IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. _____

WILDEARTH GUARDIANS,

FRIENDS OF ANIMALS, and

WESTERN WATERSHEDS PROJECT,

Plaintiffs,

v.

BRIAN NESVIK, in his official capacity as Director of the U.S. Fish and Wildlife Service, and U.S. FISH AND WILDLIFE SERVICE, an agency of the United States,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. *Speyeria nokomis nokomis* butterflies are disappearing from their dwindling habitats in Colorado, Utah, and New Mexico. Defendant U.S. Fish and Wildlife Service (FWS) has belatedly listed these butterflies under the Endangered Species Act (ESA), but it has failed to take the obvious and necessary steps to conserve them. In doing so, FWS has ignored the scientific evidence and left *Speyeria nokomis nokomis* (hereinafter, "silverspot")[1] vulnerable to extinction.

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[1] As FWS has acknowledged, the taxonomy and common name for *Speyeria nokomis nokomis* are muddled. The genus of the species nokomis has shifted over time. The genus recently shifted from *Speyeria* back to *Argynnis*, and FWS intends to adhere to this change in future updates. FWS also accepts that Nokomis Fritillary is the accepted common name for the species, but has chosen to refer to the *Speyeria nokomis nokomis* subspecies as "the

2. Silverspots, like all butterflies, are remarkable animals. Silverspots complete their entire life cycle within a year: they emerge from eggs after about two weeks as larvae, commonly known as caterpillars; the larvae then quickly go into diapause (a resting state) for winter; the larvae emerge from diapause after seven months and voraciously feed on a single plant, the bog violet, for two months; when the larvae are fully grown, they form a chrysalis and enter pupation; during about seventeen days of pupation, the larvae metamorphosize into adult butterflies; the adult butterflies emerge in late July and early August and live for about 45 days; during those 45 days, the butterflies mate, and the females lay eggs.

3. Silverspot colonies occur only in wet mountain meadows. These meadows must contain ample amounts of bog violet in order to sustain silverspot populations.

4. Because silverspots do not fly farther than ten miles from their colonies, FWS has grouped the 21 possible remaining silverspot colonies into ten different, genetically distinct populations. Yet half of these ten populations have not been seen in many years, making their continued existence doubtful and the silverspot's continued viability more tenuous than FWS contends.

5. Silverspots and their habitats are threatened by a number of human-caused factors, namely development, livestock grazing, hydrologic alteration, and climate change.

6. Recognizing the numerous threats faced by the dwindling silverspot populations, FWS listed them as threatened under the ESA in 2024. But at the very least,

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silverspot" to minimize public confusion. For consistency to the challenged rulemaking, this Complaint will generally refer to these butterflies as silverspots.

FWS should have found that silverspots are endangered in a significant portion of their range and listed the entire subspecies as endangered. Instead, FWS simply asserted in conclusory fashion that silverspots are not endangered in a significant portion of their range, contrary to the clear evidence that they are.

7. FWS's failure to list silverspots as endangered is highly consequential. Had FWS rightly found that the subspecies is endangered, all take of silverspots, even incidental take, would be generally prohibited under the ESA. And even in listing them as threatened, FWS still could have prohibited all incidental take of silverspots. But FWS instead issued a special rule under Section 4(d) of the ESA. While this rule generally prohibits the taking of silverspots, it specifically exempts a number of agricultural practices, namely grazing and mowing, that the science shows are jeopardizing the continued existence of the silverspot. FWS improperly prioritized "flexibility" to landowners over necessary conservation measures for silverspots.

8. FWS also refused to designate any silverspot critical habitat on the basis that doing so was "not prudent." FWS cited the threat of collection, but it violated the ESA by never acknowledging and weighing the benefits of designating critical habitat for silverspots. Moreover, FWS's fear of collection pressure is contradicted by its findings elsewhere that collection is not a major threat to silverspots and that much of its habitat is inaccessible to prospective collectors, among other factors.

9. In sum, Defendants acted arbitrarily and capriciously and violated the law when FWS (1) failed to list silverspot butterflies as endangered; (2) included nonsensical

and harmful incidental take exemptions in the Section 4(d) rule; and (3) failed to designate critical habitat.

PARTIES

10. Plaintiff WILDEARTH GUARDIANS ("Guardians") is a non-profit, 501(c)(3) conservation organization based in Santa Fe, New Mexico. Guardians' mission is to protect and restore the wildlife, wild places, wild rivers, and health of the American West. It has a number of members in and nearby silverspot butterfly habitat in the southwestern United States. Guardians has an active endangered species protection campaign, with a geographic focus on flora and fauna endemic to the western United States. Guardians submitted a petition to FWS in 2013 to list silverspot butterflies under the ESA. Guardians commented on FWS's proposal to list silverspot butterflies as threatened and explained that FWS should have listed the subspecies as endangered, should have strengthened provisions of the section 4(d) rule, and should have designated critical habitat. Guardians brings this action on its own behalf and on behalf of its adversely affected members.

