray wolves is not currently permitted, as this species is protected under the Endangered Species Act. *See Defs. of Wildlife v. U.S. Fish and Wildlife Serv.*, No. 21-cv-344-JSW, 2022 U.S. Dist. LEXIS 30123 (N.D. Cal. Feb. 10, 2022). However, Wisconsin law requires the Department of Natural Resources to establish a hunting season for gray wolves if this species becomes delisted from the federal or state endangered list, and this law provides that a wolf harvesting license authorizes the use of dogs to track or trail wolves. WIS. STAT. § 29.185.

<sup>2</sup> *See U.S. FOREST SERV., BENEFITS TO PEOPLE: AT A GLANCE REPORT – CHEQUAMEGON-NICOLET NAT’L FOREST 2* (2018) (there are “approximately 610,000 visitors to the Chequamegon-Nicolet National Forest”).

<sup>3</sup> *See Recreation*, U.S. FOREST SERV. - CHEQUAMEGON-NICOLET NAT’L FOREST.

bobcats in the CNNF. In doing so, these dogs reduce the abundance and diversity of wildlife in the CNNF and threaten the safety of those who visit it.

This Petition requests that the Forest Service exercise its rulemaking authority to protect wildlife and public safety. For the reasons explained below, the Forest Service should grant our Petition and promulgate a regulation or order prohibiting hounding throughout the CNNF or, in the alternative, in the Washburn District. Should the Forest Service fail to respond to this Petition in a timely manner, the Petitioner may pursue relief in federal court.<sup>4</sup>

#### IV. HOUNDING IN WISCONSIN

##### A. Packs of Dogs Chase Wildlife for Hunters to Kill

In Wisconsin, dogs may be used to hunt bears, wolves, small game mammals,<sup>5</sup> gamebirds,<sup>6</sup> furbearing animals,<sup>7</sup> and unprotected species.<sup>8</sup> How hunters use dogs depends, in large part, on the species hunted. In hunting gamebirds and small mammals such as rabbits and squirrels, hunters generally use dogs to point, flush, and retrieve, typically with the dogs in relatively close range of the hunter and under the hunter's control.<sup>9</sup> In hunting some larger mammals, however, hunters use dogs for a different purpose: to "hound," i.e., to track and chase the animal until a point where the hunter can shoot it. As used in this Petition, the term "hounding" refers to the practice of using dogs to hunt or chase animals including black bears, coyotes, foxes, bobcats, and wolves.

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<sup>4</sup> Many of Petitioners' Wisconsin members use CNNF for wildlife watching and other recreational pursuits are thus "interested persons" within the meaning of the APA. *See* 5 U.S.C. § 553(e) (granting any "interested person the right to petition for the issuance, amendment, or repeal of a rule"); *see also id.* §§ 702, 551(13) (providing that "agency action" includes "the whole or a part of an agency rule, . . . or the equivalent or denial thereof, or failure to act"); *id.* §§ 706(1), 706(2)(A) (granting a reviewing court the authority to "compel agency action unlawfully withheld or unreasonably delayed" and/or to "hold unlawful and set aside agency action . . . found to be . . . arbitrary, capricious, an abuse of discretion").

<sup>5</sup> "Small game mammals include rabbits, hares and squirrels." WISC. ADMIN. CODE § NR 1.13.

<sup>6</sup> Game birds are "birds that are in the wild and includes wild geese, brant, wild ducks, wild swan, rails, coots, gallinules, snipe, woodcock, plovers, sandpipers, ruffed grouse, prairie chicken, sharp-tailed grouse, pheasants, gray partridge, chukar partridge, bobwhite, quail, crows and wild turkey." WISC. STAT. § 29.001(39); *see also* WISC. ADMIN. CODE § NR 1.14.

<sup>7</sup> Furbearing animals are "muskrat, mink, weasel, beaver, fisher, otter, skunk, raccoon, fox, coyote, bobcat and opossum." WISC. ADMIN. CODE § NR 1.16.

<sup>8</sup> These include opossum, porcupine, skunk, weasel, woodchuck, chukar partridge, coturnix quail, English sparrows, Eurasian collared doves, starlings, and "[a]ny other wild animal" not explicitly protected. WISC. ADMIN. CODE § NR 10.04; WISC. DEP'T OF NAT. RES., WISCONSIN HUNTING REGULATIONS FALL 2022-SPRING 2023 5 (2022) [hereinafter WISCONSIN HUNTING REGULATIONS 2022-2023].

<sup>9</sup> *See Bird Dog Breeds*, PHEASANTS FOREVER, <https://www.pheasantsforever.org/hunt/bird-dog-breeds.aspx#:~:text=HUNTING%20PARTNERS%3A&text=Flushing%20dogs%20work%20cover%20close,birdy%2C%E2%80%9D%20and%20be%20ready> (last visited Apr. 18, 2022); Keith Sutton, *Rabbits & Beagles: Tips From an Expert Hunter*, BASS PRO SHOPS (Aug. 17, 2021), <https://1source.basspro.com/news-tips/small-game/7221/rabbits-beagles-tips-expert-hunter>.

Typically, hounding involves using a pack of dogs to track and chase animals.<sup>10</sup> For bobcats, coyotes and foxes, the regulations of the Department of Natural Resources (“DNR”) do not limit the number of dogs that hunters can use in a single pack.<sup>11</sup> While hunters can use no more than six dogs in a single pack when hunting wolves and bears, DNR regulations do not restrict on how frequently wolf or bear hunters can substitute dogs.<sup>12</sup> As a result, there is no limit on the number of dogs that can be involved in a single hunt.

To track and chase these animals, hunters usually run their dogs off-leash.<sup>13</sup> Once a pack of dogs is unleashed, they will spend anywhere from a couple of minutes to a couple of days locating and trailing an animal, covering miles of off-trail terrain in the process.<sup>14</sup> In the past, hunters followed these pursuits on foot or horseback.<sup>15</sup> Staying within earshot of the dogs was critical, as hunters relied on their dogs to communicate how the pursuit was progressing (e.g., when the dogs were in close range of an animal or when that animal stopped running) through different barks and baying sounds.<sup>16</sup> Today, however, hunters need not follow their dogs as closely. GPS collars now allow hunters to track the dogs remotely and thus stay within electronic “earshot”—a distance extending far beyond the hunter’s natural auditory range.<sup>17</sup> Additionally, hunters need not travel on foot or horseback, as expanded road systems and use of all-terrain vehicles now allow the hunters to simply drive in the direction of the chase.<sup>18</sup>

In a successful hunt, dogs will chase the animal until it is in a position where the hunter can shoot it. For coyotes and foxes, this can entail the dogs either luring the animal into shooting range or subduing it by nipping its back leg, thereby severing its hamstring.<sup>19</sup> For wolves, it entails the dogs “baying up,” or circling a single wolf after it stops running.<sup>20</sup> For bobcats and

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<sup>10</sup> See Kenneth D. Elowe, *Bear Hunting With Hounds: Techniques and Effects on Bears and the Public*, 10 EAST. WORKSHOP BLACK BEAR RES. AND MANAGE 101 (1990); see also *Bobcat hunting*, BOOK YOUR HUNT, <https://www.bookyourhunt.com/en/bobcat-hunting> (last visited Apr. 18, 2022); Matthew J. Breuer, *Coyote hunting with hounds is different, exciting*, GRAND VIEW OUTDOORS (Mar. 29, 2018), <https://www.grandviewoutdoors.com/predator-hunting/coyote-hunting-hounds-different-exciting>; Maria Cramer, *Wisconsin Hunters Kill Over 200 Wolves in Less Than 3 Days*, N.Y. TIMES (Mar. 3, 2021), <https://www.nytimes.com/2021/03/03/us/wisconsin-wolves-killings.html>.

<sup>11</sup> See WISC. ADMIN. CODE, Ch. NR 10.

<sup>12</sup> *Id.* § NR 10.101(2); WISC. STAT. § 29.185(6).

<sup>13</sup> See *Guidance for Hunters and Pet Owners*, WISC. DEP’T NAT. RES., <https://dnr.wisconsin.gov/topic/WildlifeHabitat/wolf/guidance.html> (last visited Apr. 18, 2022) (stating that these dogs “often hunt some distance from hunters”).

<sup>14</sup> Elowe, *supra* note 10, at 101–03.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> See *id.*

<sup>18</sup> *Id.*

<sup>19</sup> Juliet Macur, *Coyote vs. Greyhound: The Battle Lines Are Drawn*, N.Y. TIMES (Apr. 25, 2010), <https://www.nytimes.com/2010/04/26/sports/26greyhounds.html>; Mark Kayser, *Coyote Dogs: Why You Want One*, NRA AM. HUNTER (Nov. 26, 2018), <https://www.americanhunter.org/content/coyote-dogs-why-you-want-one/>. While regulations prohibit dogs from killing wild animals, “dogs get to the coyote before hunters can arrive,” and when fighting occurs, dogs can kill the coyote. *The Culture of Coyote Killing*, LEAGUE OF HUMANE VOTERS OF WISC., <https://www.lohvwi.com/wolves/coyote-killing/> (last visited Apr. 18, 2022).

<sup>20</sup> David Zeug, *Let Loose the Hounds: Why We Should Use Hounds for Wolf Hunting*, PETERSON HUNTING (Mar. 2, 2015), <https://www.petersenshunting.com/editorial/let-loose-hounds-hunt-wolves-hounds/272614>.

bears, it involves the dogs harassing the animal until it seeks refuge in a tree.<sup>21</sup> The final stage of the hunt is particularly dangerous for dogs because if they are too aggressive, they can be “injured repeatedly or killed.”<sup>22</sup> As Dave Clausen, a retired veterinarian in Burnett County, Wisconsin, reported: it is not uncommon “to see one or two dogs a weekend [in the veterinarian’s office] that had been in a tussle with a bear,” suffering lacerations, hernias, fractured ribs, and even collapsed lungs.<sup>23</sup>

## B. Regulation of Hounding in Wisconsin

Despite these dangers, hunters need no special authorization or training to use dogs while hunting in Wisconsin; hunters only need a hunting license and tag.<sup>24</sup> They do not need to show whether they intend to use dogs, how many dogs they intend to use, or whether these dogs are vaccinated or otherwise fit to hunt.<sup>25</sup> Additionally, any person may train or trial<sup>26</sup> dogs by unleashing them on free-roaming wild animals, provided the dogs do not kill, or cause to be killed, any such animal.<sup>27</sup> While there are some temporal and geographic restrictions, hunters generally do not need a dog training license, permit, or proof of vaccination to train or trial dogs on free-roaming wild animals.<sup>28</sup>

This lack of regulatory oversight is particularly striking considering the number of people that use dogs to hunt in Wisconsin. In 2020, nearly 1,500 people are estimated to have hunted black bears with the aid of dogs.<sup>29</sup> During the February 2021 wolf hunt, an estimated 1,200 people used dogs to hunt wolves.<sup>30</sup> During the 2020-21 season, over 700 people used dogs to hunt

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<sup>21</sup> See Peter Fimrite, *Assembly considers ban on using dogs to tree prey*, SFGATE (May 29, 2012), <https://www.sfgate.com/news/article/Assembly-considers-ban-on-using-dogs-to-tree-prey-3591185.php>.

<sup>22</sup> Elowe, *supra* note 10, at 104.

<sup>23</sup> Henry Redman, *Conflicts between bear hunters and property owners in Northwoods lead to fears of ‘cowboy war’*, WISC. EXAMINER (Feb. 22, 2022), <https://wisconsinexaminer.com/2022/02/22/conflicts-between-bear-hunters-and-property-owners-in-northwoods-lead-to-fears-of-cowboy-war/>; Redman, *supra* note 148, at 5.

<sup>24</sup> See WISCONSIN HUNTING REGULATIONS 2022-2023, *supra* note 8.

<sup>25</sup> *See id.*

<sup>26</sup> A “dog trial” is “any organized competitive field event involving sporting dog breeds which is sanctioned, licensed or recognized by a local, state, regional or national dog organization.” WISC. ADMIN. CODE § NR 17.001.

<sup>27</sup> WISC. ADMIN. CODE NR §§ 17.04, 17.08.

<sup>28</sup> WISC. ADMIN. CODE § NR 17.04. Exceptions to this rule are that: “[a] hound dog training license is required to train on DNR public hunting land April 15 – June 30,” and “[a] license is also necessary to train [rabbit and raccoon dogs] from May 1 to June 30 on all public and private land in the Northern Restricted Zone.” *Dog Training and Trialing*, WISC. DEP’T NAT. RES., <https://dnr.wisconsin.gov/topic/hunt/dogtraining.html#:~:text=Hound%20dog%20training%20on%20free%20roaming%20wild%20animals&text=Dogs%20may%20be%20trained%20using,aid%20of%20dogs%20is%20open> (last visited Apr. 18, 2022).

<sup>29</sup> 11,535 people were authorized to hunt black bear in 2020. BRIAN DHUEY ET AL., WISC. DEP’T NAT. RES., WISCONSIN BLACK BEAR HARVEST REPORT 1 (2020). Of these authorization holders, about 13% (1,499 people) use dogs. ROBERT HOLSMAN ET AL., WISC. DEP’T NAT. RES., A SURVEY OF APPLICANT PREFERENCES FOR BLACK BEAR HUNTING OPPORTUNITIES IN WISCONSIN 8 (2018).

<sup>30</sup> The DNR issued 1,486 tags for this hunt, and “[a]bout 85 percent of hunters [1,263 people] used dogs to track down wolves.” Theresa Machemer, *Hunters Killed 82% More Wolves Than Quota Allowed in Wisconsin*, SMITHSONIAN MAG. (Mar. 2, 2021), <https://www.smithsonianmag.com/smart-news/hunters-kill-82-more-wolves-quota-allowed-wisconsin-180977132/>.



bobcats.<sup>31</sup> While the DNR’s wildlife reports do not indicate how many coyote hunters use dogs, they do provide that nearly 20,000 people hunted coyote in Wisconsin during the 2020-21 season.<sup>32</sup> The DNR does not report how many people train dogs on free-roaming wild animals.<sup>33</sup> The DNR has estimated that Wisconsin hunters used approximately 12,000 dogs to pursue wildlife in 2014.<sup>34</sup>

### C. Hounding in the Chequamegon-Nicolet National Forest

The Chequamegon-Nicolet National Forest (“CNNF”) covers more than 1.5 million acres of land in Wisconsin<sup>35</sup> and provides prime habitat for wildlife including black bears, gray wolves, bobcats, foxes, and coyotes.<sup>36</sup> Hounding is permitted in the CNNF during seasons and locations specified in the DNR’s regulations, except as limited by federal law.

Currently, DNR regulations permit hounding in Wisconsin’s **northern zone** (fully encompassing the CNNF) during the following seasons:<sup>37</sup>

Species	Season
Black Bear (Hounding)	September 14 – October 11
Black Bear (Dog Training)	July 1 – August 31, and September 14 –October 11
Bobcat (Hounding)	October 15 – Dec. 25
Coyote (Hounding)	Year-round except from May 1 – June 30
Fox: Red, Gray (Hounding)	Oct. 15 – Feb. 15
Any free-roaming wild animal other than Black Bear (Dog Training)	Year-round except from May 1 – June 30

Following a court order restoring protections for the gray wolf under the Endangered Species Act, there is not currently a wolf hunting season in Wisconsin.<sup>38</sup> However, Wisconsin statute directs the DNR to allow wolf hunting from November through February whenever the gray wolf

<sup>31</sup> There were 3,075 bobcat harvest authorization holders for the 2020-21 season. BRIAN DHUEY & SHAWN ROSSLER, WISC. DEP’T NAT. RES., BOBCAT HARVEST 2 (2020). Of these authorization holders, about 77% (2,376 people) actually hunted bobcat during this time; of these hunters, about 31% (736 people) used dogs to do so. JES REES LOHR ET AL., WISC. DEP’T NAT. RES., BOBCAT HUNTER/TRAPPER SURVEY 3–4 (2020).

<sup>32</sup> BRIAN DHUEY, WISC. DEP’T NAT. RES., SMALL GAME HARVEST 6 (2021).

<sup>33</sup> See *Wisconsin Wildlife Reports*, WISC. DEP’T NAT. RES., <https://dnr.wisconsin.gov/topic/WildlifeHabitat/reports.html> (last visited Apr. 18, 2022).

<sup>34</sup> Brian Dhuey, Email to Melanie Weberg dated September 4, 2015 (available by request from author).