11. Plaintiff FRIENDS OF ANIMALS is a non-profit, 501(c)(3) international advocacy organization incorporated in the state of New York since 1957, with its Wildlife Law Program based in Colorado. Friends of Animals seeks to free animals from cruelty and exploitation around the world, and to promote a respectful view of non-human, free-living, and domestic animals. Friends of Animals engages in a variety of advocacy programs in support of these goals. Friends of Animals informs its members about animal advocacy issues as well as the organization's progress in addressing these issues through its magazine called *ActionLine*, its website, and other reports. Friends of Animals has published

articles and information advocating for the protection of silverspot butterflies so that they can live unfettered in their natural habitats. Friends of Animals sues on behalf of itself and its adversely affected members.

12. Plaintiff Western Watersheds Project (WWP) is a non-profit, 501(c)(3) organization with offices throughout the American West. WWP's mission is to protect and restore western watersheds and wildlife through education, public policy initiatives, and legal advocacy. WWP works to ensure that public lands and their wildlife, cultural, and natural resources are protected for future generations. WWP has a long history of advocating on behalf of endangered species. WWP's Colorado Office is situated within silverspot butterfly range in Paonia, CO. WWP sues on behalf itself and its adversely affected members.

13. Plaintiffs have numerous members and employees who are concerned about silverspot butterflies and Defendants' inadequate conservation of them. Many of these members and employees live in Colorado, Utah, and New Mexico, have viewed silverspot butterflies previously, and want to continue to be able to see them. Defendants' failures to adequately conserve silverspot butterflies harms them because it will deprive them of the opportunity to view silverspots in the future.

14. Defendant U.S. FISH AND WILDLIFE SERVICE is an agency of the United States within the Department of the Interior. FWS is responsible for complying with all federal laws, including the ESA. FWS is responsible for implementing and administering the ESA with respect to terrestrial wildlife such as silverspot butterflies.

15. Defendant BRIAN NESVIK is the Director of FWS. Defendant Nesvik is responsible for the actions of FWS, including the challenged threatened finding and the Section 4(d) rule. Defendant Nesvik is sued in his official capacity.

JURISDICTION

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

17. This Court has authority to grant Plaintiffs' requested relief pursuant to 28 U.S.C. § 2201-2202 (declaratory and injunctive relief), 16 U.S.C. § 1540(g) (ESA) and 5 U.S.C. §§ 701-706 (setting aside agency action).

18. An actual, justiciable controversy exists within the meaning of the Declaratory Judgment Act between Plaintiffs and Defendants.

19. Pursuant to the ESA's citizen-suit provision, Plaintiffs Guardians and Friends of Animals sent Defendants notice of their intent to sue (the "2024 Notice") on June 11, 2024. *See* 16 U.S.C. § 1540(g)(2).

20. Defendants received the 2024 Notice on June 17, 2024.

21. More than 60 days have passed since Defendants received the 2024 Notice.

22. FWS responded to the 2024 Notice on August 2, 2024, indicating that they believed the issues Plaintiffs Guardians and Friends of Animals raised in the 2024 Notice were without merit.

23. Plaintiff WWP sent Defendants a notice of its intent to sue in February 2025, which Defendants received in February 2025 and responded to in April 2025, again claiming that the contentions raised were without merit.

24. Defendants have not remedied their violations of the ESA. As a result, an actual controversy exists between the parties.

25. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this District. Colorado constitutes a majority of silverspots' range and contains a majority of silverspot colonies. Plaintiffs' members live in Colorado, and Defendants' actions will cause them injury in Colorado from their reduced ability to enjoy silverspot butterflies because of Defendants' actions. Additionally, FWS's Colorado Field Office drafted the Species Status Assessment Report (SSA) that drove Defendants' listing decision.

LEGAL FRAMEWORK

26. The purpose of the ESA is to conserve endangered and threatened species and the ecosystems upon which these species depend. 16 U.S.C. § 1531(b).

27. The listing process is the essential first step in the ESA's system of species protection and recovery. Before the ESA can protect a species facing extinction or that species' habitat, the species must be listed as either endangered or threatened. 16 U.S.C. § 1533(d).

28. A species is endangered if it "is in danger of extinction throughout all or a significant portion of its range." 16 U.S.C. § 1532(6). A species is threatened if it is "likely to become an endangered species within the foreseeable future." 16 U.S.C. § 1532(20).