<sup>35</sup> *Welcome to the Chequamegon-Nicolet National Forest!*, U.S. FOREST SERV., <https://www.fs.usda.gov/cnnf> (last visited Apr. 18, 2022).

<sup>36</sup> See U.S. FOREST SERV., CHEQUAMEGON-NICOLET NATIONAL FORESTS, 2004 LAND AND RESOURCE MANAGEMENT PLAN 3-12, 3-22, (2004) [hereinafter 2004 LAND & RESOURCE MANAGEMENT PLAN]; *Wilderness Areas on the Chequamegon-Nicolet*, U.S. FOREST SERV. CHEQUAMEGON-NICOLET NAT’L FOREST, <https://www.fs.usda.gov/detail/cnnf/recreation/?cid=stelprdb5176612> (last visited Apr. 18, 2022).

<sup>37</sup> WISCONSIN HUNTING REGULATIONS 2022-2023, *supra* note 8, at 3, 5–6.

<sup>38</sup> *Wolves in Wisconsin*, WISC. DEP’T NAT. RES., <https://dnr.wisconsin.gov/topic/WildlifeHabitat/wolf/index.html> (last visited Apr. 18, 2022).



is not listed on the federal endangered species list.<sup>39</sup> During this season, a person “may hunt wolves using dogs beginning with the first Monday that follows the last day of the regular season that is open to hunting deer with firearms and ending on the last day of February of the following year.”<sup>40</sup>

While hounding is generally permitted in the CNNF pursuant to DNR regulations, the Forest Service has established some additional restrictions on hunting. For instance, federal regulations prohibit anybody from discharging a firearm:

- (1) In or within 150 yards of a residence, building, campsite, developed recreation site or occupied area, or
- (2) Across or on a National Forest System road or a body of water adjacent thereto, or in any manner or place whereby any person or property is exposed to injury or damage as a result in such discharge.
- (3) Into or within any cave.<sup>41</sup>

Additionally, per a Supervisor’s Order, all hunting (including hounding) is prohibited in the Northern Great Lakes Visitor Center and the National Forest System lands adjacent thereto.<sup>42</sup> This area covers 180 acres in total of the CNNF, located in Bayfield county.<sup>43</sup> This order also prohibits the training of bear hunting dogs and “pursuit of big game animals with the aid of a dog” in the Mondeaux Flowage Area and National Forest System lands adjacent thereto (located in Taylor county) between April 1 and September 30 of each calendar year.<sup>44</sup>

However, the Forest Service does not currently restrict hounding in any other part of the CNNF. As a result, the vast majority of the CNNF is open to hounding, which has grave implications for a wide variety of threatened, endangered, and sensitive species, as well as for public safety.

## **V. THREATENED AND ENDANGERED SPECIES**

### **A. Legal Background: The Endangered Species Act**

In 1973, Congress enacted the Endangered Species Act (“ESA”) to protect threatened and endangered species as well as the ecosystems upon which they depend.<sup>45</sup> The ESA confers a duty to all federal agencies to conserve and protect all species listed as threatened or endangered.

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<sup>39</sup> WISC. STAT. § 29.185.

<sup>40</sup> *Id.*

<sup>41</sup> 36 C.F.R. § 261.10(d).

<sup>42</sup> *Occupancy and Use Restrictions for the Chequamegon-Nicolet National Forest*, U.S. FOREST SERV. CHEQUAMEGON-NICOLET NAT’L FOREST (June 2009), <https://www.fs.usda.gov/detail/cnnf/notices/?cid=STELPRDB5182020>.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> 16 U.S.C. § 1531(b).

To protect endangered fish and wildlife species, the ESA prohibits “taking” them.<sup>46</sup> “Take” is defined to include killing, harassing, harming, or attempting to engage in such conduct.<sup>47</sup> The term “harm” refers to acts which kill or injure wildlife, including “significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.”<sup>48</sup> This prohibition on take does not apply to plants.<sup>49</sup>

To conserve threatened and endangered species, the ESA mandates federal agencies “utilize their authorities in furtherance of the purposes” of the ESA “by carrying out programs for the conservation of endangered species and threatened species.”<sup>50</sup> Courts have held that this mandate requires the agency to “do far more than merely avoid the elimination of protected species.”<sup>51</sup> Rather, it imposes an “affirmative duty to increase [their] population.”<sup>52</sup>

## **B. Hounding Impacts Threatened and Endangered Species in the CNNF**

The CNNF is home to multiple species listed as threatened or endangered under the ESA. These species including the gray wolf (*Canis lupus*) and Fassett’s locoweed (*Oxytropis campestris var. chartacea*), as described below.<sup>53</sup>

### **1. The Gray Wolf (*Canis lupus*)**

Gray wolves are social and territorial animals, normally living in packs of five to twelve.<sup>54</sup> Historically, the “the wolf was the world’s most widely distributed mammal,” occupying the majority of North America.<sup>55</sup> However, extensive hunting and extermination campaigns in the 19<sup>th</sup> and 20<sup>th</sup> centuries reduced the wolf population dramatically.<sup>56</sup> In 1978, the Fish and Wildlife Service listed the gray wolf as an endangered species in the conterminous United States.<sup>57</sup> On

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<sup>46</sup> *Id.* § 1538(a)(1)(b). For species that are listed as threatened, rather than endangered, the U.S. Fish and Wildlife Service “may,” but is not required to, extend this “take prohibition” to the species. *Id.* § 1533(d).

<sup>47</sup> *Id.* § 1532(19).

<sup>48</sup> 50 C.F.R. § 17.3.

<sup>49</sup> See 16 U.S.C. § 1538(a)(1). However, the ESA does provide that “it is unlawful for any person subject to the jurisdiction of the United States to . . . remove and reduce to possession any [endangered plant species] from areas under Federal jurisdiction . . . or maliciously damage or destroy any such species on any such area; or remove, cut, dig up, or damage or destroy any such species on any other area in knowing violation of any law or regulation of any state.” *Id.* §1538(a)(2).

<sup>50</sup> *Id.* § 1536(a)(1).

<sup>51</sup> *Defs. of Wildlife v. Andrus*, 428 F. Supp. 167, 170 (D.D.C. 1977); see also *Sierra Club v. Glickman*, 156 F.3d 606, 618 (5th Cir. 1998) (finding that § 7(a)(1) required U.S. Dep’t of Agriculture to develop its own conservation program for listed species dependent on the Edwards aquifer).

<sup>52</sup> *Defs. of Wildlife*, 428 F. Supp. at 170.

<sup>53</sup> 2004 LAND AND RESOURCE MANAGEMENT PLAN, *supra* note 36, at 2-18–2-19.

<sup>54</sup> L.D. Mech & L. Boitani, *Gray wolf (Canis lupus) Species Status Account*, in CANIDS: FOXES, WOLVES, JACKALS AND DOGS – STATUS SURVEY AND CONSERVATION ACTION PLAN 124–128 (Claudio Sillero-Zubiri et al. eds., 2004).

<sup>55</sup> *Id.* at 125.

<sup>56</sup> *Id.* at 128; *Wolf Wars: America’s Campaign to Eradicate the Wolf*, PBS (Sept. 14, 2008),

<https://www.pbs.org/wnet/nature/the-wolf-that-changed-america-wolf-wars-america-campaign-to-eradicate-the-wolf/4312/#:~:text=The%20U.S.%20Fish%20and%20Wildlife,dens%2C%20and%20hunted%20with%20dogs.>

<sup>57</sup> Endangered and Threatened Wildlife and Plants; Reclassification of the Gray Wolf in the United States and Mexico, with Determination of Critical Habitat in Michigan and Minnesota, 43 Fed. Reg. 9607 (Mar. 9, 1978).