29. FWS must list species under the ESA if they are threatened or endangered due to any one or a combination of the following factors:

(A) the present or threatened destruction, modification, or curtailment of its habitat or range;

(B) overutilization for commercial, recreational, scientific, or educational purposes;

(C) disease or predation;

(D) the inadequacy of existing regulatory mechanisms; or

(E) other natural or manmade factors affecting its continued existence.

16 U.S.C. § 1533(a)(1).

30. FWS's decision whether to list a species is limited solely to consideration of these five factors. In considering these factors, FWS must use only "the best available scientific and commercial information regarding a species' status, without reference to possible economic or other impacts of such determination." 50 C.F.R. § 424.11(b), 16 U.S.C. § 1533(b)(1)(A).

31. The ESA defines the term "species" to include "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." 16 U.S.C. § 1532(16).

32. As a subspecies, silverspots are eligible for protections under the ESA.

33. Any interested person may begin the listing process by filing a petition to list a species with FWS. 16 U.S.C. § 1533(b)(3)(A).

34. Upon receipt of a petition to list a species, FWS is required to make an initial finding known as a "90-day finding" on whether the petition presents "substantial scientific or commercial information indicating that the petitioned action may be warranted." *Id.*

35. If FWS finds that the petition presents substantial information indicating that listing may be warranted, FWS must then commence a status review of the species. 16 U.S.C. § 1533(b)(3)(B). This is known as a "positive" 90-day finding. 16 U.S.C. § 1533(b)(3)(A).

36. If a positive 90-day finding is made, FWS has twelve months from the date the petition was received to make one of three findings: (1) the petitioned action is not warranted; (2) the petitioned action is warranted; or (3) the petitioned action is warranted, but presently precluded by other pending proposals to list species of higher priority, provided that FWS is making expeditious progress in listing other species. 16 U.S.C. § 1533(b)(3)(B); 50 C.F.R. § 424.14. This second finding is known as a "twelve-month finding."

37. A species is "endangered" if it is "in danger of extinction throughout all *or a significant portion of its range*." 16 U.S.C. § 1532(6) (emphasis added).

38. FWS uses three metrics to assess the subspecies' viability: resiliency, redundancy, and representation.

39. Resiliency is the ability of a species to withstand environmental and demographic stochasticity. In other words, it measures the animal's ability to withstand the "bad years" such as an extremely hot/dry summer or a low snowpack winter.

40. Representation is the ability of a species to adapt to changing environmental conditions, which may depend on the species' distribution.

41. Redundancy is the ability of a species to withstand catastrophic events, such as wildfires or natural disasters.

42. The decision whether to list a species is subject to judicial review. 16 U.S.C. § 1533(b)(3)(C)(ii).

43. If FWS finds the listing of the species is warranted, it must publish a proposed rule for public comment to list such species as either endangered or threatened in the Federal Register. 16 U.S.C. § 1533(b)(5).

44. Once a species is listed, the ESA provides strong legal protection to encourage the species' recovery. Among other things, the ESA requires FWS to designate critical habitat for all threatened and endangered species concurrently with their listing and subsequently develop recovery plans for such species. 16 U.S.C. § 1533(a)(3), (f).

45. The ESA also requires that all federal agencies "carry out programs for the conservation" of threatened and endangered species and consult with the Secretary in order to ensure that their actions are "not likely to jeopardize the continued existence" of such species or "result in the destruction or adverse modification" of their critical habitat. 16 U.S.C. § 1536(a)(1)-(2).

46. The ESA automatically confers certain mandatory statutory protections on species that are listed as endangered. For species listed as endangered, the ESA makes it unlawful for anyone to take, trade, or sell any such species. 16 U.S.C. § 1538(a)(1).

47. Protections for threatened species must be promulgated by FWS through regulation.

48. For species listed as threatened, the ESA provides that

> [T]he Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of such species. The Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 1538(a)(1) of this title, in the case of fish or wildlife, or section 1538(a)(2) of this title, in the case of plants, with respect to endangered species.
> 16 U.S.C. § 1533(d).

49. Pursuant to Section 4(d) of the ESA, FWS has issued a regulation extending the prohibition on take to all threatened species. *See* 50 C.F.R. § 17.31(a). This blanket prohibition ("Blanket 4(d) Rule") applies to all threatened species unless FWS promulgates a "special rule" under Section 4(d) for that species. 50 C.F.R. § 17.31.

50. If FWS does promulgate a special rule under Section 4(d) for a threatened species, the provisions of that species-specific rule apply instead of the Blanket 4(d) Rule.