November 23, 2020, after decades of efforts to reduce federal protections for wolves, the Fish and Wildlife Service issued a final rule removing the gray wolf in most of the U.S. from the list of endangered species.<sup>58</sup> However, on February 10, 2022, a federal judge reversed this rule.<sup>59</sup> As a result, gray wolves in Wisconsin are currently listed under the ESA as an endangered species.<sup>60</sup>

The CNNF plays a critical role in this species' conservation and recovery since it provides some of Wisconsin's largest tracts of suitable wolf habitat.<sup>61</sup> Moreover, much of this habitat is currently occupied by wolves. In the Chequamegon portion of the CNNF, wolves occupy 80% or more of suitable habitat, according to the Forest Service's most recent monitoring and evaluation report.<sup>62</sup> In the Nicolet portion, the Forest Service estimates that wolves occupy 40% or more of suitable habitat.<sup>63</sup> Additionally, a survey of wolf country residents indicates that public wolf acceptance is highest on national forests—higher than state forests, county forests, national wildlife refuges, state wildlife refuges, and other places.<sup>64</sup>

Due to the presence of wolves in the CNNF, dogs that are used to hound wildlife in the forest are at risk of encountering them. This risk is heightened when dogs roam beyond the visual or auditory range of hunters.<sup>65</sup> Since wolves typically avoid people, they are unlikely to approach dogs that are in close range of hunters.<sup>66</sup> However, dogs used to hound bears, coyotes, foxes, and bobcats often run some distance beyond this range, potentially straying into wolf rendezvous sites and other areas where wolves are concentrated.<sup>67</sup> Additionally, the baying sounds made by dogs while hounding can draw territorial wolves, who may interpret these noises as a challenge.<sup>68</sup> This risk is highest in July through September, as well as in December, since “[t]hese periods signal the summer rendezvous period, and the approach of the winter breeding season” for wolves.<sup>69</sup> Because these periods overlap with black bear, coyote, fox, and bobcat hounding seasons, dogs that are used to hound these animals are particularly likely to encounter wolves.

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<sup>58</sup> Endangered and Threatened Wildlife and Plants; Removing the Gray Wolf (*Canis lupus*) From the List of Endangered and Threatened Wildlife, 85 Fed. Reg. 69,778 (Nov. 3, 2020).

<sup>59</sup> *Def. of Wildlife v. U.S. Fish and Wildlife Serv.*, No. 21-cv-344-JSW, 2022 U.S. Dist. LEXIS 30123 (N.D. Cal. Feb. 10, 2022).

<sup>60</sup> U.S. FISH & WILDLIFE SERV., 2022 *Gray Wolf Questions and Answers*, <https://www.fws.gov/sites/default/files/documents/2022-Gray-Wolf-FAQs.pdf>.

<sup>61</sup> See WISC. WOLF ADVISORY COMM., WISC. DEP'T NAT. RES., 1999 WOLF MANAGEMENT PLAN 22 (1999).

<sup>62</sup> U.S. FOREST SERV., CHEQUAMEGON-NICOLET NATIONAL FORESTS LAND AND RESOURCE MANAGEMENT PLAN MONITORING AND EVALUATION REPORT: 2016-2017 33 (2019) [hereinafter 2016-2017 MONITORING & EVALUATION REPORT].

<sup>63</sup> *Id.*

<sup>64</sup> 1999 WOLF MANAGEMENT PLAN, ADDENDUM 44 (2007).

<sup>65</sup> Adrian P. Wydeven et al., *Characteristics of Wolf Packs in Wisconsin: Identification of Traits Influencing Depredation*, in PEOPLE AND PREDATORS: FROM CONFLICT TO COEXISTENCE 28–49 (Nina Fasione et al. eds. 2004).

<sup>66</sup> *Guidance for Hunters and Pet Owners*, *supra* note 13.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*; See also Wydeven et al., *supra* note 65.

When encounters between wolves and dogs occur, they often turn violent. In the last five years, more than 100 dogs have been injured or killed by wolves while hunting in Wisconsin.<sup>70</sup> While less often reported, these attacks result in injuries to wolves as well. During Wisconsin's 2021 February wolf hunt, at least one wolf was mauled by hunting dogs.<sup>71</sup> During Wisconsin's 2012 bear hunting season, one dog was reported to have fought an attacking wolf "over a 60 yard length."<sup>72</sup> Such injuries to wolves constitute "take," which is prohibited under the ESA.<sup>73</sup>

Even in the absence of documented injury to wolves, harm can still be inferred during violent encounters between wolves and dogs. When wolves kill or injure hunting dogs on public lands, they are not typically seeking food; instead, they are "react[ing] to dogs as trespassers in territorial defense, or as competitors."<sup>74</sup> Usually, these reactions result from "dogs get[ting] too close to wolf pups at summer rendezvous sites."<sup>75</sup> By disturbing these summer rendezvous sites and approaching wolf pups, dogs can impair wolves' "essential behavioral patterns," potentially harming wolves in violation of the ESA.<sup>76</sup>

Finally, even when these encounters are not violent, they can still impair wolf conservation, as dogs can transmit several deadly diseases to wolves. These diseases include canine parvovirus,<sup>77</sup> canine distemper virus,<sup>78</sup> sarcoptic mange,<sup>79</sup> and heartworm.

Canine parvovirus (CPV) is "a highly contagious DNA virus" that "can cause vomiting, bloody diarrhea, fever and anorexia in dogs, often leading to death."<sup>80</sup> It is transmitted mainly by the fecal-oral route, though direct contact between hosts may also spread this disease.<sup>81</sup> While domestic dogs are "a primary maintenance host species for CPV," this disease can spillover into gray wolf populations and pose a profound threat to conservation.<sup>82</sup> For instance, in the greater

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<sup>70</sup> See *Gray Wolf Depredation Reports and Maps*, WISC. DEP'T NAT. RES., <https://dnr.wisconsin.gov/topic/WildlifeHabitat/wolf/maps.html> (last visited Apr. 18, 2022) (this number was calculated by adding the number of "confirmed and probable wolf depredations" of hunting dogs from 2017-2021, as provided in the individual wolf depredation reports).

<sup>71</sup> See RANDY JOHNSON & ANNA SCHNEIDER, WISC. DEP'T NAT. RES., WISCONSIN WOLF SEASON REPORT 4 (2021).

<sup>72</sup> Eric Conn, (*GRAPHIC*) *Photos: Wisconsin Wolf Pack Kills Hunting Dog*, PETERSEN'S HUNTING (Oct. 16, 2012), <https://www.petersenshunting.com/editorial/graphic-photos-wisconsin-wolf-pack-kills-hunting-dog/273065>.

<sup>73</sup> See 50 C.F.R. § 17.3.

<sup>74</sup> Wydeven et al., *supra* note 65, at 41.

<sup>75</sup> *Id.* at 43.

<sup>76</sup> See 50 C.F.R. § 17.3.

<sup>77</sup> L. D. Mech & S. M. Goyal, *Canine Parvovirus Effect on Wolf Population Change and Pup Survival*, 29 J. WILDL. DIS. 330, 332 (1993) (stating that the wolves in the study area "live close enough to domestic dogs to have contracted [canine parvovirus] from them originally, although it is unknown whether that was the source of infection").

<sup>78</sup> Alexandra Muller et al., *Domestic Dog Origin of Canine Distemper Virus in Free-ranging Wolves in Portugal as Revealed by Hemagglutinin Gene Characterization*, 47 J. WILDL. DIS. 725, 725 (2011) (suggesting that CDV found in studied wolves "resulted from transmission events from local domestic dogs rather than from wildlife species"); Andreas Beineke et al., *Cross-Species Transmission of Canine Distemper Virus – an Update*, 1 ONE HEALTH 49, 50 (2015) ("[p]hylogenetic analysis suggest a CDV spillover from domestic dogs to free-ranging . . . wolves").

<sup>79</sup> See Boris Fuchs et al., *Sarcoptic Mange in the Scandinavian Wolf *Canis Lupus* Population*, 12 BMC VET. RES. 156, July 2016, at 1–2.

<sup>80</sup> Abdelkader Behdenna et al., *Transmission Ecology of Canine Parvovirus in a Multi-Host, MultiPathogen System*, 286 PROC. R. SOC. B, Mar. 2019, at 2.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

Minnesota population of wolves, CPV has reduced wolf pup survival by 40-60%.<sup>83</sup> This reduction has “limited the Minnesota wolf population rate of increase” and may have “reduced recolonization of new range.”<sup>84</sup>

Canine distemper virus (CDV) is another highly contagious virus that can cause fatal disease.<sup>85</sup> Affected animals can display a wide range of symptoms, including fever, difficulty breathing, seizures, and inflammation of the brain and spinal cord.<sup>86</sup> CDV may be transmitted from dogs to wolves through contact “with infected saliva, urine, feces or respiratory secretions.”<sup>87</sup> At the wolf population level, outbreaks of CDV is correlated with declines in population size and pack growth rates.<sup>88</sup>

Both dogs and gray wolves can become hosts for the mite *Sarcoptes scabiei*, which causes a skin disease called sarcoptic mange.<sup>89</sup> Transmission of sarcoptic mange “occurs through close contact between hosts.”<sup>90</sup> Once infested, wolves may “develop alopecia due to intense scratching and biting” and “may become debilitated and emaciated due to secondary bacterial infections and difficulties in catching the natural prey.”<sup>91</sup> As a result, sarcoptic mange “can reduce wolf pack size, annual pack growth rate and cause additive mortality.”<sup>92</sup>

Finally, both wolves and dogs can get heartworm. Scientists have documented high rates of heartworm in Wisconsin wolves. Some hypothesize that hounds, especially those brought from the south where heartworm is more prevalent, might be a cause of the higher rates of heartworm infection in the state’s wolves.