51. The ESA requires FWS, "to the maximum extent prudent and determinable," to designate critical habitat concurrently with listing determinations for all threatened and endangered species. 16 U.S.C. § 1533(a)(3)(A).

52. The ESA requires that FWS designate critical habitat based on the best scientific data available. 16 U.S.C. § 1533(b)(2).

53. The ESA gives FWS discretion to exclude certain areas from critical habitat if it determines that the benefits of exclusion outweigh the benefits of designating those areas as critical habitat. *Id.*

54. Yet, whatever the benefits of excluding areas as critical habitat, FWS cannot refuse to designate areas as critical habitat if such failure would lead to the extinction of the species. *Id.*

55. Courts have held that FWS violates the ESA when it fails to weigh the benefits of designating critical habitat against any potential harms. *See NRDC v. U.S. Dept. of the Interior*, 113 F.3d 1121 (9th Cir. 1997).

FACTUAL BACKGROUND

A. Silverspot butterflies have a variety of unique characteristics.

56. Silverspot butterflies are large, visually striking butterflies with up to a three-inch wingspan.

57. Silverspots are a subspecies of *Speyeria nokomis*, which has five different subspecies.

58. Silverspots are the largest of the five subspecies, with wingspans of roughly 2.5 to 3 inches.

59. Like other butterfly species, adult silverspot butterflies utilize, and therefore pollinate, a range of plant species as nectar sources, including native and introduced thistles, native and introduced forbs, horsemint, and joe pye weed.

60. When silverspots feed on nectar sources, they transfer pollen between these flowering plants, facilitating their reproduction.

61. Pollinators such as silverspot butterflies help maintain genetic diversity within plant populations by transferring pollen between plants and ensuring mixing of gene pools among different plants.

62. The number of pollinators has sharply declined in the last fifty years, adversely affecting plant life, plant genetic diversity, and biodiversity more generally.

63. Silverspots are sexually dimorphic: males are predominantly bright orange; females are light yellow and brown or black.

64. Both male and female silverspots have iridescent silver spots on the underside of their wings, giving the subspecies its name.

Picture of a silverspot butterfly from the Species Status Assessment

65. Silverspots' entire life cycle is one year.

66. Each adult silverspot butterfly lives for a single flight season between late July and September before death.

67. Adult female silverspots lay as many as 600 eggs in mid-September.

68. Silverspots generally lay their eggs on or near a plant known as the bog violet (*Viola nephrophylla/Viola sororia var. affinis*), a vibrant flower with kidney-shaped leaves.

69. While widely distributed across the American West, the bog violet occurs in naturally scarce habitats, and is susceptible to threats from development, grazing, and hydrological alteration.

70. The bog violet is the only known larval host plant for silverspot butterflies.

71. Silverspots are not found unless bog violet is present.

72. Silverspot larvae hatch ten to eighteen days after eggs are laid.

73. Shortly after hatching, silverspot larvae enter diapause for approximately 225 days.

74. Mortality rates of silverspot larvae during diapause are very high.

75. In mid-May silverspot larvae emerge from diapause and feed on bog violets until mid-July.

76. Around mid-July, silverspot larvae form chrysalises and enter pupation for about seventeen days, during which they metamorphize into adults.

77. Adult silverspot butterflies emerge from pupation and live for about 45 days.

78. Silverspot butterflies have been found at elevations between 5,200 and 8,300 feet.

79. High-elevation snowpack is crucial to support silverspots' physical and biological needs throughout their lifecycle.

80. Silverspot butterflies primarily live in spring-fed, moist meadows with the presence of bog violet, as well as a variety of vegetation on which adult butterflies feed.

81. FWS has identified a total of 21 silverspot colonies that may remain extant.

82. Some of these 21 colonies have not been observed in several years.

83. Most silverspot colonies are located in southwestern Colorado, and others are in northern New Mexico and eastern Utah.

84. The 21 silverspot colonies form ten different genetically isolated populations.

85. Genetic analysis has confirmed that eight of the populations are genetically isolated from one another.

86. The other two populations, Archuleta and Garfield, have not been genetically analyzed but are assumed to be genetically isolated because they are located more than twenty air miles from other populations.

87. Five of the populations are multiple-colony metapopulations and five are single-colony populations.

88. The two populations closest to each other—Taos and San Miguel/Mora— are 24.5 miles apart.

89. Most populations are somewhere between 40 to 80 miles apart.

90. Individual silverspots generally do not fly more than five to ten miles.

B. The silverspot butterfly's existence is threatened by a number of factors.

91. FWS found that at least five different silverspot colonies have been extirpated within the last 40 years.

92. FWS identified four "major factors" affecting silverspots: habitat loss and fragmentation; hydrologic alteration; genetic isolation; and livestock grazing.

93. FWS identified several other minor factors that it considers to be ongoing and routine threats but that are not having a meaningful impact on silverspot viability.

94. Of all the silverspot populations, only the Mesa/Grand population has had any conservation efforts directed at the subspecies.

1. Silverspot habitat has been fragmented and destroyed.

95. Only one silverspot population, the Conejos population, does not have moderate or extensive human activity near it.

96. Two colonies from the La Plata population were extirpated because of development projects.

97. The remaining La Plata colony is currently experiencing residential and commercial development adjacent to its habitat.

98. Residential development contributed to the extirpation of the Beulah, New Mexico colony.

99. Many other silverspot colonies are threatened by development that already has damaged, or threatens to damage and fragment, habitat.

100. Agricultural land conversion and agricultural practices, such as mowing native meadows, have meaningfully reduced silverspot viability.

101. If habitat is destroyed, it is unlikely that a silverspot butterfly will be able to find alternative habitat if it is more than five miles away.

102. Most silverspot colonies occur on private lands.

103. FWS does not have any conservation agreements for silverspot butterflies with private landowners.

104. Hydrologic alteration from irrigation activities has fragmented or destroyed silverspot habitat and is likely to continue to do so in the future.

105. There is a diversion ditch running through the habitat of the Costilla population, a single-colony population.

106. The ditch has impacted the size of the population and allowed for extensive agricultural development in and around its habitat.

107. The last confirmed sighting of the Costilla population was in 2010.

108. Hydrological alteration negatively affected the habitat of the Montrose/San Juan population as it degraded the wet meadow habitat and lowered the water table.

109. The negative impacts from hydrological alteration are not limited to the Costilla and Montrose/San Juan populations.

110. Hydrological alteration occurs extensively across the American West and overlaps with a significant portion of silverspot habitat.

2. Livestock grazing, particularly during the summer, deprives silverspots of necessary vegetation, including the bog violet.

111. Livestock grazing has fragmented and destroyed silverspot habitat and is likely to do so in the future.

112. Grazing by livestock during the summer—after bog violets have emerged and are growing—can kill bog violets.

113. Livestock grazing in silverspot habitat may consume or trample bog violets.

114. Summer livestock grazing also negatively affects silverspots because cattle graze on wildflowers that are critical nectar sources required by adult silverspot butterflies.

115. Summer grazing can drive out silverspot populations or limit population expansion into otherwise compatible habitat.

116. For example, adjacent to the existing Ouray population is habitat compatible for silverspots where there is livestock grazing.

117. The presence of summer livestock grazing on the adjacent suitable habitat makes it less likely that the Ouray population will expand to the unoccupied area.

118. Summer livestock grazing in and around silverspot habitat is very harmful to silverspots.

3. Silverspot populations are fragmented, causing genetic isolation.

119. To maintain genetic diversity naturally, colonies and populations must be close enough for individuals to interbreed.

120. It is likely that silverspot populations farther than five to ten miles apart from other silverspot populations are genetically isolated.

121. All ten silverspot populations are more than ten miles apart from every other silverspot population.

122. All ten silverspot populations are genetically isolated.

123. Naturally occurring genetic exchange between silverspot populations is not possible because of the distance between silverspot populations.

124. Low genetic diversity negatively impacts silverspot populations, population fitness levels, and the ability to survive environmental changes, and increases the likelihood of extinction.

125. Silverspot populations require a sufficient number of individuals within an adequately sized habitat to survive and reproduce.

126. Isolated single-colony populations may require hundreds of acres of habitat to ensure there are enough genetically diverse individuals for the population to survive.

127. A positive correlation exists between habitat size and the number of individuals within a population: the larger the habitat, the more individuals within a population and the greater the resiliency of that population.

128. While an isolated colony with sufficient habitat may be resilient enough to persist over the long term without genetic exchange from a neighboring population, most silverspot populations have limited amounts of habitat.

129. FWS has categorized three silverspot populations as having "very low" resiliency, and three other populations as having "low" resiliency.

130. A low resiliency means that a silverspot population is highly vulnerable to negative impacts.

131. FWS found that silverspot populations likely need to contain at least three colonies to be sufficiently resilient.

132. Only one silverspot population has a habitat larger than 50 acres.

4. Climate change will continue to negatively impact silverspot butterflies.

133. FWS found that desiccation of larvae is a "minor factor" but may stress silverspot populations if soil moisture and air humidity are too low for larvae to remain hydrated.