## 2. The Fassett’s Locoweed (*Oxytropis campestris* var. *chartacea*)

The Fassett’s locoweed is a perennial plant species that grows primarily along “sandy shorelines of land-locked seepage lakes” and, to a lesser extent, “on higher ground under the partial shade of adjacent vegetation.”<sup>93</sup> Typically, it blooms from May to June, with occasional plants blooming as late as November.<sup>94</sup> Its distribution is limited to “a maximum of 9 sites,” all located

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<sup>83</sup> L.D. Mech et al., *Demographic Effects of Canine Parvovirus on a Free-Ranging Wolf Population Over 30 Years*, 44 J. WILDL. DIS. 824, 824 (2008).

<sup>84</sup> *Id.*

<sup>85</sup> Beineke et al., *supra* note 78, at 49.

<sup>86</sup> Anna Burke, *Distemper in Dogs – Causes, Symptoms & Treatment*, AM. KENNEL CLUB (Mar. 5, 2022), <https://www.akc.org/expert-advice/health/distemper-in-dogs/>.

<sup>87</sup> *Canine Distemper*, CORNELL WILDL. HEALTH LAB, <https://cwhl.vet.cornell.edu/disease/canine-distemper> (last visited Apr. 18, 2022).

<sup>88</sup> Emily S. AlMBERG et al., *Parasite Invasion Following Host Reintroduction: a Case Study of Yellowstone’s Wolves*, 367 PHIL. TRANS. R. SOC. B 2840, 2846–48 (2012).

<sup>89</sup> Fuchs et al., *supra* note 79, at 1.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> U.S. FISH & WILDLIFE SERV., FASSETT’S LOCOWEED RECOVERY PLAN ii, 4 (1991) [hereinafter RECOVERY PLAN].

<sup>94</sup> U.S. FISH & WILDLIFE SERV., FASSETT’S LOCOWEED (*OXYTROPIS CAMPESTRIS* VAR. *CHARTACEA*) 5-YEAR REVIEW: SUMMARY AND EVALUATION 6 (2013) [hereinafter “2013 5-YEAR REVIEW”].

within the state of Wisconsin.<sup>95</sup> In 1988, the Fish and Wildlife Service listed this species as threatened under the ESA, and it has remained on this list since that time.<sup>96</sup>

There are two sites in the CNNF where this species is known to occur: the lakeshores of Mountain Lake and Pigeon Lake.<sup>97</sup> Both these lakes are located within the CNNF's Washburn District.<sup>98</sup> At these sites, the population size of this species can vary dramatically. In 2012, there were an estimated 5,000 plants at Mountain Lake and 125,000 at Pigeon Lake.<sup>99</sup> In 2015, no plants were reported at Pigeon Lake, and only 20 plants were reported at Mountain Lake.<sup>100</sup> In 2019 and 2020, "[i]t is very likely that all individuals and all potentially suitable habitat at [these] sites were underwater."<sup>101</sup> It is unknown how many individual plants there will be at these lakes once water levels recede.<sup>102</sup> However, these populations typically rebound once these shorelines become exposed again.<sup>103</sup>

Due in large part to this species' limited distribution and population, "any factor which could eliminate a large portion of a population" or "impact its habitat adversely could have major consequences" for the viability of the species.<sup>104</sup> The Fish and Wildlife Service has identified multiple threats to the Fassett's locoweed, including recreational use of the plant's habitat, trampling, and competition from invasive and non-native plants.<sup>105</sup> To protect the Fassett's locoweed from these threats, the Forest Service established a standard for this species in its 2004 Land & Resource Management Plan.<sup>106</sup> Standards are required courses of action to which the Forest Service must adhere.<sup>107</sup> This standard excludes "[a]ll land use activities (except population monitoring and those activities necessary to protect the site)" from "water's edge to the high-water mark and within a buffer zone 200 feet inland from the high-water mark" of Fassett's locoweed sites.<sup>108</sup>

At these sites, signs have been placed that inform the public of the presence of Fassett's locoweed.<sup>109</sup> However, nothing in the Forest Service's planning documents or monitoring and evaluation reports indicates that these sites are fenced off or otherwise protected from access. Packs of dogs used by hound hunters are not restrained by a leash and they often roam far

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<sup>95</sup> U.S. FISH & WILDLIFE SERV., FASSETT'S LOCOWEED (*Oxytropis campestris* var. *chartacea*) 5-YEAR REVIEW: SUMMARY AND EVALUATION 10 (2021) [hereinafter 2021 5-YEAR REVIEW].

<sup>96</sup> *Fassett's locoweed (Oxytropis campestris var. chartacea)*, U.S. FISH & WILDLIFE SERV., <https://ecos.fws.gov/ecp/species/209> (last visited Apr. 18, 2022).

<sup>97</sup> 2016-2017 MONITORING & EVALUATION REPORT, *supra* note 62, at 33-34.

<sup>98</sup> See WISC. DEP'T NAT. RES., MOUNTAIN LAKE STATE NATURAL AREA MAP, available at <https://dnr.wi.gov/topic/lands/naturalareas/documents/topomaps/map473.pdf>.

<sup>99</sup> 2013 5-YEAR REVIEW, *supra* note 95, at Appendix A-3.

<sup>100</sup> 2021 5-YEAR REVIEW, *supra* note 96, at 16.

<sup>101</sup> *Id.* at 5.

<sup>102</sup> *Id.* at 4.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.* at 8, 10.

<sup>105</sup> RECOVERY PLAN, *supra* note 93, at ii (stating that the "species is vulnerable to . . . trampling"); 2021 5-YEAR REVIEW, *supra* note 95, at 11.

<sup>106</sup> 2004 LAND AND RESOURCE MANAGEMENT PLAN, *supra* note 36, at 2-19.

<sup>107</sup> *Id.* at 2-1.

<sup>108</sup> *Id.* at 2-19.

<sup>109</sup> U.S. FOREST SERV., CHEQUAMEGON-NICOLET NATIONAL FORESTS FISCAL YEAR 2011 MONITORING AND EVALUATION REPORT 36 (2011).



beyond the hunter’s sight. If they encounter these sites, dogs can trample plants and alter the soil chemistry through their waste. As demonstrated below, these impacts can cause substantial harm to Fassett’s locoweed plants and hinder the Forest Service’s efforts to conserve them.

By trampling plants, dogs can “break off plant parts and rip entire plants out of the ground.”<sup>110</sup> Trampling can also cause reductions in the plant’s photosynthetic area, “flower density, and seed production per flower.”<sup>111</sup> Reductions in the plant’s photosynthetic area “can result in depleted carbohydrate reserves . . . and reduced plant vigor.”<sup>112</sup> Reduced flower density and seed production per flower can, in turn, reduce the plant’s reproduction success.<sup>113</sup> For these reasons, both the Fish and Wildlife Service and Forest Service have recognized that trampling by dogs is a threat to the Fassett’s locoweed.<sup>114</sup>

Dogs can also impact the Fassett’s locoweed by urinating and defecating at the sites these plants occur, thereby depositing nutrients such as nitrogen and phosphorus into the soil.<sup>115</sup> These nutrients count as “net inputs” because dogs are fed offsite (in contrast to wildlife species that feed off the land and recycle nutrients within the ecosystem).<sup>116</sup> Such inputs can substantially increase soil nutrient concentrations at Fassett’s locoweed sites.<sup>117</sup> This poses a threat to this species because it is adapted to survive in nutrient-poor conditions.<sup>118</sup> Increases in nutrient concentrations can degrade Fassett’s locoweed habitat and permit the establishment of invasive species that can compete with and overcrowd this species.<sup>119</sup>

In sum, hounding impairs the Forest Service’s conservation of both the gray wolf and Fassett’s locoweed—species that the Forest Service is obliged to conserve under the ESA. A prohibition on hounding would protect and conserve both these species by preventing injury and the spread of diseases to gray wolves, as well the trampling, habitat degradation, and spread of invasive species in Fassett’s locoweed sites. For these reasons, the Forest Service should prohibit hounding in the CNNF, or, in the alternative, in the Washburn district as the first step toward a phaseout of hounding. A prohibition in this district would protect all known Fassett’s locoweed sites in the CNNF and a significant portion of Wisconsin’s gray wolf population.<sup>120</sup>

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<sup>110</sup> David N. Cole & Christopher A. Montz, *Trampling Disturbance of High-Elevation Vegetation, Wind River Mountains, Wyoming, U.S.A.*, 34 ARCTIC, ANTARCTIC, AND ALPINE RES. 365, 365 (2002).