134. Annual snowpack in Colorado has predominantly been below historical averages for the last 24 years.

135. Snowpack levels can affect soil moisture levels.

136. Lower snowpack levels also mean silverspot habitat may have less snow cover.

137. Snow cover helps overwintering larvae withstand extreme cold weather and prevents desiccation during diapause.

138. Climate change increases the frequency and severity of extreme weather events. Extreme weather events can create conditions where temperatures become extremely cold or extremely dry.

139. FWS used four climate models to predict four different climate scenarios for silverspot habitat by 2050.

140. All four climate scenarios analyzed by FWS relied on unreasonable assumptions.

141. Peer reviewers questioned the reasonableness of the assumptions made by FWS in the climate scenarios.

142. All but one of the four climate scenarios analyzed by FWS predicted extreme droughts will generally occur three or four years out of every five.

143. The climate scenarios analyzed by FWS predicted that high elevation snowpack near silverspot habitat will generally decrease by 2050.

144. Desiccation of silverspot larvae may become a more significant factor affecting the subspecies' viability because of climactic shifts that create extremely dry weather patterns that increase mortality rates during diapause.

145. FWS found climate change to be a "minor factor," but indicated that it may become a "major factor" in the foreseeable future.

146. FWS did not suggest when climate change will become a "major factor."

147. The Archuleta population has already experienced prolonged drought conditions that limit the water supply and negatively impact the population.

148. Two of the four climate scenarios analyzed by FWS predict that climate change will cause the extirpation of half of silverspot populations.

149. FWS relied on tree ring and other paleoclimate data to suggest that silverspot butterflies have survived droughts and other extreme weather events in the distant past (prior to 1900).

150. The major threats facing silverspots today are significantly different than the threats they faced before 1900.

C. FWS determines that silverspot butterflies are threatened.

151. In 1978, FWS proposed to list silverspot butterflies as threatened or endangered under the ESA.

152. In 1984, FWS placed silverspots on something known as the "Category 2 Candidate Species List," a grouping of species for which FWS believed an ESA listing was potentially appropriate but for which it lacked conclusive evidence to support a listing.

153. FWS affirmed silverspots' placement on the Category 2 Candidate Species List in subsequent notices of review in 1989, 1991, and 1994.

154. In 1996, FWS removed all species, including silverspots, from the Category 2 Candidate Species List.

155. In 2013, Plaintiff WildEarth Guardians petitioned FWS to list silverspots as threatened or endangered under the ESA (the "Petition").

156. In 2016, FWS issued a 90-day finding that the Petition presented substantial scientific or commercial information indicating that the listing of silverspots might be warranted and that it would proceed with an ESA status review.

157. In 2022, FWS published a proposed rule in the Federal Register to list silverspots as threatened, with a species-specific Section 4(d) rule, but without a designation of critical habitat. 87 Fed. Reg. 26,319 (May 4, 2022).

158. WildEarth Guardians and other members of the public commented on the proposed rule and urged FWS to list silverspots as endangered, to designate critical habitat, and to strengthen the species-specific Section 4(d) rule if it proceeded to list silverspots as threatened.

159. On February 15, 2024, FWS published a Final Rule in which it listed silverspots as threatened, issued a species-specific Section 4(d) rule (the "Special Rule"), and did not designate critical habitat.

160. FWS based its finding that silverspots are not currently in danger of extinction in large part on its determination that the subspecies is "widespread."

161. FWS also found that it is possible that half of the ten silverspot populations are no longer extant.

162. Eight of the twenty-one silverspot colonies have not been observed in surveys in the last five years.

163. For the populations and colonies that were not observed in the most recent survey, FWS has presumed that some are "extant" based on sightings more than ten years ago.

D. FWS determined that silverspot butterflies are not endangered in a significant portion of their range.

164. FWS determined that silverspot butterflies are not endangered in a significant portion of their range (the "SPR Analysis").

165. FWS found that threats facing silverspots were "similar in scope, scale, and distribution" across all areas of the subspecies' range.

166. FWS found that the spatial distribution of these threats was evenly spread across the silverspot's range and not concentrated in any area.

167. FWS's own analysis, however, shows that not all populations experience the same major threats.

168. Six of the ten remaining populations are considered "low" resiliency or "very low" resiliency, five of which are single-colony populations.

169. Single-colony populations require heightened habitat and conservation requirements to maintain adequate genetic diversity.

170. Despite the differences in the types of threats experienced by each population at varying resiliency levels, FWS found that major factors are similar across the range of the subspecies.

171. While FWS acknowledged the existence of smaller silverspot populations with low resiliency, it found that the smaller populations are not concentrated but are instead distributed throughout the subspecies' range with larger, more resilient populations interspersed between them.

172. In noting that the smaller silverspot populations have larger silverspot populations interspersed between them, FWS did not explain the relevance of relative population locations when silverspots cannot travel between them.

173. FWS determined that the small silverspot populations are not at risk of extinction due to the lack of imminent threats.

E. FWS issued a special rule under Section 4(d) for silverspot butterflies.

174. FWS issued a special rule under Section 4(d) of the ESA for silverspot butterflies (the "Special Rule").

175. The Special Rule generally prohibits import and export, take, and possession of silverspot butterflies.

176. The Special Rule exempts multiple forms of incidental take of silverspot butterflies from being ESA violations.

177. For each exemption for incidental take, the Special Rule requires that individuals conduct the specified activities with "reasonable care."

178. One of the activities the Special Rule exempts from prohibitions for incidental take is grazing.

179. Provided other requirements are met, the Special Rule exempts incidental take of silverspots from "moderate grazing" during the late fall through much of spring (October 15 to May 31).

180. The Special Rule defines "moderate grazing" as 40 to 55 percent vegetative utilization.

181. Provided other requirements are met, the Special Rule exempts incidental take of silverspots from "light grazing" during the summer through early fall (June 1 to October 14).

182. The Special Rule defines "light grazing" as less than 30 percent vegetative utilization.

183. In exempting certain forms of grazing from incidental take prohibitions, FWS contended that grazing may improve silverspot habitat by opening up tree or shrub canopy cover and by removing herbaceous vegetation that may compete with the bog violet.

184. FWS determined that not grazing silverspot habitat during summer and early fall was "preferred."

185. Nonetheless, FWS did not prohibit summer and early fall grazing in any part of silverspot habitat.

186. In fact, FWS did not prohibit grazing during any part of the year in any part of silverspot habitat.

187. Despite finding elsewhere in the Final Rule that grazing was a major factor affecting the viability of silverspots, FWS did not consider the negative impacts of exempting grazing from incidental take prohibitions.

188. FWS did not acknowledge that grazing during the summer is particularly harmful to silverspots.

189. It is not feasible for FWS to enforce the grazing limitations in the Special Rule.

190. The Special Rule also exempts certain types of haying and mowing from incidental take prohibitions.

191. The Special Rule prohibits haying and mowing from July 1 through October in areas in and adjacent to bog violet habitat.

192. The Special Rule exempts annual haying or mowing before July as long as blade height is set at least six inches above the ground.

193. FWS determined that it would be "preferred" if blade heights were set at least eight inches above the ground in bog violet habitat, but the Special Rule does not require that blade heights be at least eight inches to constitute reasonable care.

194. In exempting some forms of haying and mowing, FWS found that annual haying or mowing in the early summer can be beneficial to silverspots by reducing vegetation that competes with the bog violet.

195. FWS has not explained how the haying and mowing exemptions are adequate to conserve silverspots.

196. FWS has not explained how it will enforce the haying and mowing limitations in the Special Rule.

197. The Special Rule also includes incidental take exemptions for prescribed burning during certain times of the year, brush control, noxious weed control, and maintenance of fences, corridors, and other structures.

F. FWS refused to designate any critical habitat for silverspot butterflies.

198. In the Final Rule, FWS determined that designation of critical habitat for silverspots was not prudent.

199. FWS determined that designation of critical habitat was not prudent because it believes "the silverspot faces a threat of unauthorized collection and trade, and designation can reasonably be expected to increase the degree of these threats to the subspecies."

200. FWS claimed that designation of critical habitat would require the publication of maps and a description of habitat areas in the Federal Register that would be more detailed than the general location information provided in the Final Rule.

201. FWS claimed that publication of detailed locations of silverspot colonies "would likely facilitate unauthorized collection and trade, as collectors would know the exact locations where silverspots occur."

202. FWS pointed to no instances where designation of critical habitat led to increased collection of a butterfly species.

203. In support of its claims about the threat of collection, FWS pointed to an instance of past silverspot collection, the potential for increased collection pressure if

location information became known, general desire for butterflies in the illegal animal trade, and rarity leading to increased collector interest for other butterfly species.

204. In sum, FWS concluded that designation of critical habitat would be detrimental.

205. Elsewhere, FWS determined that collection is a "minor factor" that does not have a meaningful impact on the silverspot's viability.

206. FWS found that collection is not a significant stressor for silverspots because collection pressure is not extensive, most colonies occur on private land, and the locations of colonies are largely unknown.

207. In refusing to designate critical habitat, FWS did not consider the current demand from collectors for silverspot butterflies.

208. In refusing to designate critical habitat, FWS did not consider the likelihood of collectors' ability to access locations of silverspot colonies.