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> See Hannah Kang, *What Does Trampling Do to Wildflowers*, BAY NATURE (Apr. 17, 2019), <https://baynature.org/2019/04/17/what-does-trampling-do-to-wildflowers/>.

<sup>114</sup> *Threatened, Endangered, and Proposed (TEP) Plant Profile*, U.S. FOREST SERV., [https://www.fs.fed.us/wildflowers/Rare\\_Plants/profiles/TEP/oxytropis\\_campestris\\_chartacea/index.shtml](https://www.fs.fed.us/wildflowers/Rare_Plants/profiles/TEP/oxytropis_campestris_chartacea/index.shtml) (last visited Apr. 18, 2022); RECOVERY PLAN, *supra* note 93, at ii.

<sup>115</sup> Pieter De Frenne et al., *Nutrient Fertilization by Dogs in Peri-Urban Ecosystems*, 3 ECOL. SOLS. EVIDENCE e12128, Dec. 2022, at 1.

<sup>116</sup> *Id.* at 2.

<sup>117</sup> See *id.* at 1.

<sup>118</sup> See RECOVERY PLAN, *supra* note 93, at 22.

<sup>119</sup> See *id.*

<sup>120</sup> 2016-2017 MONITORING & EVALUATION REPORT, *supra* note 62, at 33–34; WISC. DEP’T NAT. RES., WISC. GRAY WOLF MONITORING REPORT: 15 APRIL 2020 THROUGH 14 APRIL 2021 (2021), available at [https://widnr.widen.net/s/vlfpznr12w/wisconsin\\_gray\\_wolf\\_2020\\_2021\\_final](https://widnr.widen.net/s/vlfpznr12w/wisconsin_gray_wolf_2020_2021_final). Compare with *Chequamegon-Nicolet National Forest - Maps & Publications*, U.S. FOREST SERV., <https://www.fs.usda.gov/main/cnnf/maps-pubs> (last visited Apr. 18, 2022).



## VI. REGIONAL FORESTER SENSITIVE SPECIES

### A. Legal Background: The National Forest Management Act

The National Forest Management Act of 1976 (“NFMA”) requires the Forest Service to establish land and resource management plans for each Forest Service Unit that “provide[s] for diversity of plant and animal communities.”<sup>121</sup> Regulations promulgated under NFMA require the Forest Service to maintain viable populations and “support the persistence of” desirable species.<sup>122</sup> However, some of these species require “special management emphasis to ensure their viability and to preclude trends toward endangerment that would result in the need for Federal listing.”<sup>123</sup> These species are designated as Regional Forester Sensitive Species (“sensitive species”). The Regional Forester may identify species as sensitive if they exhibit “[s]ignificant current or predicted downward trends” in (a) “population numbers or density,” or (b) “habitat capability that would reduce a species’ existing distribution.”<sup>124</sup>

### B. Hounding Impacts Sensitive Species on the CNNF

The CNNF is a refuge for many sensitive species. Currently, there are 26 sensitive animal species in the CNNF, including the American marten (*Martes americana*), red-shouldered hawk (*Buteo lineatus*), spruce grouse (*Falcapennis canadensis*), cerulean warbler (*Setophaga cerulea*), Connecticut warbler (*Oporornis agilis*), northern long-eared bat (*Myotis septentrionalis*), and chryxus arctic butterfly (*Oeneis chryxus*).<sup>125</sup> There are currently 55 sensitive plant species in the CNNF, including the roundleaf orchid (*Amerorchis rotundifolia*), brown beakrush (*Rhynchospora fusca*), and snowline wintergreen (*Pyrola minor*).<sup>126</sup>

In its 2004 Land & Resource Management Plan, the Forest Service established guidelines that protect and promote the conservation of these species.<sup>127</sup> These are “required courses of action or levels of attainment that promote the achievement of Forest Plan goals and objectives.”<sup>128</sup> Guidelines included in the 2004 Land and Resource Management Plan require:<sup>129</sup>

- The protection of all sensitive species by “restricting recreation activities as needed within the 100 to 500 foot distance from a [sensitive species] site;”
- The protection of “active and historic nest sites” for the red-shouldered hawk by (a) limiting land use activities “[w]ithin an area of at least 30 acres surrounding nest sites” to those that “are necessary to protect the nest site for as long as the territory or stand is suitable habitat,” and (b) minimizing human disturbances within this buffer from February 15 to August 1, among other actions; and
- The protection of “known locations of chryxus arctic butterfly from disturbance.”

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<sup>121</sup> 16 U.S.C. § 1604(g)(3)(b).

<sup>122</sup> 36 C.F.R. § 219.9.

<sup>123</sup> FOREST SERV. MANUAL 2672.1.

<sup>124</sup> *Id.* at 2670.5.

<sup>125</sup> U.S. FOREST SERV., REGIONAL FORESTER SENSITIVE ANIMAL SPECIES FOR THE EASTERN REGION (2012).

<sup>126</sup> U.S. FOREST SERV., REGIONAL FORESTER SENSITIVE PLANT SPECIES FOR THE EASTERN REGION (2012).

<sup>127</sup> 2004 LAND AND RESOURCE MANAGEMENT PLAN, *supra* note 36, at 2-19-2-24.

<sup>128</sup> *Id.* at P-2.

<sup>129</sup> *Id.* at 2-19-2-22.

NFMA requires the Forest Service to comply with this plan, including the guidelines set forth in it.<sup>130</sup> However, notwithstanding these guidelines' restrictions on recreational activities within sensitive species sites, dogs used to hound wildlife are generally free to roam onto them. Once there, they can cause substantial harm to sensitive species.

As discussed in part III above, dogs can trample plants, and their waste can change soil chemistry. This harms not only plant species, but those that rely on them for habitat and food, such as the chryxus arctic butterfly. For instance, by trampling plants, dogs can dislodge the eggs of butterfly species from host plants, crush their larvae, and remove plants that would otherwise provide an important source of food for these species.<sup>131</sup>

Dogs can also attack, injure, and even kill animals such as the American marten and spruce grouse. However, dogs need not deliberately chase or attack animals to harm them. Since dogs are considered a predator to most bird and small mammal species, the mere presence of an unrestrained dog is considered a "threatening stimulus" to them.<sup>132</sup> In response to threatening stimuli, animals may alter their foraging, breeding, and resting patterns and may engage in "anti-predator" behavior, such as flight, vigilance, retreat, freezing behavior, or hiding.<sup>133</sup> They have been documented to display physiological changes in response to the presence of dogs, such as hormone release or elevated heart rates.<sup>134</sup>

In addition to these impacts on individual wild animals, disturbances can have population-level effects. In areas where dogs are permitted to roam, researchers have "found lower signs of activity" of small mammals compared to dog-free areas, suggesting that mammals "alter their spatial distribution in areas where dogs are permitted to roam."<sup>135</sup> Noise and other disturbance from packs of dogs may likewise harm the northern long-eared bat, which is a Regional Forester Sensitive Species and now federally listed as endangered under the ESA. 87 Fed. Reg. 73,488 (Nov. 30, 2022).