209. FWS did not consider whether it was prudent to list some portions of silverspot habitat as critical habitat even if it were not prudent to list other portions.

210. FWS did not consider the benefits of designating silverspot critical habitat.

211. FWS did not weigh the benefits of designating any areas as silverspot critical habitat against the benefits of excluding those areas as critical habitat.

FIRST CAUSE OF ACTION
Arbitrary and Capricious Determination that Silverspot Butterflies are not Endangered in a Significant Portion of their Range

212. Plaintiffs incorporate herein all information and allegations contained in the preceding paragraphs.

213. FWS failed to adequately determine whether silverspots are endangered in a significant portion of their range.

214. FWS failed to adequately explain why it concluded that silverspots are not endangered in a significant portion of their range.

215. In concluding that silverspots are not endangered in a significant portion of their range, FWS failed to make that determination based on the best science available.

216. In concluding that silverspots are not endangered in a significant portion of their range, FWS arbitrarily determined that climate change is not a major factor affecting the subspecies.

217. FWS's determination that the various threats affecting silverspots are not impacting any portion of the population differently than they are affecting the population as a whole was arbitrary and capricious, contrary to the evidence, and not based on the best available science.

218. FWS's determination that none of the smaller silverspot populations are currently at risk of extinction was arbitrary and capricious, contrary to the evidence, and not based on the based available science.

219. FWS failed to assess the three biological factors (resiliency, redundancy, and representation) when it conducted the SPR analysis and failed to explain why it did not assess these biological factors.

SECOND CAUSE OF ACTION
Failure to Designate Critical Habitat

220. Plaintiffs incorporate herein all information and allegations contained in the preceding paragraphs.

221. FWS's failure to designate critical habitat for silverspot butterflies was arbitrary and capricious.

222. FWS failed to consider the benefits of designating critical habitat for silverspots.

223. FWS's determination that designating critical habitat was not prudent was arbitrary and capricious.

224. FWS failed to rely on the best available science in determining that designating critical habitat was not prudent.

THIRD CAUSE OF ACTION
Arbitrary Provisions of the Special Rule

225. Plaintiffs incorporate herein all information and allegations contained in the preceding paragraphs.

226. FWS failed to issue rules that are necessary and advisable to provide for the conservation of silverspots.

227. The Special Rule does not provide for the conservation of silverspots.

228. The specific exemptions for incidental take in the Special Rule described in the paragraphs above are arbitrary and capricious.

229. FWS failed to explain the inconsistency between the Special Rule's exemptions for incidental take and FWS's refusal to designate critical habitat for fear that it could lead to take.

230. FWS failed to prohibit forms of take that are necessary to prevent the extinction of the silverspot.

231. The Special Rule's grazing exemptions are arbitrary and capricious and contrary to the evidence.

232. FWS failed to explain the Special Rule's grazing exemptions.

233. The Special Rule's mowing and haying exemptions are arbitrary and capricious and contrary to the evidence.

234. FWS failed to explain the Special Rule's mowing and haying exemptions.

235. FWS has not explained how it will enforce the limitations for grazing, mowing, and haying.

236. The Special Rule's exemptions, including for grazing, haying, and mowing, are arbitrary and capricious.

REQUEST FOR RELIEF

Plaintiffs respectfully request that this Court order the following relief:

A. Declare that the Defendants violated the ESA and the APA by issuing and affirming the unlawful Threatened Finding rather than listing silverspot butterflies as endangered;

B. Declare that the Defendants violated the ESA and the APA by refusing to designate critical habitat for silverspots;

C. Declare that the Defendants violated the ESA and the APA by issuing the challenged provisions of the special 4(d) rule;

D. Vacate the challenged provisions of the special 4(d) rule;

E. Remand the Threatened Finding without vacatur;

F. Remand the Special Rule;

G. Order the Defendants to review the best scientific data available and reconsider listing silverspot butterflies as endangered, reconsider designating critical habitat, reconsider the provisions of the Special Rule, and order Defendants to issue a new proposed rule within six months;

H. Order FWS to carry out and/or require remedial relief for any harm to silverspot butterflies already caused by the failure to list silverspots as endangered, the refusal to designate critical habitat, and the Special Rule;

I. Award Plaintiffs their costs, including reasonable attorney fees, pursuant to the ESA, 16 U.S.C. § 1540(g)(4), and the Equal Access to Justice Act, 28 U.S.C. § 2414; and

J. Provide Plaintiffs such other relief as the Court deems just and proper.

Dated: October 30, 2025

Respectfully Submitted,

s/ Stephen R. Hernick
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