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<sup>130</sup> See *Native Ecosystems Council v. U.S. Forest Serv.*, 418 F.3d 953, 961 (9th Cir. 2005) ("It is well-settled that the Forest Service's failure to comply with the provisions of a Forest Plan is a violation of NFMA."); *All. for the Wild Rockies v. U.S. Forest Serv.*, 907 F.3d 1105, 1110 (9th Cir. 2018) (explaining that consistency with the forest plan entails conforming to guidelines, in addition to standards). However, the Forest Service "may deviate from the forest plan's 'guidelines,' so long as the rationale for deviation is documented." *All. for the Wild Rockies*, 907 F.3d at 1110; 2004 LAND AND RESOURCE MANAGEMENT PLAN, *supra* note 36, at P-2 (stating that in addition to standards, "[g]uidelines are also required courses of action or levels of attainment that promote the achievement of Forest Plan goals and objectives, but they can be adjusted or modified if site-specific project conditions warrant a deviation").

<sup>131</sup> See NAT'L PARK SERV., GOLDEN GATE NATIONAL RECREATION AREA DRAFT DOG MANAGEMENT PLAN / ENVIRONMENTAL IMPACT STATEMENT VOL. 2 1123 (2011) (describing how trampling can impact other butterfly species).

<sup>132</sup> Michael A. Weston & Theodore Stankowich, *Dogs as agents of disturbance*, in *FREE-RANGING DOGS AND WILDLIFE CONSERVATION* 94 (Matthew E. Gompper ed. 2014).

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Id.* at 102–03.

Dogs have also been shown to affect wild bird populations. For instance, the presence of dogs in a woodland area has been shown, over time, to reduce wild bird abundance by 41%.<sup>136</sup> The diversity of bird species in these areas has also been shown to decline by about 35%.<sup>137</sup>

Roaming, unrestrained dogs evoke some of the most dramatic disturbances among wildlife because they can move so unpredictably—often at variable speeds and directions.<sup>138</sup> As a result, it is difficult for wildlife to habituate, or learn to reduce the intensity or frequency of their responses to the presence of unrestrained dogs.<sup>139</sup> Instead, dog behavior promotes “sensitization,” “or enhanced response frequencies or intensities with increasing exposure” to dogs.<sup>140</sup>

Dogs that are used to hound animals can induce particularly harmful disturbance bouts since hounding seasons overlap with many sensitive species’ reproductive cycles. For instance, the season to hound coyote and train dogs for bear hounding starts on July 1. However, the breeding seasons for the Connecticut warbler and cerulean warbler run through the end of August—a full two months after hounding season begins.<sup>141</sup>

In sum, these disturbances impair the Forest Service’s ability to conserve sensitive species in the CNNF. This, in turn, compromises the Forest Service’s ability to fulfill its responsibilities under NFMA—namely, to “provide for diversity of plant and animal communities.”<sup>142</sup> However, the Forest Service can minimize disturbances to plants and animals by prohibiting hounding in the CNNF. Such prohibition would protect wildlife from being injured, killed, or displaced from the CNNF, in furtherance of NFMA and the Forest Service’s conservation goals.

## VII. PUBLIC SAFETY

### A. Legal Background: The Multiple Use Sustained Yield Act

The Multiple Use Sustained Yield Act of 1960 (“MUSY”) established that national forests “shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes.”<sup>143</sup> MUSY directs the Forest Service to manage the national forests “so that they are utilized in the combination that will best meet the needs of the American people.”<sup>144</sup> Pursuant to this responsibility, the Forest Service has adopted a policy to “[r]egulate uses to the extent necessary to provide for user and public safety, . . . minimize conflict and maximize responsible use” of the CNNF.<sup>145</sup> In furtherance of this goal, the Forest Service has established objectives to

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<sup>136</sup> Peter B. Banks & Jessica V. Bryant, *Four-Legged Friend or Foe? Dog Walking Displaces Native Birds from Natural Areas*, 3 BIOL. LETT. 611, 611 (2007).

<sup>137</sup> *Id.*

<sup>138</sup> Weston & Stankowich, *supra* note 132, at 99.

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> WISC. DEP’T NAT. RES., WISCONSIN BIRD AVOIDANCE DATES FOR SPECIES TRACKED BY THE NATURAL HERITAGE INVENTORY 5–6 (2019). Breeding season dates “include territory establishment, courtship, nest building, and post-fledging periods.” *Id.* at 4.

<sup>142</sup> 16 U.S.C. § 1604(g)(3)(b).

<sup>143</sup> 16 U.S.C. § 528.

<sup>144</sup> 16 U.S.C. § 531(a).

<sup>145</sup> FOREST SERV. MANUAL 2350.3.

(a) “[r]educe the impacts and conflicts resulting from recreational use” and (b) “[a]dress public safety through utilization of appropriate risk management approaches.”<sup>146</sup>

## B. Hounding Poses a Public Safety Risk

Every year, the CNNF draws “approximately 610,000 visitors,” who use the area for recreational and other purposes.<sup>147</sup> During hounding seasons, however, Wisconsin residents have expressed fear of hound hunters and visiting the CNNF.<sup>148</sup> This fear is based, in large part, on the risk of being attacked by hounding dogs. These attacks have occurred numerous times in national forests and parks, and they have resulted in severe injuries.

For example, in the Nantahala National Forest, a pack of about twelve bear-hunting hounds attacked a hiker and her pet dogs.<sup>149</sup> The hiker attempted to fight off the attacking hounds for 45 minutes, suffering numerous bite wounds on her hands and legs.<sup>150</sup> In another incident, several hikers were “swarmed” and attacked by five hunting dogs while in the Green Mountain National Forest.<sup>151</sup> One of these hikers recalled “bleeding profusely from both [] hands . . . screaming at the top of [her] lungs and hoping that the hunters would hear.”<sup>152</sup> The hunters did not arrive until about half an hour later and only after the hiker had suffered serious injuries.<sup>153</sup> In yet another incident, a family and their dog was attacked by a pack of six hunting dogs while hiking on a trail in Hawaii.<sup>154</sup> The family watched as their dog “was being stretched and pulled in two directions” by the hunting dogs.<sup>155</sup> While attempted to protect their pet, one hiker suffered such severe lacerations that she was unable to use her hands.<sup>156</sup>

While dog attacks can occur in any setting, there are certain features of hounding that increase the likelihood and potential danger of these attacks. First, dogs used for hounding do so in packs. This poses an increased risk because dogs acting as a pack are more dangerous than individual dogs.<sup>157</sup> Even those that are “individually benign . . . can become excited and brought to a state

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<sup>146</sup> *Id.* at 2302.

<sup>147</sup> See BENEFITS TO PEOPLE: AT A GLANCE REPORT, *supra* note 2, at 2.

<sup>148</sup> See, e.g., *Sample Letter to National Forest Officials: End Bear Baiting and Hounding on Wisconsin Public Lands*, FRIENDS OF THE WISCONSIN WOLF & WILDLIFE (Sept. 12, 2017), <https://wiwolvesandwildlife.org/2017/09/12/sample-letter-to-national-forest-officials-end-bear-baiting-and-hounding-on-wisconsin-public-lands/>; Henry Redman, *Residents of northwestern Wisconsin report increasing problems with bear hunters and hounds: High-tech hunters harass and trespass*, WISCONSIN EXAMINER (Oct. 27, 2022).

<sup>149</sup> Carla Field, *No charges in horrific hunting hounds' attack on hiker, her dogs*, WYFF (Oct. 21, 2014), <https://www.wyff4.com/article/no-charges-in-horrific-hunting-hounds-attack-on-hiker-her-dogs/7011212#>.

<sup>150</sup> *Id.*

<sup>151</sup> Christopher Ross, *Bear-hunting hounds attack hikers and pup*, ADDISON CNTY. IND. (Oct. 31, 2019), <https://www.addisonindependent.com/2019/10/31/bear-hunting-hounds-attack-hikers-and-pup/>.

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> Rick Daysog, *Hiker says hunting dogs along popular trail attacked his family and their dog*, HAWAII NEWS NOW (Jan. 3, 2021), <https://www.hawaiinewsnow.com/2021/01/03/hiker-says-hunting-dogs-along-popular-trail-attacked-his-family-their-dog/>.

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> Gabriel M. Fonesca & Rocio Palacios, *An Unusual Case of Predation: Dog Pack or Cougar Attack?*, 58 J. FORENSIC SCI. 224, 225–26 (2012).

of frenzy” when acting as a group.<sup>158</sup> Second, dogs used to hound wildlife are generally off-leash and rarely under the hunter’s voice control. Thus, in the event of a dog attack, hunters may not be able to respond in time to prevent injuries. Finally, if an attack does occur, it could result in the spread of rabies and other vaccine-preventable diseases, as hounds are not required to be vaccinated to hunt in Wisconsin.

For these reasons, hounding poses a safety threat to visitors of the CNNF, which can deter the public from utilizing this forest.<sup>159</sup> By prohibiting hounding, the Forest Service would minimize this conflict and “maximize responsible use” of the CNNF, thereby furthering the Forest Service’s policy<sup>160</sup> and ensuring that the CNNF is managed to “meet the needs of the American people.”<sup>161</sup>

## VIII. LEGAL AUTHORITY TO RESTRICT HOUNDING

Under the Federal Land Policy and Management Act of 1976 (“FLPMA”), the Forest Service and Bureau of Land Management may “designate areas of public land . . . in the National Forest System where, and establish periods when, *no hunting or fishing will be permitted for reasons of public safety, administration, or compliance with provisions of applicable law.*”<sup>162</sup> As such, the Forest Service is authorized to ban hounding to protect wildlife consistent with the agency’s duties under “applicable law.” This law includes the ESA, NFMA, and MUSY.

### A. Proper Administration of the CNNF Requires a Ban on Hounding to Protect Wildlife and Public Safety

As discussed above, the ESA confers a duty to the Forest Service to conserve threatened and endangered species. NFMA charges the Forest Service with providing for “diversity of plant and animal communities.”<sup>163</sup> As the Forest Service has acknowledged in its manual, these statutes grant the Forest Service the “authority and responsibility to manage wildlife” on National Forest System lands.<sup>164</sup> In addition, MUSY directs the Forest Service to manage the national forests “so that they are utilized in the combination that will best meet the needs of the American people.”<sup>165</sup> Pursuant to this responsibility, the Forest Service has the authority to protect public safety on the CNNF.

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<sup>158</sup> *Id.*

<sup>159</sup> See Tim Morrissey, *Environmental Groups: Keep Hounding Out of Wisconsin’s National Forests*, PUB. NEWS SERV. (Sept. 11, 2017), <https://www.publicnewsservice.org/2017-09-11/endangered-species-and-wildlife/environmental-groups-keep-hounding-out-of-wisconsins-national-forests/a59311-1>.

<sup>160</sup> FOREST SERV. MANUAL 2350.3.

<sup>161</sup> 16 U.S.C. § 531(a).

<sup>162</sup> 43 U.S.C. § 1732(b).

<sup>163</sup> 16 U.S.C. § 1604(g)(3)(b).

<sup>164</sup> FOREST SERV. MANUAL 2601.1. Considering such authority and responsibility, the court has found that “administration” of public lands “includes wildlife management.” *Alaska v. Andrus*, 429 F.Supp. 958, 962 (D. Alaska 1977). Thus, when a wolf-hunting program threatened a caribou herd on BLM land, the court held that FLPMA granted this agency “the power to halt the wolf hunt.” *Id.*

<sup>165</sup> 16 U.S.C. § 531(a); see also Email from Thomas Doolittle, District Wildlife Biologist, Chequamegon-Nicolet National Forest, Washburn Ranger District (September 15, 2015) (discussing public safety and other risks).

For the purposes of protecting wildlife and public safety, regulations provide each Regional Forester with authority to prohibit, by regulation, acts “within all or any part of the area over which he has jurisdiction.”<sup>166</sup> They also authorize each Regional Forester and Forest Supervisor to “issue orders which close or restrict the use” of areas over which they have jurisdiction.<sup>167</sup> The Regional Forester or Forest Supervisor can do so “by applying any or all of the prohibitions authorized.”<sup>168</sup> Hunting prohibitions are explicitly authorized by regulation.<sup>169</sup> Indeed, as described above, the Forest Supervisor of the CNNF has already used this authority to restrict hounding in parts of the CNNF, namely, near the Northern Great Lakes Visitor Center and Mondeaux flowage area.<sup>170</sup>

## B. Preemption of State Game Laws

While FLPMA and MUSY acknowledge the jurisdiction of the States with respect to wildlife on the national forests, the Forest Service has authority to preempt state game laws and regulations.<sup>171</sup> As the explained by the Forest Service Manual, hunting on National Forest System lands is subject to State laws and regulations *unless*: (a) they conflict with federal laws, or (b) they would permit activities that “conflict with land and resource management responsibilities of the Forest Service or that are inconsistent with direction in forest plans.”<sup>172</sup>

In *Meister v. U.S. Dep’t of Agriculture*, the court found that gun hunting (authorized by the state game agency) was inconsistent with the direction in forest plans for the Huron-Manistee National Forests.<sup>173</sup> Therefore, the Forest Service had the authority to close certain portions of this forest to hunting.<sup>174</sup> As the court stated: “The Service is charged with balancing competing uses of the Forests . . . if that balance requires closure of certain areas to certain activities, Congress has granted the Service that authority. There is no lawful policy that ties the Service’s hands in this regard.”<sup>175</sup>

## IX. REQUEST FOR RULEMAKING

Pursuant to the Forest Service’s authority to protect wildlife and public safety, Petitioners respectfully request that the Forest Service prohibit hounding in the CNNF. In the alternative, Petitioners request the Forest Service prohibit hounding in the CNNF’s Washburn District as a first step towards phaseout of hounding. This prohibition could take the form of a regulation, amending 36 C.F.R. § 261.78, as follows (amendments in red):

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<sup>166</sup> 36 C.F.R. § 261.70(a).

<sup>167</sup> *Id.* § 261.50(a).

<sup>168</sup> *Id.*

<sup>169</sup> *Id.* § 261.58(v).

<sup>170</sup> *Occupancy and Use Restrictions for the Chequamegon-Nicolet National Forest*, U.S. FOREST SERV. (June 2009), <https://www.fs.usda.gov/detail/cnnf/notices/?cid=STELPRDB5182020>.

<sup>171</sup> See U.S. CONST., art. VI (establishing that federal law generally takes precedence over state laws); *Utah Native Plant Soc’y v. U.S. Forest Serv.*, 923 F.3d 860, 868 (10th Cir. 2019) (stating that “[l]ike Congress, a federal agency by way of congressional delegation of authority also may preempt state laws and regulations”).

<sup>172</sup> Forest Serv. Manual 2643.1

<sup>173</sup> *Meister v. U.S. Dep’t Agric.*, 623 F.3d 363, 379 (6th Cir. 2010).

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

§ 261.78 Prohibitions applicable to Region 9, Eastern Region

(a) Using or occupying any area of the Manistee National Forest abutting the Pine River between a point commencing 1 mile downstream from Lincoln Bridge to a point one-half mile upstream from Stronach Dam, for the purpose of entering, leaving, or going upon the river, in, on, or upon any floatable object of any kind or description during specific dates set forth annually and posted in such locations and manner as to reasonably bring the closure and dates to the attention of the public, is prohibited unless otherwise authorized by permit.

(b) ~~Reserved~~ Using off-leash dogs in the Chequamegon-Nicolet National Forest [or the Washburn District of the Chequamegon-Nicolet National Forest] is prohibited when hunting bear, bobcat, wolf, fox or coyote, or when training off-leash dogs to hunt these animals.

Alternatively, this prohibition could take the form of an order, as follows:

Occupancy and Use Restrictions for the Chequamegon - Nicolet National Forest

Under authority of the Act of Congress of June 4, 1897, 16 USC 551, and pursuant to the Secretary of Agriculture's Regulations set forth at 36 C.F.R. § 261.50(a) and 261.50(b), the following acts or omissions are prohibited on National Forest System lands, roads and trails on the Chequamegon-Nicolet National Forest [or the Washburn District of the Chequamegon-Nicolet National Forest]:

1. It is prohibited to use off-leash dogs for the purpose of hunting bear, bobcat, wolf, fox or coyote, or training off-leash dogs to hunt these animals. 36 C.F.R. § 261.58(v)

**X. CONCLUSION**

As detailed above, hounding impacts a wide range of threatened, endangered, and sensitive wildlife species, as well as the public's safety in the CNNF. These impacts impair the Forest Service's ability to administer the CNNF for wildlife and recreational purposes. For these reasons, we urge the Forest Service to expeditiously respond to the Petition by prohibiting hounding.

The Petition's supporting documents are available for download from this link:

<https://diversity.box.com/s/ao5t6cpi4arlw06rre7uh3a9r04325m2> .

Sincerely,



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